

2006

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Bill Stefaniak)

Terrorism (Preventative Detention) Bill 2006

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FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Bill Stefaniak)

Terrorism (Preventative Detention) Bill 2006

A Bill for

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

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

4 **2 Commencement**

5 This Act commences on the day after its notification day.

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

8 **3 Dictionary**

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

10 *Note 1* The dictionary at the end of this Act defines certain terms used in this
11 Act.

12 *Note 2* A definition in the dictionary applies to the entire Act unless the
13 definition, or another provision of the Act, provides otherwise or the
14 contrary intention otherwise appears (see Legislation Act, s 155 and
15 s 156 (1)).

16 **4 Notes**

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

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

20 **5 Offences against Act—application of Criminal Code etc**

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

22 *Note 1 Criminal Code*

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

25 The chapter sets out the general principles of criminal responsibility
26 (including burdens of proof and general defences), and defines terms

used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 *Penalty units*

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

6 Object

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

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

Note Section 41 provides that, while a person is being detained under a preventative detention order, the person may only be questioned for very limited purposes.

7 Extraterritoriality of terrorist act no barrier

To remove any doubt, the functions under this Act in relation to a terrorist act may be exercised whether the terrorist act has been, is being, or is likely to be committed in the ACT.

8 Senior police officer with functions under preventative detention orders

If—

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

the function is imposed at that time on the most senior of those police officers.

- 1 **Part 2** **Preventative detention orders**
- 2 **9** **When preventative detention orders may be made**
- 3 (1) A preventative detention order may be made against a person if—
- 4 (a) there are reasonable grounds to suspect that the person—
- 5 (i) will engage in a terrorist act; or
- 6 (ii) possesses a thing that is connected with the preparation
- 7 for, or the engagement of a person in, a terrorist act; or
- 8 (iii) has done an act in preparation for, or planning, a terrorist
- 9 act; and
- 10 (b) making the order would substantially assist in preventing a
- 11 terrorist act happening; and
- 12 (c) detaining the person for the period for which the person is to be
- 13 detained under the order is reasonably necessary for the
- 14 purpose of substantially assisting in preventing a terrorist act
- 15 happening.
- 16 (2) For subsection (1), the terrorist act must be imminent and, in any
- 17 event, be expected to occur at some time in the next 14 days.
- 18 (3) A preventative detention order may also be made against a person
- 19 if—
- 20 (a) a terrorist act has happened within the last 28 days; and
- 21 (b) it is necessary to detain the person to preserve evidence in the
- 22 ACT or elsewhere of, or relating to, the terrorist act; and

- 1 (c) detaining the person for the period for which the person is to be
2 detained under the order is reasonably necessary for the
3 purpose of preserving any such evidence.

4 *Note* As a consequence of the operation of section 7, it does not matter
5 whether the location of the terrorist act is in the ACT or elsewhere.

6 **10 No preventative detention order in relation to person**
7 **under 16 years of age**

- 8 (1) A preventative detention order cannot be applied for, or made, in
9 relation to a person who is under 16 years old.
- 10 (2) If—
- 11 (a) a person is being detained under a preventative detention order
12 (or a purported preventative detention order); and
- 13 (b) the police officer who is detaining the person is satisfied on
14 reasonable grounds that the person is under 16 years old;
- 15 the police officer must release the person, as soon as practicable,
16 from detention under the order.

17 **11 Who may apply for preventative detention orders**

- 18 A police officer may apply for a preventative detention order in
19 relation to a person, but only if—
- 20 (a) the police officer is satisfied of the requirements under
21 section 8 for making the order; and
- 22 (b) the police officer has obtained approval to make the
23 application from a senior police officer.

- 1 **12 Applications for preventative detention orders**
- 2 (1) An application for a preventative detention order must—
- 3 (a) subject to subsection (3), be in writing and sworn; and
- 4 (b) set out the facts and other grounds on which the police officer
- 5 considers the order should be made; and
- 6 (c) state the period for which the person is to be detained under the
- 7 order and set out the facts and other grounds on which the
- 8 police officer considers that the person should be detained for
- 9 that period; and
- 10 (d) set out the information (if any) that the applicant has about the
- 11 person's age; and
- 12 (e) set out the following:
- 13 (i) the outcomes and particulars of all previous applications
- 14 for preventative detention orders made in relation to the
- 15 person;
- 16 (ii) the information (if any) that the applicant has about any
- 17 periods for which the person has been detained under an
- 18 order made under a corresponding law;
- 19 (iii) the information (if any) that the applicant has about any
- 20 control order (including any interim control order) made
- 21 in relation to the person under the Commonwealth
- 22 Criminal Code, division 104 (Control orders).
- 23 (2) The application must also fully disclose all relevant matters of
- 24 which the applicant is aware, both favourable and adverse to the
- 25 making of the order.
- 26 (3) An application for a preventative detention order that is required
- 27 urgently may be made by telephone, fax, email or other electronic
- 28 communication.

-
- 1 (4) For an application made under subsection (3)—
- 2 (a) the Supreme Court may make an interim preventative detention
- 3 order if satisfied it is not practicable for the applicant to appear
- 4 before the court to make the application; and
- 5 (b) the terms of the interim order and related directions and other
- 6 matters may be transmitted to the applicant by telephone, fax,
- 7 email or other electronic communication; and
- 8 (c) a written record relating to the application and interim order
- 9 must be made as soon as practicable by or at the direction of
- 10 the court.
- 11 (5) The Supreme Court may refuse to make a preventative detention
- 12 order unless the police officer applying for the order gives the court
- 13 any further information that the court requests about the facts and
- 14 other grounds on which the police officer considers the order should
- 15 be made.
- 16 **13 Supreme Court may make interim preventative detention**
- 17 **order**
- 18 (1) The Supreme Court may, pending the hearing and final
- 19 determination of an application for a preventative detention order,
- 20 make an interim preventative detention order.
- 21 (2) The Supreme Court is to make an interim order if—
- 22 (a) the application and any further information supplied by the
- 23 applicant satisfy the requirements under section 9 for making
- 24 the order; and
- 25 (b) the court cannot proceed immediately to the hearing and
- 26 determination of the application.
- 27 (3) The interim order may be made in the absence of, and without
- 28 notice to, the person in relation to whom the order is to be made (or
- 29 his or her representative).
-

- 1 (4) If the Supreme Court makes an interim order it must—
2 (a) fix the date on which, and the time at which, the hearing of the
3 application is to be resumed; and
4 (b) give directions for notice to be given to the person subject to
5 detention under the interim order (or his or her representative)
6 of the date and time fixed for the resumed hearing.
- 7 (5) The Supreme Court may further adjourn the resumed hearing and
8 continue the interim order in force until the adjourned hearing.
- 9 *Note* Section 17 (Duration of preventative detention orders) prevents an
10 interim order remaining in force for more than 48 hours after the person
11 was first taken into custody under the interim order.

