

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

(Attorney-General)

Terrorism (Extraordinary Temporary Powers) Bill 2005

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(Prepared by Parliamentary Counsel's Office)

(Attorney-General)

Terrorism (Extraordinary Temporary Powers) Bill 2005

A Bill for

An Act to provide extraordinary temporary powers to prevent and respond to terrorist acts, and for related purposes

Preamble

- 1 This Act is based on an agreement between the Commonwealth, State and Territory Governments adopted at the special meeting of the Council of Australian Governments (COAG) on counter-terrorism held in Canberra on 27 September 2005.
- 2 At the meeting, COAG considered the evolving security environment in the context of the terrorist attacks in London in July 2005 and agreed that there was a clear case for Australia's counter-terrorism laws to be strengthened.
- 3 Leaders agreed that any strengthened counter-terrorism laws must be necessary, effective against terrorism, contain appropriate safeguards against abuse (such as parliamentary and judicial review), and be exercised in a way that is evidence-based, intelligence-led and proportionate.
- 4 The Legislative Assembly wishes to enact legislation in accordance with the COAG agreement in recognition of the clear need for laws to combat terrorism.
- 5 The Legislative Assembly is committed to fully implementing United Nations resolutions relating to terrorism by adopting counter-terrorism measures that are consistent with international human rights obligations.
- 6 In particular, the Legislative Assembly is committed to taking measures to protect our community against terrorist activity that respect and promote the values reflected in, and the rights and freedoms guaranteed by, the International Covenant on Civil and Political Rights.

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- 7 In enacting these extraordinary temporary measures, the Legislative Assembly, therefore, considers that it is critical that Australia's fundamental legal principles (such as the rule of law, respect for the legal process, the separation of powers, and respect for human rights) be preserved.

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

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Part 1 Preliminary

1 Name of Act

This Act is the *Terrorism (Extraordinary Temporary Powers) Act 2005*.

2 Commencement

This Act commences on the day after its notification day.

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

3 Dictionary

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

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*serious harm*—see the Criminal Code, dictionary.’ means that the term ‘serious harm’ is defined in that dictionary and the definition applies to this Act.

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

4 Notes

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

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

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

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

The chapter sets out the general principles of criminal responsibility (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 Meaning of *terrorist act*

- (1) An act is a *terrorist act* if—
- (a) it does any of the following:
 - (i) causes serious harm that is physical harm to a person;
 - (ii) causes serious damage to property;
 - (iii) causes a person's death;
 - (iv) endangers the life of someone other than the person doing the act;
 - (v) creates a serious risk to the health or safety of the public;
 - (vi) seriously interferes with, seriously disrupts, or destroys, an electronic system; and
 - (b) it is done with the intention of advancing a political, religious or ideological cause; and

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- (c) it is done with the intention of—
 - (i) coercing, or influencing by intimidation, the government of the Territory, the Commonwealth, a State, another Territory or a foreign country, or of part of a State, another Territory or foreign country; or
 - (ii) intimidating the public.
- (2) However, an act is not a *terrorist act* if—
 - (a) it is advocacy, protest, dissent or industrial action; and
 - (b) it is not intended to do any of the following:
 - (i) cause serious harm that is physical harm to a person;
 - (ii) cause a person's death;
 - (iii) endanger the life of someone other than the person doing the act;
 - (iv) create a serious risk to the health or safety of the public.
- (3) A reference in this section to a person or property is a reference to a person or property wherever situated, whether in or outside the ACT (including outside Australia).
- (4) In this section:
 - electronic system* includes any of the following electronic systems:
 - (a) an information system;
 - (b) a telecommunications system;
 - (c) a financial system;
 - (d) a system used for the delivery of essential government services;

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(e) a system used for, or by, an essential public utility;

(f) a system used for, or by, a transport system.

public includes the public (or any section of the public) of a State, another Territory or a foreign country.

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 carried out, in or outside the ACT (including outside Australia).

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Part 2 Preventative detention orders

Division 2.1 Preventative detention orders—preliminary

8 Purpose—pt 2

The purpose of this part is to allow a person to be taken into custody and detained for up to 14 days as a measure of last resort—

- (a) to prevent a terrorist act that is imminent and is, in any event, expected to happen some time within the next 14 days; or
- (b) to preserve evidence of, or relating to, a terrorist act that happened within the last 28 days.

Note Section 55 (Questioning of detained person prohibited) provides that, while a person is detained under a preventative detention order, the person may only be questioned for very limited purposes.

9 Definitions—pt 2

In this part:

corresponding preventative detention law means—

- (a) the 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 declared by regulation to be a corresponding preventative detention law.

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corresponding preventative detention order means an order (however described) for a person's detention under a corresponding preventative detention law.

identification material, for a person, means—

- (a) prints of the person's hands, fingers, feet or toes; or
- (b) recordings of the person's voice; or
- (c) samples of the person's handwriting; or
- (d) photographs (including video recordings) of the person.

interim preventative detention order (or *interim order*) means an interim preventative detention order made under section 21.

maximum 7-day period—see section 13.

maximum 24-hour period—see section 13.

part 2 application—each of the following is a *part 2 application*:

- (a) an application for a preventative detention order for a person;
- (b) an application to extend, or further extend, the period for which a preventative detention order (including an interim order) is to be in force for a person;
- (c) an application to set aside or amend a preventative detention order (including an interim order) made for a person;
- (d) an application for a prohibited contact order, or to set aside a prohibited contact order, made in relation to a person's detention under a preventative detention order.

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preventative detention order means a preventative detention order made under section 19, and includes—

- (a) the order as extended, or further extended under division 2.4; and
- (b) an interim order.

prohibited contact order means an order made under section 29.

10 Police officer with functions under preventative detention orders

If—

- (a) 2 or more police officers are detaining, or involved in the detention of, a person under a detention order at a particular time; and
- (b) a function (other than a power) is expressed in this part to be imposed on the police officer detaining the person;

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

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12 Restrictions on multiple preventative detention orders

- (1) If—
- (a) a preventative detention order, or corresponding preventative detention order, is made for a person on the basis of assisting in preventing a terrorist act happening within a particular period; and
 - (b) the person is detained under the order;

a preventative detention order cannot be applied for, or made, under this Act for the person on the basis of assisting in preventing the same terrorist act happening within that period.

Note It will be possible to apply for, and make, another preventative detention order for the person on the basis of preserving evidence of, or relating to, the terrorist act if it happens.

- (2) If—
- (a) a preventative detention order, or corresponding preventative detention order, is made for a person on the basis of assisting in preventing a terrorist act happening within a particular period; and
 - (b) the person is detained under the order;

a preventative detention order cannot be applied for, or made, under this Act for the person on the basis of assisting in preventing a different terrorist act happening within that period unless the application, or the order, is based on information that became available only after the order mentioned in paragraph (a) was made.