12 **14 Supreme Court may make preventative detention order**
13 **after hearing**

- 14 (1) After hearing an application for a preventative detention order, the
15 Supreme Court must—
16 (a) grant the application and make a preventative detention order;
17 or
18 (b) refuse the application.
- 19 (2) The Supreme Court may make a preventative detention order only if
20 satisfied of the requirements under section 9 (When preventative
21 detention orders may be made) for making the order.
- 22 (3) The following people may adduce evidence (including by calling
23 witnesses or producing material), or make submissions, to the
24 Supreme Court in connection with the hearing of an application for
25 a preventative detention order (other than an interim order):
26 (a) the applicant for the order or any other police officer;
27 (b) the person in relation to whom the order is to be made;
28 (c) one or more representatives of the applicant or person.

- 1 (4) Subsection (3) does not limit the power of the Supreme Court to
2 control proceedings in relation to the application for the order.
- 3 (5) The Supreme Court may determine the application in the absence of
4 the person in relation to whom the order is to be made (or his or her
5 representative) if satisfied that the person was properly notified of
6 the proceedings.

7 **15 Terms of preventative detention orders**

- 8 (1) A preventative detention order must set out—
- 9 (a) the name of the person authorised to be detained under the
10 order; and
- 11 (b) the period for which the person is authorised to be detained
12 (not exceeding the period provided by this Act); and
- 13 (c) the date on which, and the time at which, the order is made;
14 and
- 15 (d) the date and time after which the person may not be taken into
16 custody under the order (not exceeding 48 hours after the order
17 is made); and
- 18 (e) a summary of the grounds on which the order is made.
- 19 (2) To remove any doubt, subsection (1) (e) does not require
20 information to be included in a summary if the disclosure of the
21 information is likely to prejudice national security (within the
22 meaning of the *National Security Information (Criminal and Civil
23 Proceedings) Act 2004* (Cwlth)).

- 1 **16 Maximum period of detention and multiple preventative**
2 **detention orders**
- 3 (1) In this section:
- 4 *related order*, in relation to a person, means any of the following
5 orders that is made in relation to the person:
- 6 (a) an interim preventative detention order;
- 7 (b) another preventative detention order;
- 8 (c) an order under a corresponding law.
- 9 (2) Subject to subsection (3), the maximum period for which a person
10 may be detained under a preventative detention order (other than an
11 interim order) is 14 days.
- 12 (3) The maximum period for which a person may be detained under a
13 preventative detention order is reduced by any period of actual
14 detention under a related order against the person in relation to the
15 same terrorist act.
- 16 *Note* Under s 17 (Duration of preventative detention order) an interim order
17 expires 48 hours after the person is first taken into custody under the
18 order if the application for the order has not been heard and finally
19 determined by that time.
- 20 (4) Despite subsection (2), the maximum period for which a person may
21 be detained under a preventative detention order made on the basis
22 of preserving evidence of, or relating to, a terrorist act that has
23 happened is not to be reduced by any period for which the person is
24 detained under a preventative detention order or related order made
25 on the basis of preventing a terrorist act.
- 26 (5) Subject to subsection (6), more than 1 preventative detention order
27 may be made in relation to the same terrorist act (whether or not
28 against the same person).
- 29 (6) Not more than 1 interim preventative detention order may be made
30 against the same person in relation to the same terrorist act.

(7) Subsection (6) does not prevent—

(a) an extension of an interim order under section 12 (5); or

(b) the making of another interim order following a further application for an order.

(8) A preventative detention order can be made against a person to take effect on the expiry of detention under a related order against the person.

Note This part does not authorise the extension of the period of an order. However, if the initial order does not authorise detention for the maximum period of detention in relation to the same terrorist act that is authorised by this section, further orders may be applied for and made (so long as that maximum period is not exceeded in relation to the total period of those orders).

(9) For this section—

(a) a terrorist act ceases to be the same terrorist act if there is a change in the date on which the terrorist act is expected to happen; and

(b) a terrorist act that is expected to happen at a particular time does not cease to be the same terrorist act only because of—

(i) a change in the people expected to carry out the act at that time; or

(ii) a change in how or where the act is expected to be carried out at that time.

17 Duration of preventative detention order

(1) An interim preventative detention order ceases to have effect if the Supreme Court has not heard and determined the application in relation to which the interim order was made within 48 hours after the person was first taken into custody under the interim order.

- 1 (2) A preventative detention order (other than an interim order) ceases
2 to have effect on the expiry of the period for which the person may
3 be detained under the order in accordance with this part.
- 4 (3) A preventative detention order ceases to have effect if the person
5 has not been taken into custody under the order within the time that
6 the order authorises the person to be taken into custody.
- 7 (4) A preventative detention order ceases to have effect if it is revoked
8 under section 17.

9 **18 Revocation of preventative detention orders**

- 10 (1) A preventative detention order may be revoked by the Supreme
11 Court on application made by the person in relation to whom the
12 order was made or on application by a police officer.
- 13 (2) An application for the revocation of a preventative detention order
14 must be made by a police officer detaining the person if the police
15 officer is satisfied that the grounds on which the order was made
16 have ceased to exist.
- 17 (3) An application made by a person in relation to whom a preventative
18 detention order (other than an interim order) was made must set out
19 information on which the person relies in making the application.
- 20 (4) The information must be information that was not provided to the
21 Supreme Court when the order was made.
- 22 (5) If the Supreme Court rejects an application for revocation, it may
23 give the directions it considers appropriate in relation to any further
24 application for revocation of the order.
- 25 (6) Any further application must set out new information on which the
26 person relies in making the further application.

-
- 1 **19 Prohibited contact orders**
- 2 (1) A police officer who applies to the Supreme Court for a preventative
- 3 detention order in relation to a person (the *subject*) may also apply
- 4 for a prohibited contact order under this section in relation to the
- 5 subject's detention under the preventative detention order.
- 6 (2) If a preventative detention order is in force in relation to the subject,
- 7 a police officer may apply to the Supreme Court for a prohibited
- 8 contact order under this section in relation to the subject's detention
- 9 under the preventative detention order.
- 10 (3) The application must be in writing and sworn, and set out—
- 11 (a) the terms of the order sought; and
- 12 (b) the facts and other grounds on which the police officer
- 13 considers that the order should be made.
- 14 (4) If the Supreme Court is satisfied that making a prohibited contact
- 15 order is reasonably necessary to achieve the purposes of the
- 16 preventative detention order, the court may make a prohibited
- 17 contact order under this section that the subject is not, while being
- 18 detained under the preventative detention order, to contact a person
- 19 stated in the prohibited contact order.
- 20 (5) An application for a prohibited contact order that is required
- 21 urgently may be made by telephone, fax, email or other electronic
- 22 communication.
- 23 (6) For an application made under subsection (5)—
- 24 (a) the Supreme Court may make the order if satisfied it is not
- 25 practicable for the applicant to appear before the court to make
- 26 the application; and
- 27 (b) the terms of the order may be transmitted to the applicant by
- 28 telephone, fax, email or other electronic communication; and
- 29 (c) a written record relating to the application and order must be
- 30 made as soon as practicable by or at the direction of the court.
-

- 1 (7) A prohibited contact order may be revoked by the Supreme Court,
2 on application made by the person in relation to whom the relevant
3 preventative detention order relates or on application by a police
4 officer.
- 5 (8) An application for the revocation of a prohibited contact order must
6 be made by a police officer detaining the person under the relevant
7 preventative detention order if the police officer is satisfied that the
8 grounds on which the prohibited contact order was made have
9 ceased to exist.
- 10 (9) The Supreme Court may refuse to make a prohibited contact order
11 unless the police officer applying for the order gives the court any
12 further information that the court requires about the facts and other
13 grounds on which the police officer considers the order should be
14 made.

15 **20 Rules of evidence**

- 16 (1) This section applies to a proceeding in the Supreme Court in relation
17 to an application for the making or revocation of a preventative
18 detention order or prohibited contact order.
- 19 (2) The Supreme Court may take into account any evidence or
20 information that the court considers credible or trustworthy in the
21 circumstances and, in that regard, is not bound by principles or rules
22 governing the admission of evidence.

23 **21 Closure of court and restriction on publication of**
24 **proceedings**

- 25 (1) This section applies to a proceeding in the Supreme Court in relation
26 to an application for the making or revocation of a preventative
27 detention order or prohibited contact order.
- 28 (2) The proceeding must be heard in the absence of the public.

- 1 (3) The Supreme Court may, in any such proceeding, make the orders
2 relating to the suppression of publication of the whole or any part of
3 the proceeding or of the evidence given in the proceeding that, in its
4 opinion, are necessary to secure the object of this Act.
- 5 (4) A person commits an offence if—
6 (a) the person discloses information; and
7 (b) the disclosure contravenes an order under subsection (3); and
8 (c) the person knows the disclosure contravenes an order under
9 subsection (3).
- 10 Maximum penalty: 500 penalty units, imprisonment for 5 years, or
11 both.

Part 3 Carrying out preventative detention orders

22 Power to detain person under preventative detention order

- (1) While a preventative detention order is in force in relation to a person—
 - (a) any police officer may take the person into custody; and
 - (b) any police officer may detain the person.
- (2) A police officer has, for the purpose of taking a person into custody under a preventative detention order or preventing the person escaping from that custody, the same functions as the police officer would have if the police officer were taking the person into custody in connection with the commission of an offence or preventing the person escaping from that custody.
- (3) Subsection (2) does not apply to the extent to which particular functions are provided for in this part.

23 Nominated senior police officer to supervise order

- (1) If a preventative detention order is made in relation to a person, the chief police officer, must nominate a police officer of or above the rank of superintendent (the *nominated senior police officer*) to supervise the exercise of functions in relation to the order.
- (2) The nominated senior police officer must be someone who was not involved in the making of the application for the preventative detention order.
- (3) The nominated senior police officer must—
 - (a) supervise the exercise of functions under the preventative detention order; and

- 1 (b) without limiting paragraph (a), ensure compliance with the
2 obligation under part 2 (Preventative detention orders) of the
3 police officer detaining the person under the preventative
4 detention order to apply for the revocation of the order, or for
5 the revocation of a related prohibited contact order, if the
6 grounds on which the order was made have ceased to exist; and
- 7 (c) consider any representations that are made under subsection (4)
8 in relation to the matters mentioned in paragraph (a) or (b) or
9 to the treatment under the preventative detention order of the
10 detained person.
- 11 (4) For subsection (3) (c), representations may be made to the
12 nominated senior police officer by any of the following:
- 13 (a) the person being detained under the preventative detention
14 order;
- 15 (b) a lawyer acting for that person in relation to the order;
- 16 (c) a person with whom that person has contact under section 38.

17 **24 Endorsement of order with date and time person taken**
18 **into custody**

19 As soon as practicable after a person is first taken into custody
20 under a preventative detention order, the police officer who is
21 detaining the person under the order must endorse on the order the
22 date and time when the person is first taken into custody under the
23 order.

24 **25 Power to require name and address**

- 25 (1) A police officer may require a person to give the police officer the
26 person's name and home address if the officer believes, on
27 reasonable grounds, that the person may be able to assist the police
28 officer in executing a preventative detention order.

- 1 (2) The police officer must tell the person the reason for the
2 requirement and record the reason.
- 3 (3) The person may ask the police officer to tell the person 1 or more of
4 the following:
- 5 (a) the officer's name;
- 6 (b) the address of the officer's place of duty;
- 7 (c) the officer's identification number.
- 8 (4) The person must comply with a requirement made of the person
9 under subsection (1) if the police officer—
- 10 (a) tells the person the reason for the requirement; and
- 11 (b) complies with any request made by the person under
12 subsection (3).
- 13 Maximum penalty: 10 penalty units.
- 14 (5) An offence against this section is a strict liability offence.
- 15 (6) In this section:
- 16 *home address*, of a person, means the address of the place where the
17 person usually lives.

18 **26 Power to enter premises**

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

1 (3) However, the police officer must not enter premises (or a part of
2 premises) used for residential purposes at any time between 9 pm on
3 a day and 6 am on the next day unless the police officer believes, on
4 reasonable grounds, that—

5 (a) it would not be practicable to take the person into custody,
6 either at the premises or somewhere else, at another time; or

7 (b) it is necessary to enter the premises to prevent the
8 concealment, loss or destruction of evidence of, or relating to,
9 a terrorist act.

10 **27 Power to conduct frisk and ordinary personal searches**

11 (1) In this section:

12 *seizable item* means anything that—

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

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

16 (c) could be used to contact another person or to operate a device
17 remotely; or

18 (d) is evidence of, or relates to, a terrorist act.

19 (2) A police officer may, at or soon after the time when a person is
20 taken into custody under a preventative detention order, search the
21 person and anything in the possession of the person to find out
22 whether the person is carrying any seizable items.

23 (3) A police officer is not authorised to search for evidence of, or
24 relating to, a terrorist act, unless the police officer has reasonable
25 grounds to suspect the person is carrying evidence of, or relating to,
26 a terrorist act.

27 (4) The police officer may seize any seizable item found as a result of a
28 search conducted under this section.