- (3) If—
- (a) a preventative detention order, or corresponding preventative detention order, is made for a person on the basis of preserving evidence of, or relating to, a terrorist act; and
 - (b) the person is detained under the order;
- a preventative detention order cannot be applied for, or made, under this Act for the person on the basis of preserving evidence of, or relating to, the same terrorist act.
- (4) Subsections (1) to (3) do not apply to—
- (a) the making of a preventative detention order for a person for a terrorist act after the making of an interim preventative detention order for the person for the same terrorist act; or
 - (b) an order extending, or further extending, a preventative detention order; or
 - (c) the making of a preventative detention order for a person after the making of a corresponding preventative detention order.
- (5) However, subsection (4) is subject to section 13 (Restrictions on period of detention under preventative detention orders).
- (6) If—
- (a) a preventative detention order is made for a person on the basis of particular information; and
 - (b) the person is detained under the order;
- a preventative detention order cannot be applied for, or made, under this Act for the person solely on the basis of the same information.

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- (7) Subsection (6) does not apply to—
- (a) the making of a preventative detention order after the making of an interim order; or
 - (b) an order extending, or further extending, a preventative detention order; or
 - (c) the making of a preventative detention order for a person not later than 7 days after the day another preventative detention order for the person lapsed under section 39 (Release of person from preventative detention) if, since the person was released from detention under the first order, the person has been detained under—
 - (i) the *Crimes Act 1914* (Cwlth) in relation to an offence against the Commonwealth Criminal Code, part 5.3 (Terrorism); or
 - (ii) the *Australian Security Intelligence Organisation Act 1979* (Cwlth), part 3, division 3 (Special powers relating to terrorism offences).

13 Restrictions on period of detention under preventative detention orders

- (1) The *maximum 24-hour period* for an interim preventative detention order for a person is the period that ensures that the person cannot be detained under the order for longer than whichever of the following periods ends first:
- (a) 24 hours after the person is first detained under the order;
 - (b) the maximum 14-day period.

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- (2) The *maximum 7-day period* for a preventative detention order for a person is the period that ensures that the person cannot be detained under the order for longer than whichever of the following periods ends first:
- (a) if the period for which the order is to be in force has not been extended, or further extended—7 days after the person is first detained under the order;
 - (b) if the period for which the order is to be in force is extended, or further extended—7 days after the person is detained under the order as extended, or further extended;
 - (c) the maximum 14-day period.
- (3) If, because of the application of subsection (1) or (2), a period is nil for a particular proposed preventative detention order for a person, the order cannot be applied for, or made, for the person.
- (4) In this section:
- maximum 14-day period* for a preventative detention order (the *current order*) for a person means the period that ensures that—
- (a) if the person has not previously been detained under a preventative detention order, or corresponding preventative detention order—the person is not detained under the current order for longer than 14 days; or
 - (b) if the person has previously been detained under a preventative detention order, or corresponding preventative detention order—the person is not detained under the current order for longer than the period (if any) by which 14 days exceeds the total of the periods for which the person was previously detained under a preventative detention order, or corresponding preventative detention order, for the same terrorist act.

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- (5) A reference in this section to a number of days is a reference to the number of hours in that number of days.

14 Rights in relation to hearing of part 2 applications

- (1) This section applies to a part 2 application other than an application to which section 21 (Making interim preventative detention order) applies.

Note **Part 2 application** is defined in s 9.

- (2) The person is entitled—
- (a) to be served with a copy of the application; and
 - (b) to be given written notice of the place, date and time the application is to be heard.
- (3) The person is entitled to be present at the hearing of an application to which this section applies in person or, if the Supreme Court directs, by videolink.
- (4) The person is entitled to be represented at the hearing by a lawyer of the person's choice.
- (5) To remove any doubt, subsection (4) does not entitle the person to require the legal aid commission to provide a particular lawyer for the person.
- (6) The person (or the person's lawyer) is entitled to present evidence at the hearing, call witnesses, examine and cross-examine witnesses, and make submissions.

- (7) This section—
- (a) is additional to any other rights of the person; but
 - (b) is subject to the Supreme Court’s inherent jurisdiction to regulate its proceedings.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (8) To remove any doubt, the Supreme Court may hear the application in the absence of the person (or the person’s lawyer) if satisfied that the person was properly notified of the hearing.

15 Appointment of PIM for applications etc

- (1) This section applies to a part 2 application.
- (2) The applicant must give the legal aid commission—
 - (a) a copy of the application; and
 - (b) written notice of the place, date and time the application is to be heard.
- (3) On receiving a copy of the application under subsection (2), the legal aid commission must appoint a person from the public interest monitor panel under section 59 to be the public interest monitor (**PIM**) for the application.
- (4) The PIM is entitled to be present at the hearing of the application, to ask questions of anyone giving evidence to the court and to make any submissions to the court.

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16 Notifying public advocate about applications etc

- (1) This section applies to a part 2 application.
- (2) If the application relates to a preventative detention order proposed to be made or made for a person with impaired decision-making ability, the applicant must give the public advocate—
 - (a) a copy of the application; and
 - (b) written notice of the place, date and time the application is to be heard.
- (3) The public advocate is entitled to be present at the hearing of the application, to ask questions of anyone giving evidence to the court and to make any submissions to the court.

**Division 2.3 Preventative detention orders—
applications for and making**

17 Applying for preventative detention order

- (1) A senior police officer may apply to the Supreme Court for a preventative detention order for a person.
- (2) The senior police officer may make the application only if—
 - (a) subsection (3) or (5) applies; and
 - (b) the making of the application has been approved, in writing, by the chief police officer.
- (3) Subject to subsection (4), this subsection applies if the senior police officer—
 - (a) suspects, on reasonable grounds, that the person—
 - (i) intends, and has the capacity, to carry out a terrorist act;
or

- (ii) possesses something connected with the preparation for, or carrying out of, a terrorist act; or
 - (iii) has done an act in preparation for, or planning, a terrorist act; and
- (b) is satisfied, on reasonable grounds—
 - (i) that it is reasonable and necessary to detain the person to prevent a terrorist act; and
 - (ii) that detaining the person under the order is the least restrictive way of preventing the terrorist act mentioned in subparagraph (i); and
 - (iii) that detaining the person for the period for which the person is to be detained under the order is reasonable and necessary to prevent the terrorist act.
- (4) For subsection (3), the terrorist act must be imminent and, in any event, be expected to happen some time within the next 14 days.
- (5) This subsection applies if the senior police officer is satisfied, on reasonable grounds—
 - (a) that a terrorist act has happened within the last 28 days; and
 - (b) that it is reasonable and necessary to detain the person to preserve evidence in the ACT or elsewhere of, or relating to, the terrorist act; and
 - (c) that detaining the person under the order is the only effective way of preserving the evidence mentioned in paragraph (b); and
 - (d) that detaining the person for the period for which the person is to be detained under the order is reasonable and necessary to preserve the evidence.