- 1 (5) Schedule 1 applies to a search conducted under this section.
2 *Note* Sch 1 provides for the carrying out of ordinary searches and frisk
3 searches for the purposes of this section (but not strip searches).

4 **28 Release of person from preventative detention**

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

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

- 10 (2) The police officer who releases the person from detention under the
11 preventative detention order must give the person a written
12 statement that the person is being released from that detention.

- 13 (3) For subsection (2), the statement must be signed by the police
14 officer.

- 15 (4) To remove any doubt, a person may be taken to have been released
16 from detention under a preventative detention order even if—

17 (a) the person is informed that he or she is being released from
18 detention under the order; and

19 (b) the person is taken into custody on some other basis
20 immediately after the person is informed that he or she is being
21 released from detention under the order.

- 22 (5) To remove any doubt, a person is taken not to be detained under a
23 preventative detention order during a period during which the
24 person is released from detention under the order.

25 *Note* During this period, the provisions of this part that apply to a person who
26 is being detained under a preventative detention order (for example,
27 those dealing with the people the person may contact) do not apply to
28 the person.

(6) To remove any doubt—

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

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

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

29 Arrangement for detainee to be held in prison

- (1) A police officer who is detaining a person (the *subject*) under a preventative detention order may arrange for the subject to be detained under the order at a correctional center, in accordance with arrangements made by the chief executive.

(2) If an arrangement is made under subsection (1)—

- (a) the police officer making the arrangement is to provide the person in charge of the correctional centre with written notice of the arrangement, a copy of the preventative detention order and any prohibited contact order that is in force in relation to the subject's detention; and

- (b) the preventative detention order is taken to authorise the person in charge of the correctional centre to detain the subject at the correctional centre while the order is in force in relation to the subject; and

- (c) section 33 (Humane treatment of person being detained) applies in relation to the subject's detention under the order at the correctional centre as if—

- (i) the person in charge of that correctional centre; or

Part 3 Carrying out preventative detention orders

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- 1 (ii) any other person involved in the subject's detention at
2 that correctional centre;
- 3 were a person exercising authority under the order or
4 implementing or enforcing the order; and
- 5 (d) the police officer who made the arrangement (or another police
6 officer designated by the chief police officer) is taken, while
7 the subject is detained at the correctional centre, to be the
8 police officer detaining the subject for the purposes of this part;
9 and
- 10 (e) a police officer may, for the purposes of exercising functions
11 under the order, enter at any time the correctional centre and
12 visit the subject in the correctional centre.
- 13 (3) An arrangement under subsection (1) does not prevent the subject
14 being returned to the custody of a police officer.
- 15 (4) During any period that a subject under 18 years old is not detained
16 under an arrangement in force under this section, a police officer
17 must not detain the subject together with adults unless the
18 nominated senior police officer under section 22 considers that there
19 are exceptional circumstances and approves of that detention.

Part 4 Informing person detained about preventative detention orders

30 Effect of interim preventative detention order to be explained to person detained

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

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

- (2) The matters covered by this subsection are—

- (a) the fact that an interim preventative detention order has been made authorising the person's detention pending the hearing and determination of the application for the person's continued preventative detention; and
- (b) the date and time fixed by the Supreme Court for the hearing and determination of the application; and
- (c) the people that the person is entitled to contact under section 35 and section 38 and the restrictions that apply to the contact; and
- (d) any right the person has to complain to the ombudsman in relation to—
 - (i) the application for, or the making of, the order; or
 - (ii) the treatment of the person by a police officer in relation to the person's detention under the order; and

- 1 (e) the fact that the person may ask the Supreme Court to revoke
2 the order or seek from a court any other remedy relating to—
3 (i) the order; or
4 (ii) the treatment of the person in relation to the person's
5 detention under the order; and
6 (f) the person's entitlement under section 37 to contact a lawyer;
7 and
8 (g) the name and work telephone number of the senior police
9 officer who has been nominated under section 22 to supervise
10 the exercise of functions under the order.
- 11 (3) Subsection (2) (c) does not require the police officer to inform the
12 person being detained of—
13 (a) the fact that a prohibited contact order has been made in
14 relation to the person's detention; or
15 (b) the name of a person stated in a prohibited contact order that
16 has been made in relation to the person's detention.

17 **31 Effect of preventative detention order (other than interim**
18 **order) to be explained to person detained**

- 19 (1) As soon as practicable after a preventative detention order (other
20 than an interim order) is made in relation to a person, the police
21 officer who is detaining the person must inform the person of the
22 matters covered by subsection (2).

23 Maximum penalty: 200 penalty units, imprisonment for 2 years, or
24 both.

- 25 (2) The matters covered by this subsection are—
26 (a) the fact that the order has been made in relation to the person;
27 and

-
- 1 (b) the period during which the person may be detained under the
2 order; and
- 3 (c) the people that the person is entitled to contact under
4 section 35 and section 38 and the restrictions that apply to the
5 contact; and
- 6 (d) any right the person has to complain to the ombudsman in
7 relation to—
- 8 (i) the application for the order; or
- 9 (ii) the treatment of the person by a police officer in relation
10 to the person's detention under the order; and
- 11 (e) the fact that the person may ask the Supreme Court to revoke
12 the order or seek from a court any other remedy relating to—
- 13 (i) the order; or
- 14 (ii) the treatment of the person in relation to the person's
15 detention under the order; and
- 16 (f) the person's entitlement under section 37 to contact a lawyer;
17 and
- 18 (g) the name and work telephone number of the senior police
19 officer who has been nominated under section 22 to supervise
20 the exercise of functions under the order.
- 21 (3) Subsection (2) (c) does not require the police officer to inform the
22 person being detained of—
- 23 (a) the fact that a prohibited contact order has been made in
24 relation to the person's detention; or
- 25 (b) the name of a person stated in a prohibited contact order that
26 has been made in relation to the person's detention.

- 1 **32 Compliance with obligation to inform**
- 2 (1) Section 29 (1) and section 30 (1) do not apply if the actions of the
- 3 person being detained under the preventative detention order make it
- 4 impracticable for the police officer to comply with those sections.
- 5 (2) The police officer detaining the person under the preventative
- 6 detention order complies with section 29 (1) or section 30 (1) if the
- 7 police officer informs the person in substance of the matters covered
- 8 by section 29 (2) or section 30 (2) (even if this is not done in
- 9 language of a precise or technical nature).
- 10 (3) The police officer who is detaining the person under the
- 11 preventative detention order must arrange for the assistance of an
- 12 interpreter in complying with section 29 (1) or section 30 (1) if the
- 13 police officer has reasonable grounds to believe that the person is
- 14 unable, because of inadequate knowledge of the English language or
- 15 a disability, to communicate with reasonable fluency in English.
- 16 (4) Without limiting subsection (3), the assistance of the interpreter may
- 17 be provided by telephone.
- 18 (5) The lawfulness of a person's detention under a preventative
- 19 detention order is not affected by a failure to comply with
- 20 section 29 (1) or section 30 (1) or subsection (3) of this section.
- 21 **33 Copy of preventative detention order and summary of**
- 22 **grounds**
- 23 (1) As soon as practicable after a person is first taken into custody
- 24 under an interim preventative detention order, the police officer who
- 25 is detaining the person under the order must give the person a copy
- 26 of the order.
- 27 (2) Despite section 21 (2), a police officer does not need to have a copy
- 28 of the order with him or her, or to produce a copy of the order to the
- 29 person being taken into custody, when the police officer takes the
- 30 person into custody.

-
- 1 (3) As soon as practicable after a preventative detention order (other
2 than an interim order) is made in relation to a person, the police
3 officer who is detaining the person under the order, must give the
4 person a copy of the order.
- 5 (4) A person who is being detained under a preventative detention order
6 may request a police officer who is detaining the person under the
7 order to give a copy of the order to a lawyer acting for the person in
8 relation to the order.
- 9 (5) The police officer must make arrangements for a copy of the order
10 to be given to the lawyer as soon as practicable after the request is
11 made.
- 12 (6) Without limiting subsection (5), the copy of the order may be faxed
13 or emailed to the lawyer.
- 14 (7) To avoid doubt, subsection (5) does not entitle the lawyer to be
15 given a copy of, or see, a document other than the order.
- 16 (8) This section does not require a copy of a prohibited contact order to
17 be given to a person.
- 18 (9) The police officer who gives—
19 (a) the person being detained under an interim preventative
20 detention order; or
21 (b) a lawyer acting for the person;
22 a copy of the interim order under this section must endorse on the
23 copy the date and time when the person was first taken into custody
24 under the order and the date and time fixed by the Supreme Court
25 for the hearing and determination of the application for the
26 continued detention of the person.
- 27 (10) The lawfulness of a person's detention under a preventative
28 detention order is not affected by a failure to comply with this
29 section.
-

1 **Part 5 Treatment of person detained**

2 **34 Humane treatment of person being detained**

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

5 (a) must be treated with humanity and with respect for human
6 dignity; and

7 (b) must not be subjected to cruel, inhuman or degrading
8 treatment, by anyone exercising authority under the order or
9 implementing or enforcing the order.

10 (2) A person commits an offence if the person contravenes
11 subsection (1).

12 Maximum penalty: 200 penalty units, imprisonment for 2 years, or
13 both.

14 **35 Restriction on contact with other people**

15 Except as provided by this part, while a person is being detained
16 under a preventative detention order, the person—

17 (a) is not entitled to contact another person; and

18 (b) may be prevented from contacting another person.

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

22 *Note 2* A person's entitlement to contact other people under this part is subject
23 to a prohibited contact order (see s 40).

- 1 **36 Contacting family members etc**
- 2 (1) The person being detained is entitled to contact—
- 3 (a) one of his or her family members; and
- 4 (b) if he or she—
- 5 (i) lives with another person and that other person is not a
- 6 family member of the person being detained; or
- 7 (ii) lives with other people and those other people are not
- 8 family members of the person being detained, that other
- 9 person or one of those other people; and
- 10 (c) if he or she is employed—his or her employer; and
- 11 (d) if he or she employs people in a business—one of the people
- 12 he or she employs in that business; and
- 13 (e) if he or she engages in a business together with another person
- 14 or other people—that other person or one of those other
- 15 people; and
- 16 (f) if the police officer detaining the person being detained agrees
- 17 to the person contacting another person—that person, by
- 18 telephone, fax or email but only for the purpose of letting the
- 19 person contacted know that he or she is safe and is being
- 20 detained.
- 21 (2) To remove any doubt, the person being detained is entitled, under
- 22 subsection (1), to disclose—
- 23 (a) the fact that a preventative detention order has been made in
- 24 relation to the person; and
- 25 (b) the fact that the person is being detained; and
- 26 (c) the period for which the person is being detained.

1 (3) In this section:

2 *family member* of a person means—

- 3 (a) the person's domestic partner; or
- 4 (b) a parent, step-parent or grandparent of the person; or
- 5 (c) a child, stepchild or grandchild of the person; or
- 6 (d) a brother, sister, stepbrother or stepsister of the person; or
- 7 (e) a guardian or carer of the person.

8 **37 Contacting ombudsman**

9 The person being detained is entitled to contact the ombudsman.

10 **38 Contacting lawyer**

11 (1) The person being detained is entitled to contact a lawyer but only

12 for the purpose of—

13 (a) obtaining advice from the lawyer about the person's legal

14 rights in relation to—

15 (i) the preventative detention order; or

16 (ii) the treatment of the person in connection with the

17 person's detention under the order; or

18 (b) arranging for the lawyer to act for the person in relation to, and

19 instructing the lawyer in relation to, a proceeding in the

20 Supreme Court relating to—

21 (i) the making of a preventative detention order against the

22 person; or

23 (ii) the revocation of a preventative detention order made

24 against the person; or

-
- 1 (c) arranging for the lawyer to act for the person in relation to, and
2 instructing the lawyer in relation to, any other proceeding in a
3 court for a remedy relating to—
- 4 (i) the preventative detention order; or
- 5 (ii) the treatment of the person in connection with the
6 person's detention under the order; or
- 7 (d) arranging for the lawyer to act for the person in relation to, and
8 instructing the lawyer in relation to, a complaint to the
9 ombudsman in relation to—
- 10 (i) the application for, or the making of, the preventative
11 detention order; or
- 12 (ii) the treatment of the person by a police officer in relation
13 to the person's detention under the order; or
- 14 (e) arranging for the lawyer to act for the person in relation to an
15 appearance, or hearing, before a court that is to take place
16 while the person is being detained under the order.
- 17 (2) The form of contact that the person being detained is entitled to
18 have with a lawyer under subsection (1) includes—
- 19 (a) being visited by the lawyer; and
- 20 (b) communicating with the lawyer by telephone, fax or email.
- 21 (3) If—
- 22 (a) the person being detained asks to be allowed to contact a
23 particular lawyer under subsection (1); and
- 24 (b) either—
- 25 (i) the person is not entitled to contact that lawyer because of
26 a prohibited contact order; or
- 27 (ii) the person is not able to contact that lawyer;
-