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**18 Application for preventative detention order—contents
 etc**

- (1) An application under section 17 by a senior police officer for a preventative detention order for a person must—
- (a) be in writing; and
 - (b) state the following particulars about the person for whom the order is sought:
 - (i) the person’s full name;
 - (ii) the address of the place where the person is living;
 - (iii) the address of the place where the person usually lives; and
 - (c) state whether an interim order is applied for and, if it is applied for—
 - (i) state that the person is not in custody, or being detained, under a territory law or a law of the Commonwealth, a State or another Territory; and
 - (ii) set out the facts and other grounds on which the officer considers that an interim order should be made for the person; and
 - (d) set out the facts and other grounds on which the officer considers a preventative detention order should be made for the person; and
 - (e) state the period for which the person is to be detained under a preventative detention order and set out the facts and other grounds on which the officer considers that the person should be detained for that period; and

- (f) state that the officer does not suspect that any of the facts and other grounds relied on in making the application are based on information obtained, directly or indirectly, from torture; and
- (g) set out the information that the officer has about the person's age and decision-making ability; and
- (h) state that the officer is satisfied that the person is not a child; and
- (i) state whether the officer suspects, or has any grounds to suspect, that the person has impaired decision-making ability; and
- (j) set out the following:
 - (i) particulars of all previous preventative detention orders made for the person;
 - (ii) particulars of all periods for which the person has been detained under a preventative detention order;
 - (iii) the outcomes and particulars of all applications previously made and proceedings previously taken by or in relation to the person under this part; and
- (k) set out the following (to the extent that the officer has the information):
 - (i) particulars of all corresponding preventative detention orders previously made for the person;
 - (ii) particulars of all periods for which the person has been detained under corresponding preventative detention orders;

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- (iii) the outcomes and particulars of all applications (however described) previously made, and all proceedings previously taken, by or in relation to the person under corresponding preventative detention laws;
 - (iv) particulars of all orders previously made for the person under the Commonwealth Criminal Code, division 104 (Control orders);
 - (v) the outcomes and particulars of all requests and applications (however described) previously made, and all proceedings previously taken, by or in relation to the person under the Commonwealth Criminal Code, division 104;
 - (vi) particulars of all periods for which the person has been detained under the *Australian Security Intelligence Organisation Act 1979* (Cwlth), part 3, division 3 (Special powers relating to terrorism offences) within the last 3 months; and
- (l) set out—
- (i) the information (if any) the officer has about any child or person with impaired decision-making ability the person lives with or is responsible for; and
 - (ii) if the officer has information that the person lives with, or is responsible for, a child or person with impaired decision-making ability—the provisions that are proposed for the order, or the arrangements otherwise proposed, to protect the interests of the child or person; and
- (m) set out the inquiries the officer has made about the matters mentioned in paragraphs (f), (g), (k) and (l).

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- (2) If the person has impaired decision-making ability, the application must state—
- (a) whether the person may be contacted under section 51 (Person with impaired decision-making ability to be contacted by public advocate) within 24 hours of being detained under the order; and
 - (b) if the person should not be contacted under section 51 within 24 hours of being detained under the order because the contact would significantly increase the risk of a terrorist act happening or seriously undermine the effectiveness of the order—
 - (i) the grounds for preventing the contact; and
 - (ii) the period as soon as possible after the end of the 24-hour period when the person must be contacted under that section.
- (3) If—
- (a) a preventative detention order, or corresponding preventative detention order, has been made for the person on the basis of assisting in preventing a terrorist act happening within a particular period; and
 - (b) the person was detained under the order; and
 - (c) the application is made on the basis of assisting in preventing a different terrorist act happening within that period;

the application must specifically identify the information on which the application is based that became available only after the order mentioned in paragraph (a) was made.

Note See s 12 (2) (Restrictions on multiple preventative detention orders).

- (4) If—
- (a) a preventative detention order has been made for the person on the basis of particular information; and
 - (b) the person was detained under the order;

the application must specifically identify the additional information on the basis of which the application is made.

Note See s 12 (6) (Restrictions on multiple preventative detention orders).

- (5) The application must include a statement by the applicant that the application fully discloses all matters of which the applicant is aware that are, or may be, relevant to the making of a decision on the application, whether they are favourable or adverse to a decision to make the order.
- (6) The information in the application must be sworn on oath by the applicant.

Note 1 **Oath** includes affirmation and **swear** an oath includes make an affirmation (see Legislation Act, dict, pt 1).

Note 2 The Criminal Code, ch 7 contains offences for perjury and making false or misleading statements in a legal proceeding.

19 Making preventative detention order

- (1) The Supreme Court may make a preventative detention order for a person on application under section 17.
- (2) However, the Supreme Court must not make a preventative detention order (other than an interim order) for a person if the person has not been—
- (a) served with a copy of the application; and

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- (b) given written notice of the place, date and time the application is to be heard.

Note For the making of interim preventative detention orders see s 21.

- (3) Also, the Supreme Court may make a preventative detention order for the person only if subsection (4) or (6) applies.
- (4) Subject to subsection (5), this subsection applies if the Supreme Court is satisfied, on reasonable grounds—
- (a) that the person—
 - (i) intends, and has the capacity, to carry out a terrorist act; or
 - (ii) possesses something connected with the preparation for, or carrying out of, a terrorist act; or
 - (iii) has done an act in preparation for, or planning, a terrorist act; and
 - (b) that it is reasonable and necessary to detain the person to prevent a terrorist act; and
 - (c) that detaining the person under the order is the least restrictive way of preventing the terrorist act mentioned in paragraph (b); and
 - (d) that detaining the person for the period for which the person is to be detained under the order is reasonable and necessary to prevent the terrorist act.
- (5) For subsection (4), the terrorist act must be imminent and, in any event, be expected to happen some time within the next 14 days.

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- (6) This subsection applies if the Supreme Court is satisfied, on reasonable grounds—
- (a) that a terrorist act has happened within the last 28 days; and
 - (b) that it is reasonable and necessary to detain the person to preserve evidence in the ACT or elsewhere of, or relating to, the terrorist act; and
 - (c) that detaining the person under the order is the only effective way of preserving the evidence mentioned in paragraph (b); and
 - (d) that detaining the person for the period for which the person is to be detained under the order is reasonable and necessary to preserve the evidence.
- (7) If the person has impaired decision-making ability, the court must also consider the following in deciding whether to make a preventative detention order for the person:
- (a) the nature and extent of the person's impairment;
 - (b) any other way it may be appropriate to deal with the person under a territory law.
- (8) If the Supreme Court makes a preventative detention order (other than an interim order) for a person, the court must—
- (a) when making the order, give its reasons for making the order; and
 - (b) ensure that reasonable steps are taken to explain to the person (and in language the person can readily understand) the effect of the order.

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**20 Supreme Court may require further information—
preventative detention application**

If the Supreme Court asks the applicant for further information about the application, the court may refuse to make a preventative detention order (including an interim order) on the application unless the information is given to the court in the way the court requires.