- 1 the police officer who is detaining the person must give the person
2 reasonable assistance to choose another lawyer for the person to
3 contact under subsection (1).
- 4 (4) If the police officer who is detaining a person under a preventative
5 detention order has reasonable grounds to believe that—
- 6 (a) the person is unable, because of inadequate knowledge of the
7 English language or a disability, to communicate with
8 reasonable fluency in English; and
- 9 (b) the person may have difficulties in choosing or contacting a
10 lawyer because of that inability;
- 11 the police officer must give the person reasonable assistance
12 (including, if appropriate, by arranging for the assistance of an
13 interpreter) to choose and contact a lawyer under subsection (1).
- 14 (5) In recommending lawyers to the person being detained as part of
15 giving the person assistance under subsection (3), the police officer
16 who is detaining the person may give priority to lawyers who have
17 been given a security clearance at an appropriate level by the
18 Attorney-General's Department of the Commonwealth.
- 19 (6) Despite subsection (5) but subject to any prohibited contact order,
20 the person being detained is entitled under this section to contact a
21 lawyer who does not have a security clearance of the kind referred
22 to in subsection (5).
- 23 **39 Special contact rules for person under 18 or incapable of**
24 **managing own affairs**
- 25 (1) This section applies if the person being detained under a
26 preventative detention order—
- 27 (a) is under 18 years old; or
- 28 (b) is incapable of managing his or her affairs.

-
- 1 (2) The person is entitled, while being detained under the order, to have
2 contact with—
- 3 (a) a parent or guardian of the person; or
- 4 (b) another person who—
- 5 (i) is able to represent the person's interests; and
- 6 (ii) is, as far as practicable in the circumstances, acceptable to
7 the person and to the police officer who is detaining the
8 person; and
- 9 (iii) is not a police officer; and
- 10 (iv) is not a member (however described) of a police force of
11 a State or another Territory; and
- 12 (v) is not an officer or employee of the Australian Security
13 Intelligence Organisation.
- 14 (3) To remove any doubt—
- 15 (a) if the person being detained (the *detainee*) has 2 parents or 2 or
16 more guardians, the detainee is entitled, subject to any
17 prohibited contact order, to have contact under subsection (2)
18 with each of those parents or guardians; and
- 19 (b) the detainee is entitled to disclose the following to a person
20 with whom the detainee has contact under subsection (2):
- 21 (i) the fact that a preventative detention order has been made
22 in relation to the detainee;
- 23 (ii) the fact that the detainee is being detained;
- 24 (iii) the period for which the detainee is being detained.
- 25 (4) The form of contact that the detainee is entitled to have with another
26 person under subsection (2) includes—
- 27 (a) being visited by that other person; and
-

- 1 (b) communicating with that other person by telephone, fax or
2 email.
- 3 (5) The period for which the detainee is entitled to have contact with
4 another person each day under subsection (2) is—
- 5 (a) 2 hours; or
- 6 (b) if the preventative detention order allows a longer period—the
7 period.
- 8 (6) Despite subsection (5), the police officer who is detaining the person
9 may permit the detainee to have contact with a person under
10 subsection (2) for a period that is longer than the period provided for
11 in subsection (5).
- 12 **40 Monitoring contact with family members, lawyers etc**
13 **under s 35, s 37 and s 38**
- 14 (1) The contact the person being detained has with another person under
15 section 35, 37 or 38 may take place only if it is conducted in a way
16 that the contact, and the content and meaning of the communication
17 that takes place during the contact, can be effectively monitored by
18 a police officer exercising authority under the preventative detention
19 order.
- 20 (2) The contact may take place in a language other than English only if
21 the content and meaning of the communication that takes place
22 during the contact can be effectively monitored with the assistance
23 of an interpreter.
- 24 (3) Without limiting subsection (2), the interpreter referred to in that
25 subsection may be a police officer.

-
- 1 (4) If the person being detained indicates that he or she wishes the
2 contact to take place in a language other than English, the police
3 officer who is detaining the person must—
- 4 (a) arrange for the services of an appropriate interpreter to be
5 provided if it is reasonably practicable to do so during the
6 period during which the person is being detained; and
- 7 (b) if it is reasonably practicable to do so—arrange for those
8 services to be provided as soon as practicable.
- 9 (5) Any communication between—
- 10 (a) a person who is being detained under a preventative detention
11 order; and
- 12 (b) a lawyer, for a purpose referred to in section 37 is not
13 admissible in evidence against the person in any proceeding in
14 a court.
- 15 (6) A person (the *monitor*) commits an offence if—
- 16 (a) the monitor is—
- 17 (i) a police officer who monitors; or
- 18 (ii) an interpreter who assists in monitoring, contact that a
19 person being detained under a preventative detention
20 order has with a lawyer under section 37 while the
21 detainee is being detained under the order; and
- 22 (b) information is communicated in the course of that contact; and
- 23 (c) the information is communicated for one of the purposes
24 referred to in section 37; and
- 25 (d) the monitor discloses that information to another person.
- 26 Maximum penalty: 500 penalty units, imprisonment for 5 years, or
27 both.
-

- 1 **41 Entitlement to contact subject to prohibited contact order**
- 2 Sections 35, 37 and 38 have effect subject to any prohibited contact
- 3 order made in relation to the person's detention.
- 4 **42 Questioning of person prohibited while person detained**
- 5 A police officer must not question a person while the person is
- 6 being detained under a preventative detention order if the
- 7 questioning is not for the purposes of—
- 8 (a) determining whether the person is the person specified in the
- 9 order; or
- 10 (b) ensuring the safety and well-being of the person being
- 11 detained; or
- 12 (c) allowing the police officer to comply with a requirement of this
- 13 Act in relation to the person's detention under the order.
- 14 Maximum penalty: 200 penalty units, imprisonment for 2 years, or
- 15 both.
- 16 *Note* This section will not apply to the person if the person is released from
- 17 detention under the order (even though the order may still be in force in
- 18 relation to the person).
- 19 **43 Taking fingerprints, recordings, samples of handwriting**
- 20 **or photographs**
- 21 (1) In this section:
- 22 *identification material*, in relation to a person, means prints of the
- 23 person's hands, fingers, feet or toes, recordings of the person's
- 24 voice, samples of the person's handwriting or photographs
- 25 (including video recordings) of the person.

- 1 (2) A police officer commits an offence if—
- 2 (a) the police officer takes identification material from a person
- 3 who is being detained under a preventative detention order;
- 4 and
- 5 (b) the identification material is not taken in accordance with this
- 6 section.
- 7 Maximum penalty: 200 penalty units, imprisonment for 2 years, or
- 8 both.
- 9 (3) A police officer who is of the rank of sergeant or higher may take
- 10 identification material from the person, or cause identification
- 11 material from the person to be taken, if—
- 12 (a) the person consents in writing; or
- 13 (b) the police officer believes on reasonable grounds that it is
- 14 necessary to do so for the purpose of confirming the person's
- 15 identity as the person specified in the order.
- 16 (4) A police officer may use the force as is necessary and reasonable in
- 17 the circumstances to take identification material from a person under
- 18 this section.
- 19 (5) Subject to this section, a police officer may only take identification
- 20 material (other than hand prints, fingerprints, foot prints or toe
- 21 prints) from a person who—
- 22 (a) is under 18 years old; or
- 23 (b) is incapable of managing his or her affairs, if the Supreme
- 24 Court orders that the material be taken.
- 25 (6) The taking of identification material from a person who—
- 26 (a) is under 18 years old; or
- 27 (b) is incapable of managing his or her affairs, must be done in the
- 28 presence of—

- 1 (i) a parent or guardian of the person, or
- 2 (ii) if a parent or guardian of the person is not acceptable to
- 3 the person—another appropriate person.
- 4 (7) Despite this section, identification material may be taken from a
- 5 person who is under 18 years old and is capable of managing his or
- 6 her affairs if—
- 7 (a) subsections (8) and (9) are satisfied; or
- 8 (b) subsection (8) or (9) is satisfied (but not both) and the Supreme
- 9 Court orders that the material be taken.
- 10 (8) This subsection applies if the person agrees in writing to the taking
- 11 of the material.
- 12 (9) This subsection applies if either—
- 13 (a) a parent or guardian of the person; or
- 14 (b) if a parent or guardian is not acceptable to the person—another
- 15 appropriate person, agrees in writing to the taking of the
- 16 material.
- 17 (10) Despite this section, identification material may be taken from a
- 18 person who—
- 19 (a) is at least 18 years old; and
- 20 (b) is capable of managing his or her affairs, if the person consents
- 21 in writing.
- 22 (11) A reference in this section to an *appropriate person* in relation to a
- 23 person (the *subject*) who is under 18 years old, or incapable of
- 24 managing his or her affairs, is a reference to a person who—
- 25 (a) is capable of representing the subject's interests; and
- 26 (b) as far as is practicable in the circumstances, is acceptable to the
- 27 subject and the police officer who is detaining the subject; and

1 (c) is none of the following:

2 (i) a police officer;

3 (ii) a member (however described) of a police force of a State
4 or another Territory;

5 (iii) an officer or employee of the Australian Security
6 Intelligence Organisation.

7 **44 Use of identification material**

8 (1) This section applies if identification material is taken under
9 section 42 from a person being detained under a preventative
10 detention order.

11 (2) The material may be used only for the purpose of determining
12 whether the person is the person specified in the order.

13 (3) A person commits an offence if the person uses identification
14 material in contravention of subsection (2).

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

17 (4) If—

18 (a) a period of 12 months elapses after the identification material
19 is taken; and

20 (b) a proceeding in relation to—

21 (i) the preventative detention order; or

22 (ii) the treatment of the person in connection with the
23 person's detention under the order, has not been brought,
24 or has been brought and discontinued or completed,
25 within that period;

26 the chief police officer must ensure that the material is destroyed as
27 soon as practicable after the end of that period.

1 **Part 6 Miscellaneous**

2 **45 Annual reports to be given to Attorney-General**

- 3 (1) The chief police officer must report annually to the Attorney-
4 General on the exercise of powers under this Act by police officers.
- 5 (2) A report under subsection (1) must be provided within 4 months
6 after each 30 June.
- 7 (3) Without limiting subsection (1), a report relating to a year ended on
8 that 30 June must include the following matters:
- 9 (a) the number of applications for preventative detention orders
10 (including interim orders) and the number of any preventative
11 detention orders made, and the number of times a preventative
12 detention order (other than an interim order) was not made
13 following a hearing;
- 14 (b) the number of applications for preventative detention orders,
15 and preventative detention orders, in relation to adults and the
16 number in relation to children;
- 17 (c) the duration of each preventative detention order made;
- 18 (d) a statement as to whether each such order was made to prevent
19 a terrorist act or to preserve evidence;
- 20 (e) a statement as to whether a person was taken into custody
21 under each preventative detention order and, if so, the period
22 for which the person was detained;
- 23 (f) the number of applications for prohibited contact orders and
24 the number of prohibited contact orders made, the duration of
25 each order and the number of orders made in relation to adults
26 and in relation to children;
- 27 (g) the number of applications for revocation of an order and the
28 number of revocations granted;

1 (h) particulars of any complaints in relation to the detention of a
2 person under a preventative detention order made or referred
3 during the year to the ombudsman and the outcome of any
4 complaint made;

5 (i) a statement confirming the destruction of identification
6 material required to be destroyed under section 44 (4).

7 (4) The Attorney-General must present the reports to the Legislative
8 Assembly as soon as practicable after receiving them.

9 **46 Monitoring by ombudsman**

10 (1) For the period of 5 years after the commencement of this Act, the
11 ombudsman must keep under scrutiny the exercise of powers
12 conferred on police officers under this Act.

13 (2) For that purpose, the ombudsman may require the chief police
14 officer to provide information about the exercise of those powers.

15 (3) The chief police officer must ensure that the ombudsman—

16 (a) is notified of the making of a preventative detention order or
17 prohibited contact order, and given a copy of the order; and

18 (b) if a person is taken into custody under a preventative detention
19 order—is notified that the person has been taken into custody;
20 and

21 (c) if an order is revoked—is notified of the revocation.

22 (4) The ombudsman must, as soon as practicable after the expiration
23 of—

24 (a) 2 years after the commencement of this Act; and

25 (b) 5 years after that commencement;

26 prepare reports on the exercise of those powers and give a copy of
27 the reports to the Attorney-General.

- 1 (5) The Attorney-General must present the reports to the Legislative
2 Assembly as soon as practicable after receiving them.

3 **47 Law relating to legal professional privilege not affected**

4 To remove any doubt, this Act does not affect the law relating to
5 legal professional privilege.

6 **48 Legal proceedings in relation to preventative detention
7 orders**

8 This Act does not limit proceedings that may be brought in a court
9 for a remedy in relation to—

- 10 (a) a preventative detention order; or
11 (b) the treatment of a person in connection with the person's
12 detention under a preventative detention order.

13 **49 Sunset provision**

- 14 (1) A preventative detention order, or a prohibited contact order, that is
15 in force at the end of 10 years after the day on which this Act
16 commences ceases to be in force at that time.
17 (2) A preventative detention order, and a prohibited contact order,
18 cannot be applied for, or made, after the end of 10 years after the
19 day on which this Act commences.

Schedule 1 Conduct of personal searches

(see s 26 (5))

1.1 Application—sch 1

This schedule applies to any search of a person carried out, or authorised to be carried out, by a police officer under this Act.