Examples of how information may be required

- 1 the court may require evidence to be given on oath before the court
- 2 the court may require information to be given by affidavit

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

21 Making interim preventative detention order

- (1) This section applies if—
 - (a) an application for a preventative detention order for a person is made to the Supreme Court under section 17 without the person being served with a copy of the application, or being given notice of the place, date and time of the hearing; and
 - (b) the application states that an interim order is applied for.
- (2) The Supreme Court may make an interim preventative detention order for the person pending hearing and making a final decision on the application if satisfied, on reasonable grounds, that—
 - (a) the person is not in custody, or being detained, under a territory law or a law of the Commonwealth, a State or another Territory (whether or not the person is in custody or being detained under a corresponding preventative detention law); and

- (b) taking the person into custody, and detaining the person, pending hearing and making a final decision on the application is reasonable and necessary to—
 - (i) prevent a terrorist act; or
 - (ii) preserve evidence of, or relating to, a terrorist act.
- (3) To remove any doubt, the Supreme Court may make an interim order for the person only if section 19 (4) or (6) also applies.
- (4) The interim order may be made in the absence of, and without notice to, the person (or any representative of the person).
- (5) If the Supreme Court makes an interim order for the person, the court must—
 - (a) when making the interim order, give its reasons for making the order; and
 - (b) fix the date and time when the hearing of the application is to be resumed.
- (6) The date and time fixed must be no later than 24 hours after the interim order is made.
- (7) As soon as possible after the person is detained under the interim order, the police officer detaining the person must give the person—
 - (a) a copy of the application; and
 - (b) written notice of the place, date and time of the resumed hearing.

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22 Preventative detention order—contents etc

- (1) A preventative detention order (including an interim order) for a person is an order that the person may be taken into custody and detained, or detained, during a period that—
 - (a) starts at the later of the following:
 - (i) if the order states that it is to start when a stated interim order, or stated corresponding preventative detention order, then in force for the person ceases to have effect— at that time; or
 - (ii) in any other case—when the order is made; and
 - (b) ends a stated period of time after the person is first taken into custody and detained, or detained, under the order.
- (2) The preventative detention order must be in writing.
- (3) The period stated under subsection (1) (b) must not be longer than—
 - (a) if the order is an interim order—the maximum 24-hour period; or
 - (b) in any other case—the maximum 7-day period.
- (4) However, if—
 - (a) the preventative detention order (the *first order*) was made for the person not later than 7 days after the day another preventative detention order for the person lapsed under section 39 (Release of person from preventative detention); and
 - (b) section 12 (7) (c) (Restrictions on multiple preventative detention orders) applies to the making of the first order;the period of time stated under subsection (1) (b) for the first order must not be longer than the maximum period for which the person

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could have been detained under the other order (if that order had not been extended or further extended) immediately before the other order lapsed.

- (5) The preventative detention order must state—
 - (a) the person's name; and
 - (b) the address of the place where the person is living; and
 - (c) the address of the place where the person usually lives; and
 - (d) the date and time when the order is made; and
 - (e) the period during which the person may be detained under the order.
- (6) If the person has impaired decision-making ability, the preventative detention order may provide that the period each day for which the person is entitled to have contact with a stated person under section 50 (Special contact rules for people with impaired decision-making ability) is the stated period of longer than 2 hours.
- (7) Also, if the person has impaired decision-making ability, the preventative detention order may state both of the following:
 - (a) that the person may not be contacted under section 51 (Person with impaired decision-making ability to be contacted by public advocate) within 24 hours after being detained under the order;
 - (b) that the person must be contacted under section 51 after the end of the 24-hour period within a period stated in the order.
- (8) However, if the person has impaired decision-making ability and the preventative detention order is an interim order, the order may state that the person may not be contacted under section 51 while being detained under the interim order.

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- (9) The only basis for a decision under subsection (7) or (8) is that preventing the contact is necessary because the contact would significantly increase the risk of a terrorist act happening or seriously undermine the effectiveness of the preventative detention order.
- (10) The preventative detention order may include provision for the person to have contact with a child of the person in addition to the provision for contact under section 47 (Contact with family members etc).

23 Start and end of effect of preventative detention order

- (1) A preventative detention order (including an interim order) for a person starts to have effect—
 - (a) if the order states that it is to start when a stated interim order, or stated corresponding preventative detention order, then in force for the person ceases to have effect—at that time; or
 - (b) in any other case—when it is made.
- (2) A preventative detention order (including an interim order) for a person ceases to have effect when whichever of the following first happens:
 - (a) the end of 48 hours after the order is made if the person has not been detained under the order;
 - (b) the end of—
 - (i) the period stated in the order as the period during which the person may be detained under the order; or
 - (ii) if the order is extended, or further extended, under division 2.4—the period as extended, or further extended;

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- (c) the order lapses under section 39 (Release of person from preventative detention);
- (d) the order is set aside under division 2.5;
- (e) the order ceases to have effect under section 99 (2) (Expiry of Act etc).

Division 2.4 Preventative detention orders—extensions

24 Supreme Court may extend interim order

- (1) This section applies if the Supreme Court makes an interim preventative detention order for a person.
- (2) The Supreme Court may, by order—
 - (a) adjourn, or further adjourn, the resumed hearing of the application for a preventative detention order for the person; and
 - (b) extend, or further extend, the period for which the interim order is in force until the adjourned hearing.
- (3) The period as extended, or further extended, must end no later than the end of the maximum 24-hour period after the person is first detained under the order.
- (4) Also, if the person has impaired decision-making ability, the extension, or further extension, may state that the person may not be contacted under section 51 (Person with impaired decision-making ability to be contacted by public advocate) while being further detained under the interim order.

- (5) The only basis for a decision under subsection (4) is that preventing the contact is necessary because the contact would significantly increase the risk of a terrorist act happening or seriously undermine the effectiveness of the interim order.

25 Application for extension of preventative detention order

- (1) If a preventative detention order (other than an interim order) is in force for a person, a senior police officer may apply to the Supreme Court for an extension, or further extension, of the period for which the order is in force for the person.
- (2) The senior police officer may make the application only if the police officer is satisfied, on reasonable grounds, that the extension, or further extension, is reasonable and necessary for the purpose for which the order was made.

Note See s 19 (4) (b) and (6) (b) for the purpose for which a preventative detention order may be made.

- (3) The application must—
- (a) be in writing; and
 - (b) set out the facts and other grounds on which the police officer considers that the extension, or further extension, is reasonable and necessary for the purpose for which the order was made; and
 - (c) set out the outcomes and particulars of all previous applications for extensions, or further extensions, of the order.
- (4) Also, if the person has impaired decision-making ability, the application must state—
- (a) whether the person may be contacted under section 51 (Person with impaired decision-making ability to be contacted by

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public advocate) within 24 hours after being further detained under the order; and

- (b) if the person should not be contacted under section 51 within 24 hours of being further detained under the order because the contact would significantly increase the risk of a terrorist act happening or seriously undermine the effectiveness of the order—
 - (i) the grounds for preventing the contact; and
 - (ii) the period as soon as possible after the end of the 24-hour period when the person must be contacted under that section.
- (5) The application must include a statement by the applicant that the application fully discloses all matters of which the applicant is aware that are, or may be, relevant to the making of a decision on the application, whether they are favourable or adverse to a decision on the application.
- (6) The information in the application must be sworn on oath by the applicant.