1.2 Definitions—sch 1

In this schedule:

electronic metal detection device means an electronic device that is capable of detecting the presence of metallic objects.

frisk search means—

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

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

- (a) requiring the person to remove only his or her overcoat, coat or jacket or similar article of clothing and any gloves, shoes and hat; and
- (b) an examination of those items.

1 ***strip search*** means a search of a person or of things in the
2 possession of a person that may include—

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

6 **1.3 Frisk searches and ordinary searches**

7 (1) A police officer who is authorised to search a person may carry out
8 a frisk search or an ordinary search of the person for any purpose for
9 which the search may be conducted.

10 (2) In conducting a frisk search, a police officer may, if the police
11 officer has asked the person to remove a coat or jacket, treat the
12 person's outer clothing as being the person's outer clothing after the
13 coat or jacket has been removed.

14 **1.4 Strip searches**

15 A police officer who is authorised to search a person may conduct a
16 strip search of the person—

17 (a) if the person is suspected of being the target of an
18 authorisation; and

19 (b) if the police officer suspects on reasonable grounds that it is
20 necessary to conduct a strip search of the person for the
21 purposes of the search and that the seriousness and urgency of
22 the circumstances require the strip search to be carried out.

23 **1.5 Preservation of privacy and dignity during search**

24 (1) A police officer who searches a person must, as far as is reasonably
25 practicable in the circumstances, comply with this section.

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- 1 (2) The police officer must inform the person to be searched of the
2 following matters:
- 3 (a) whether the person will be required to remove clothing during
4 the search;
- 5 (b) why it is necessary to remove the clothing.
- 6 (3) The police officer must ask for the person's co-operation.
- 7 (4) The police officer must conduct the search—
- 8 (a) in a way that provides reasonable privacy for the person
9 searched; and
- 10 (b) as quickly as is reasonably practicable.
- 11 (5) The police officer must conduct the least invasive kind of search
12 practicable in the circumstances.
- 13 (6) The police officer must not search the genital area of the person
14 searched, or in the case of a female or transgender person who
15 identifies as a female, the person's breasts unless the police officer
16 suspects on reasonable grounds that it is necessary to do so for the
17 purposes of the search.
- 18 (7) A search must be conducted by a police officer of the same sex as
19 the person searched or by a person of the same sex under the
20 direction of the police officer.
- 21 (8) A search of a person must not be carried out while the person is
22 being questioned. If questioning has not been completed before a
23 search is carried out, it must be suspended while the search is
24 carried out.
- 25 (9) A person must be allowed to dress as soon as a search is finished.
- 26 (10) If clothing is seized because of the search, the police officer must
27 ensure the person searched is left with or given reasonably
28 appropriate clothing.
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- 1 (11) In this section—
- 2 *questioning* of a person means questioning the person, or carrying
- 3 out an investigation (in which the person participates).
- 4 *transgender person* means a person, whether or not the person is a
- 5 recognised transgender person—
- 6 (a) who identifies as a member of the opposite sex, by living, or
- 7 seeking to live, as a member of the opposite sex; or
- 8 (b) who has identified as a member of the opposite sex by living as
- 9 a member of the opposite sex; or
- 10 (c) who, being of indeterminate sex, identifies as a member of a
- 11 particular sex by living as a member of that sex;
- 12 and includes a reference to the person being thought of as a
- 13 transgender person, whether or not the person is, or was, in fact a
- 14 transgender person.

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

- 16 (1) A police officer who strip searches a person must, as far as is
- 17 reasonably practicable in the circumstances, comply with the
- 18 following:
- 19 (a) the strip search must be conducted in a private area;
- 20 (b) the strip search must not be conducted in the presence or view
- 21 of a person who is of the opposite sex to the person being
- 22 searched;
- 23 (c) except as provided by this section, the strip search must not be
- 24 conducted in the presence or view of a person whose presence
- 25 is not necessary for the purposes of the search.
- 26 (2) A parent, guardian or personal representative of the person being
- 27 searched may, if it is reasonably practicable in the circumstances, be
- 28 present during a search if the person being searched has no objection
- 29 to that person being present.

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- 1 (3) A strip search of a child who is at least 10 years of age, or of a
2 person who has impaired intellectual functioning, must, unless it is
3 not reasonably practicable in the circumstances, be conducted in the
4 presence of a parent or guardian of the person being searched or, if
5 that is not acceptable to the child or person, in the presence of
6 another person (other than a police officer) who is capable of
7 representing the interests of the person and who, as far as is
8 practicable in the circumstances, is acceptable to the person.
- 9 (4) A strip search must not involve a search of a person's body cavities
10 or an examination of the body by touch.
- 11 (5) A strip search must not involve the removal of more clothes than the
12 person conducting the search believes on reasonable grounds to be
13 reasonably necessary for the purposes of the search.
- 14 (6) A strip search must not involve more visual inspection than the
15 person conducting the search believes on reasonable grounds to be
16 reasonably necessary for the purposes of the search.
- 17 (7) A strip search may be conducted in the presence of a doctor of the
18 opposite sex to the person being searched if the person being
19 searched has no objection to that person being present.
- 20 (8) This section is in addition to the other requirements of this Act
21 relating to searches.
- 22 (9) In this section—
- 23 ***impaired intellectual functioning*** means—
- 24 (a) total or partial loss of a person's mental functions; or
- 25 (b) a disorder or malfunction that results in a person learning
26 differently from a person without the disorder or malfunction;
27 or
-

Schedule 1 Conduct of personal searches

Section 1.7

- 1 (c) a disorder, illness or disease that affects a person's thought
2 processes, perceptions of reality, emotions or judgment, or that
3 results in disturbed behaviour.

4 *Note* Procedures for searches of a more invasive nature are dealt with
5 under the *Crimes (Forensic Procedures) Act 2000*.

6 **1.7 No strip searches of children under 10 years**

7 A strip search must not be conducted on a child who is under the
8 age of 10 years.

Dictionary

(see s 3)

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

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

- function
- police officer.

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

corresponding law means—

- (a) Commonwealth Criminal Code, division 105 (Preventative detention orders); or
- (b) a law of a State or another Territory that provides for preventative detention of people in relation to terrorist acts (including any law of a State or another Territory that is prescribed by regulation as a corresponding law).

interim preventative detention order or ***interim order*** means an interim preventative detention order made by the Supreme Court under section 12 pending the hearing and final determination of an application for a preventative detention order.

preventative detention order means a preventative detention order made by the Supreme Court under section 13, and (unless expressly otherwise provided) includes an interim preventative detention order.

prohibited contact order means an order made by the Supreme Court under section 18.

senior police officer means the chief police officer or another police officer of or above the rank of superintendent.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2006.

2 Notification

Notified under the Legislation Act on 2006.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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