Note 1 **Oath** includes affirmation and *swear* an oath includes make an affirmation (see Legislation Act, dict, pt 1).

Note 2 The Criminal Code, ch 7 contains offences for perjury and making false or misleading statements in a legal proceeding.

**26 Supreme Court may require further information—
extension application**

If the Supreme Court asks the applicant for further information about the application, the court may refuse to extend, or further extend, the period for which the order is in force unless the information is given to the court in the way the court requires.

Examples of how information may be required

- 1 the court may require evidence to be given on oath before the court
- 2 the court may require information to be given by affidavit

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

27 Supreme Court may extend preventative detention order

- (1) The Supreme Court may, on application under section 25 and by order, extend, or further extend, the period for which the preventative detention order is in force if satisfied, on reasonable grounds, that the extension, or further extension, is reasonable and necessary for the purpose for which the order was made.

Note See s 19 (4) (b) and (6) (b) for the purpose for which a preventative detention order may be made.

- (2) The period as extended, or further extended, must end no later than the end of the maximum 7-day period after the person is first detained under the order.
- (3) Also, if the person has impaired decision-making ability, the extension, or further extension, may state both of the following:
 - (a) that the person may not be contacted under section 51 (Person with impaired decision-making ability to be contacted by public advocate) within 24 hours after being further detained under the order;

- (3) On application under subsection (1), the Supreme Court—
- (a) must, by order, set aside the preventative detention order if satisfied that the grounds on which the order was made do not exist or no longer exist; and
 - (b) may, by order, set the preventative detention order aside if satisfied that it is appropriate that the order be set aside because of—
 - (i) new facts and circumstances that have arisen since the order was made, extended or last extended; or
 - (ii) facts and circumstances that were not before the court when the order was made, extended or last extended.
- (4) If the Supreme Court sets the preventative detention order aside, the police officer detaining the person under the order must give written notice of the setting aside of the order to the chief executive.
- (5) If the person has been detained under the preventative detention order and the Supreme Court sets the order aside, the court may order the Territory to pay compensation to the person for the detention if the court considers that, because of facts and circumstances not before the court when the order was made, extended or last extended, the order should not have been made, extended or last extended.
- (6) On application under subsection (1), the Supreme Court may amend the preventative detention order if satisfied that it is appropriate that the order be amended because of—
- (a) new facts and circumstances that have arisen since the order was made, extended or last extended; or
 - (b) facts and circumstances that were not before the court when the order was made, extended or last extended.

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Division 2.6 Preventative detention orders— prohibited contact orders

29 Prohibited contact orders

- (1) If a senior police officer applies to the Supreme Court for a preventative detention order for a person, the police officer may also apply to the Supreme Court for a prohibited contact order in relation to the person's detention under the preventative detention order.
- (2) If a preventative detention order is in force for the person, a senior police officer may apply to the Supreme Court for a prohibited contact order in relation to the person's detention under the preventative detention order.
- (3) A senior police officer may apply for a prohibited contact order in relation to a person's detention under a preventative detention order only if the officer is satisfied, on reasonable grounds, that the prohibited contact order is reasonable and necessary for 1 or more of the following purposes:
 - (a) to avoid jeopardising action that is being taken to prevent a terrorist act;
 - (b) to prevent serious harm to a person;
 - (c) to preserve evidence of, or relating to, a terrorist act;
 - (d) to prevent interference with the gathering of information about—
 - (i) a terrorist act; or
 - (ii) the preparation for, or the planning of, a terrorist act;

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- (e) to avoid jeopardising—
 - (i) the arrest of a person who is suspected of having committed an offence against the Commonwealth Criminal Code, part 5.3 (Terrorism) or another serious offence; or
 - (ii) the taking into custody of a person for whom a preventative detention order is in force or for whom a preventative detention order is likely to be made; or
 - (iii) the service on a person of a control order under the Commonwealth Criminal Code, division 104.
- (4) An application under this section must—
 - (a) be in writing; and
 - (b) set out the terms of the order sought; and
 - (c) set out the facts and other grounds on which the applicant considers the order should be made; and
 - (d) state that the applicant does not suspect that any of the facts and other grounds relied on in making the application are based on information obtained, directly or indirectly, from torture; and
 - (e) set out the inquiries the applicant has made about the matter mentioned in paragraph (d).
- (5) The application must include a statement by the applicant that the application fully discloses all matters of which the applicant is aware that are, or may be, relevant to the making of a decision on the application, whether they are favourable or adverse to a decision to make the order.

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- (6) The information in the application must be sworn on oath by the applicant.

Note 1 **Oath** includes affirmation and *swear* an oath includes make an affirmation (see Legislation Act, dict, pt 1).

Note 2 The Criminal Code, ch 7 contains offences for perjury and making false or misleading statements in a legal proceeding.

- (7) The Supreme Court may make a prohibited contact order prohibiting the person for whom a preventative detention order has been made from contacting, while the person is detained under the preventative detention order, the person or people stated in the prohibited contact order if the court is satisfied, on reasonable grounds, that the prohibited contact order is reasonable and necessary for 1 or more of the purposes mentioned in subsection (3).

30 Supreme Court may require further information— prohibited contact application

If the Supreme Court asks the applicant for further information about the application, the court may refuse to make a prohibited contact order on the application unless the information is given to the court in the way the court requires.

Examples of how information may be required

- 1 the court may require evidence to be given on oath before the court
- 2 the court may require information to be given by affidavit

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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31 Setting aside prohibited contact orders

- (1) The person in relation to whom a prohibited contact order has been made, or a senior police officer, may apply to the Supreme Court for the order to be set aside.
- (2) However, if the police officer detaining the person under the relevant preventative detention order is satisfied that the grounds on which the prohibited contact order was made do not exist, or no longer exist, then—
 - (a) if the officer is a senior police officer—the officer must apply to the Supreme Court under subsection (1) for the order to be set aside; and
 - (b) if the officer is not a senior police officer—the officer must tell a senior police officer in writing and, if the senior police officer is satisfied that the grounds on which the order was made do not exist or no longer exist, the senior police officer must apply to the Supreme Court under subsection (1) for the order to be set aside.
- (3) On application under subsection (1), the Supreme Court—
 - (a) must, by order, set aside the prohibited contact order if satisfied that the grounds on which the order was made do not exist or no longer exist; and
 - (b) may, by order, set aside the prohibited contact order if satisfied that it is appropriate that the order be set aside because of—
 - (i) new facts and circumstances that have arisen since the order was made; or
 - (ii) facts and circumstances that were not before the court when the order was made.

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Division 2.7 Preventative detention orders— carrying out

32 Power to detain person under preventative detention order etc

- (1) While a preventative detention order is in force for a person—
 - (a) any police officer may take the person into custody; and
 - (b) subject to section 40 (Detention arrangements), any police officer may detain the person.
- (2) The person may ask a police officer who exercises a power under subsection (1)—
 - (a) to tell the person 1 or more of the following:
 - (i) the officer's name;
 - (ii) the address of the officer's place of duty;
 - (iii) the officer's identification number; and
 - (b) if the officer is not in uniform—to show the person evidence that the officer is a police officer.
- (3) A police officer must comply with a request under subsection (2).

33 Nominated senior police officer

- (1) If a preventative detention order is made for a person (the *detained person*), the chief police officer must nominate a senior police officer (the *nominated senior police officer*) to supervise the exercise of functions in relation to the preventative detention 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.

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- (3) The nominated senior police officer must—
- (a) tell the detained person about his or her nomination as nominated senior police officer; and
 - (b) supervise the exercise of functions in relation to the preventative detention order; and
 - (c) without limiting paragraph (b), ensure compliance with section 28 (2) (Setting aside or amending preventative detention orders) and section 31 (2) (Setting aside prohibited contact orders) in relation to the preventative detention order; and
 - (d) receive and consider any representations made under subsection (4) in relation to—
 - (i) anything mentioned in paragraph (b) or (c); or
 - (ii) the treatment of the person by anyone exercising authority under the order or implementing or enforcing it.
- (4) For subsection (3) (d), representations may be made to the nominated senior police officer by any of the following:
- (a) the detained person;
 - (b) a lawyer acting for the detained person;
 - (c) the ombudsman;
 - (d) if the detained person has impaired decision-making ability—the public advocate or a person with whom the detained person has contact under section 50 (Special contact rules for people with impaired decision-making ability);
 - (e) a person exercising authority under the order or implementing or enforcing it.

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- (5) The chief police officer may exercise the power under subsection (1) to replace a nominated senior police officer with another nominated senior police officer (a *new nominated senior police officer*).
- (6) A new nominated senior police officer must tell the detained person of the senior police officer's nomination.
- (7) The nominated senior police officer (including a new nominated senior police officer) must arrange for the assistance of an interpreter in complying with this section if the officer suspects, or has grounds to suspect, that the detained person cannot, because of inadequate knowledge of the English language or a disability, communicate with reasonable fluency in English.
- (8) Without limiting subsection (7), the assistance of the interpreter may be provided by phone if—
 - (a) the detained person agrees; or
 - (b) it is not practicable to arrange for the interpreter to attend in person.
- (9) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with subsection (7).

34 Endorsement of order with date and time person detained under order

- (1) As soon as possible after a person is first detained under a preventative detention order, the police officer detaining the person under the order must endorse on the order—
 - (a) the date and time when the person was first detained under the order; and
 - (b) the place where the person was first detained.

- (2) As soon as possible after the person is transferred to another place of detention under the preventative detention order, the police officer detaining the person must endorse on the order—
- (a) the date and time when the person was first detained at the other place under the order; and
 - (b) the other place.

35 Power to require name and address

- (1) A police officer may require a person to give the police officer the person's name and home address if the officer believes, on reasonable grounds, that the person may be able to assist the police officer in executing a preventative detention order.
- (2) The police officer must tell the person the reason for the requirement and record the reason.
- (3) The person may ask the police officer to tell the person 1 or more of the following:
- (a) the officer's name;
 - (b) the address of the officer's place of duty;
 - (c) the officer's identification number.
- (4) The person must comply with a requirement made of the person under subsection (1) if the police officer—
- (a) tells the person the reason for the requirement; and
 - (b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

- (5) An offence against this section is a strict liability offence.

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(6) In this section:

home address, of a person, means the address of the place where the person usually lives.

36 Power to enter premises

(1) This section applies if —

- (a) a preventative detention order is in force for a person; and
- (b) a police officer believes, on reasonable grounds, that the person is on any premises.

(2) The police officer may enter the premises, using any reasonable and necessary force, and with any reasonable and necessary assistance from other police officers, at any time of the day or night for the purpose of searching the premises for the person or taking the person into custody.

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

- (a) it would not be practicable to take the person into custody, either at the premises or somewhere else, at another time; or
- (b) it is necessary to enter the premises to prevent the concealment, loss or destruction of evidence of, or relating to, a terrorist act.

37 Use of force etc—preventative detention order

A police officer 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 reasonable and necessary—

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- (a) to take the person into custody or detain the person; or
- (b) to prevent the escape of the person after being taken into custody or detained.

38 Search of person taken into custody under preventative detention order

- (1) In this section:
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 someone else to operate a device remotely.
- (2) A police officer may, when or soon after a person is taken into custody under a preventative detention order, conduct a frisk search or ordinary search of the person to find out whether the person is carrying a seizable item.
- (3) However, the police officer must not conduct a frisk search or ordinary search of the person for evidence of, or relating to, a terrorist act unless the officer suspects, on reasonable grounds, that the person is carrying evidence of, or relating to, a terrorist act.
- (4) The police officer may seize any seizable item found during the search.
- (5) Schedule 1 applies to a search conducted under this section.

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39 Release of person from preventative detention

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

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

- (2) The police officer who releases the person from detention under the preventative detention order must give the person a signed written statement that the person is being released from that detention.
- (3) The statement must identify the police officer who signs it.
- (4) To remove any doubt, a person is taken to have been released from detention under a preventative detention order if the person is taken into custody, or detained, on some other basis, whether or not the person is told that the person is being released from detention under the order.
- (5) If a person is released from detention under a preventative detention order—
 - (a) the order lapses; and
 - (b) the person must not again be taken into custody, or detained, under the order.

40 Detention arrangements

- (1) The chief police officer may, with the Minister's written approval, make written arrangements in relation to the detention of people under preventative detention orders.

- (2) Before seeking the Minister's approval to arrangements, the chief police officer must consult with the chief executive, the human rights commissioner, the ombudsman and the public advocate about the arrangements.
- (3) The arrangements must be consistent with human rights.
- (4) Without limiting subsections (1) and (3), the arrangements must—
 - (a) provide for people detained under preventative detention orders (*detainees*) to be detained in the ACT; and
 - (b) identify the places in the ACT where detainees may be detained; and
 - (c) provide for—
 - (i) the place where each detainee is detained to be recorded; and
 - (ii) access to the records; and
 - (d) provide for how responsibility for detainees is to be shared between the chief police officer and the chief executive; and
 - (e) provide for how detainees are to be transferred between places where they may be detained; and
 - (f) provide for the ombudsman to be told about each place where a detainee is detained; and
 - (g) provide for the human rights commissioner, the ombudsman and the public advocate to be able to visit a place where a detainee is detained at any reasonable time; and
 - (h) provide for the identification of everyone involved in detaining a detainee; and

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- (i) include guidelines about the minimum conditions of detention and standards of treatment for detainees.
- (5) Without limiting subsection (4) (i), the guidelines must—
- (a) provide for detainees to be segregated from people who have been convicted of, or remanded for, offences; and
 - (b) provide for detainees to be treated with humanity and respect for the inherent dignity of the human person; and
 - (c) take account of the sex and age of detainees; and
 - (d) respect the cultural and religious needs of detainees; and
 - (e) ensure that detainees are provided with appropriate health care services; and
 - (f) ensure that detainees with disabilities are provided with appropriate support.
- (6) The chief police officer must ensure that a copy of the arrangements in force under this section is given to the human rights commissioner and the ombudsman—
- (a) when the arrangements are first made; and
 - (b) whenever the arrangements are changed.
- (7) If a person is detained under a preventative detention order in accordance with the arrangements made under this section—
- (a) the nominated senior police officer is taken, for this part, to be the police officer detaining the person; and
 - (b) a police officer authorised, in writing, by the chief police officer may, at any time, visit the detained person to exercise functions under this part in relation to the detained person.

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- (8) If a person is detained under a preventative detention order at a correctional centre—
- (a) the order is taken to authorise the person in charge of the correctional centre to detain the person while the order is in force in relation to the person and the person is detained at the correctional centre under the arrangements made under this section; and
 - (b) section 45 (Humane treatment of detained person) applies in relation to the person's detention at the correctional centre as if the following people were exercising authority under this order or implementing or enforcing it:
 - (i) the person in charge of the correctional centre;
 - (ii) anyone else involved in detaining the detained person at the correctional centre.
- (9) Subsection (8) is additional to, and does not limit, any other territory law.
- (10) A person commits an offence if—
- (a) the person detains someone under a preventative detention order; and
 - (b) the person engages in conduct in relation to the detained person that contravenes the arrangements under this section.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (11) In this section:

chief executive means the chief executive under the *Crimes (Sentence Administration) Act 2005*.

human rights—see the *Human Rights Act 2004*, section 5.

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Division 2.8 Preventative detention orders— informing detained people

41 Effect of preventative detention order etc to be explained to detained person

- (1) As soon as possible after a person is first detained under a preventative detention order, the police officer detaining the person under the order must tell the person about the matters mentioned in subsection (2).

Note A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see s 43 (5)).

- (2) The police officer must tell the person about the following:
- (a) if the preventative detention order is an interim order—the following:
 - (i) the fact that the Supreme Court has made a preventative detention order for the person's detention pending hearing and making a final decision on the application for a preventative detention order for the person;
 - (ii) the date and time fixed for the hearing of the application to be resumed;
 - (iii) the effect of the order;
 - (b) the period during which the person may be detained under the order;
 - (c) the person's rights to contact people while the person is detained under the order and how the rights may be exercised;

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- (d) without limiting paragraph (c), the person's rights under section 49 (Contact with lawyer etc) to contact a lawyer and, in particular, the person's right to contact the legal aid commission for assistance to choose a lawyer;
- (e) the restrictions that apply to contacting people while the person is detained under the order;
- (f) whether an application can be made for an extension, or further extension, of the period for which the order is to be in force for the person;
- (g) the person's right to complain to the ombudsman in relation to—
 - (i) the application for the order; or
 - (ii) the person's treatment by anyone exercising authority under the order or implementing or enforcing it; or
 - (iii) the person's detention, or continued detention, under the order;
- (h) the fact that the person may apply to the Supreme Court to set aside or amend the order or seek from the court any other remedy relating to the person's treatment by anyone exercising authority under the order or implementing or enforcing it;
- (i) the name and work phone number of the senior police officer nominated under section 33 (Nominated senior police officer) to supervise the exercise of functions in relation to the order;
- (j) the right of the person and the other people mentioned in section 33 (4) to make representations to the nominated senior police officer and the matters mentioned in section 33 (3) (d) about which the representations may be made.

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42 Detained person to be told about extension of order

If a preventative detention order is extended, or further extended, under division 2.4, the police officer detaining the person under the order must tell the person about the extension, or further extension, as soon as possible after the extension, or further extension, is made.

Note A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see s 43 (5)).

43 Compliance with obligation to inform

- (1) Section 41 or section 42 does not apply if the actions of the person detained under the preventative detention order make it impracticable for the police officer to comply with the section.
- (2) The police officer detaining the person under the preventative detention order complies with section 41 (1) if the police officer tells the person in substance about the matters mentioned in section 41 (2) (even if this is not done in language of a precise or technical nature).
- (3) The police officer detaining the person under the preventative detention order must arrange for the assistance of an interpreter in complying with section 41 (1) or section 42 if the officer suspects, or has grounds to suspect, that the detained person cannot, because of inadequate knowledge of the English language or a disability, communicate with reasonable fluency in English.
- (4) Without limiting subsection (3), the assistance of the interpreter may be provided by phone if—
 - (a) the detained person agrees; or
 - (b) it is not practicable to arrange for the interpreter to attend in person.

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- (5) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with section 41 (1), section 42, or subsection (3).

44 Copies of orders to be given to detained person

- (1) As soon as possible after a person is first detained under an interim preventative detention order, the police officer detaining the person under the order must give the person a copy of the order.
- (2) As soon as possible after any other order is made in relation to a person detained under this part, the police officer detaining the person must give the person a copy of the order.

Note This subsection applies to the following orders:

- a preventative detention order (other than an interim order)
- an order extending, or further extending, a preventative detention order
- an order setting aside or amending a preventative detention order
- a prohibited contact order
- an order setting aside a prohibited contact order.

Division 2.9 Preventative detention orders— treatment of detained people generally

45 Humane treatment of detained person

- (1) A person being taken into custody, or detained, under a preventative detention order—
- (a) must be treated with humanity and respect for the inherent dignity of the human person; and
- (b) must not be subjected to cruel, inhuman or degrading treatment;

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

Note See s 40 (8) in relation to detention at a correctional centre.

- (2) A person commits an offence if the person engages in conduct that contravenes this section.

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

46 Restriction on contact with other people

- (1) While a person is detained under a preventative detention order, the person—
- (a) is not entitled to contact anyone; and
 - (b) may be prevented from contacting anyone.
- (2) This section is subject to the following sections:
- (a) section 47 (Contact with family members etc);
 - (b) section 48 (Contact with ombudsman);
 - (c) section 49 (Contact with lawyer etc);
 - (d) section 50 (Special contact rules for people with impaired decision-making ability).

Note A person's entitlement to contact other people under some of these sections is subject to a prohibited contact order (see s 54).

- (3) The detained person is entitled, under subsection (1), to disclose only—
- (a) the fact that the person is being detained under a preventative detention order; and
 - (b) the fact that the person is safe; and
 - (c) the period for which the person is being detained; and
 - (d) for contact with someone under subsection (1) (a) or (b)— where the person is being detained.
- (4) The detained person is also entitled to have the further contact with the person’s family or anyone else that is allowed under the preventative detention order.
- (5) The form of contact that the detained person may have with someone under subsection (4) includes—
- (a) being visited by the person; and
 - (b) communicating with the person by phone, fax or email.
- (6) The detained person is entitled to have contact with someone under subsection (4) for the period on any day, and on the days, allowed under the preventative detention order.
- (7) In this section:
- family member*, of a person, means—
- (a) the person’s domestic partner; or
 - (b) a parent, step-parent or grandparent of the person; or
 - (c) a child, stepchild or grandchild of the person; or
 - (d) a brother, sister, stepbrother or stepsister of the person; or
 - (e) a guardian or carer of the person.

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48 Contact with ombudsman

A person detained under a preventative detention order is entitled to contact the ombudsman.

49 Contact with lawyer etc

(1) A person detained under a preventative detention order is entitled to contact a lawyer privately and at any time for the purpose of—

(a) obtaining advice from a lawyer about the person's legal rights in relation to a part 2 application; or

Note **Part 2 application** is defined in s 9.

(b) arranging for a lawyer to act for the person in relation to, and instructing a lawyer in relation to, a proceeding in the Supreme Court relating to a part 2 application; or

(c) arranging for a lawyer to act for the person in relation to, and instructing a lawyer in relation to, any other proceeding in a court or tribunal for a remedy in relation to the preventative detention order, including, for example, in relation to—

(i) the implementation or enforcement of the order; or

(ii) the person's treatment by anyone exercising authority under the order or implementing or enforcing it; or

(iii) the person's detention under the order; or

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(d) arranging for a lawyer to act for the person in relation to, and instructing a lawyer in relation to, a complaint to the ombudsman or other entity in relation to the preventative detention order, including, for example, in relation to—

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- (i) the making of the application for the order; or
 - (ii) the implementation or enforcement of the order; or
 - (iii) the person's treatment by anyone exercising authority under the order or implementing or enforcing it; or
 - (iv) the person's detention under the order; or
 - (e) arranging for a lawyer to act for the person in relation to an appearance, or hearing, before a court or tribunal that is to take place while the person is detained under the order.
- (2) The form of contact that the person may have with a lawyer under subsection (1) includes—
- (a) being visited by the lawyer; and
 - (b) communicating with the lawyer by phone, fax or email.
- (3) The person is entitled to contact the legal aid commission by phone, fax or email to ask for assistance to choose a lawyer.
- Note* Under s 41 (2), the police officer detaining the person must tell the person about the person's rights to contact a lawyer and, in particular, the person's right to contact the legal aid commission for assistance to choose a lawyer.
- (4) If the person contacts the legal aid commission, the commission must provide reasonable assistance to the person to choose a lawyer, including by arranging for a suitable lawyer to contact and act for the person if the person asks it to make the arrangements.
- (5) If the person asks the legal aid commission to provide legal representation for the person, the commission must provide the representation or arrange for it to be provided.

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- (6) For subsections (4) and (5), the legal aid commission may—
- (a) arrange for a lawyer to visit the person; and
 - (b) communicate with the person by phone, fax or email at any reasonable time.
- (7) In making arrangements for the person, the legal aid commission may give priority to lawyers who have been given an appropriate security clearance.
- (8) Despite subsection (7) but subject to any prohibited contact order, the person is entitled under this section to contact a lawyer of the person's choice, whether or not the lawyer has an appropriate security clearance.
- (9) Also, subject to any prohibited contact order, the police officer detaining the person must allow the person to have reasonable contact with a lawyer for a purpose other than a purpose mentioned in subsection (1).
- (10) If the police officer detaining the person suspects, or has grounds to suspect, that—
- (a) the person cannot, because of inadequate knowledge of the English language or a disability, communicate with reasonable fluency in English; and
 - (b) the person may have difficulty in understanding or exercising the person's rights under this section;

the officer must give the person reasonable assistance (including, if appropriate, by arranging for the assistance of an interpreter) for the person to understand and exercise the person's rights under this section.

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- (11) If the person asks to contact a lawyer or the legal aid commission, the police officer detaining the person must make a written record of—
- (a) the details of the request; and
 - (b) the date and time the request was made; and
 - (c) the action taken in response to the request.
- (12) Any communication between a person detained under a preventative detention order and the person’s lawyer is subject to legal professional privilege and it is not admissible in evidence against the person in any court proceeding.

50 Special contact rules for people with impaired decision-making ability

- (1) This section applies if a person detained under a preventative detention order has impaired decision-making ability.
- (2) The person is entitled, while detained under the order, to have contact with—
- (a) a parent or guardian of the person; or
 - (b) someone else who—
 - (i) can represent the person’s interests; and
 - (ii) is, as far as practicable, acceptable to the person and to the police officer detaining the person; and
 - (iii) is not a police officer; and
 - (iv) is not an AFP employee (within the meaning of the *Australian Federal Police Act 1979 (Cwlth)*); and

- (v) is not a member (however described) of a police force or service of a State or another Territory; and
 - (vi) is not an officer or employee of the Australian Security Intelligence Organisation.
- (3) To remove any doubt—
- (a) if the detained person has 2 parents or 2 or more guardians—the person is entitled to have contact under subsection (2) with each of the parents or guardians; and
 - (b) the person is entitled to disclose to someone with whom the person has contact under subsection (2)—
 - (i) the fact that the person is being detained under a preventative detention order; and
 - (ii) the fact that the person is safe; and
 - (iii) the period for which the person is being detained; and
 - (iv) where the person is being detained; and
 - (c) the first contact under subsection (2) must be within 24 hours after each of the following:
 - (i) the person is first detained under the preventative detention order;
 - (ii) the person is further detained under an extension, or further extension, of the preventative detention order.
- (4) The form of contact that the detained person may have with someone under subsection (2) includes—
- (a) being visited by the person; and
 - (b) communicating with the person by phone, fax or email.

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- (5) The period for which the detained person is entitled to have contact under subsection (2) with someone each day is—
 - (a) 2 hours; or
 - (b) if the preventative detention order allows a longer period—that period.
- (6) Despite subsection (5), the police officer detaining the person may allow the person to have contact with someone under subsection (2) for longer than the period provided for in subsection (5).

51 Person with impaired decision-making ability to be contacted by public advocate

- (1) This section applies if a person detained under a preventative detention order has impaired decision-making ability.
- (2) As soon as possible after the person is detained under the preventative detention order, the police officer detaining the person must tell the public advocate about the person's detention.
- (3) The public advocate may have the contact with the person—
 - (a) that is necessary to ensure the person understands the effect of the preventative detention order; and
 - (b) that is necessary to find out anything about the welfare of the person.
- (4) The first contact under subsection (3) must be within 24 hours after each of the following:
 - (a) the person is first detained under the preventative detention order;
 - (b) the person is further detained under an extension, or further extension, of the preventative detention order.

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- (5) Despite subsection (4), the first contact mentioned in that subsection—
- (a) if the preventative detention order is an interim order—must not take place if the order includes a statement to that effect in the order under section 22 (7); or
 - (b) if the preventative detention order is not an interim order and the order includes statements under section 22 (6) about contact with the person under this section—must take place in accordance with the order.
- (6) A single contact may satisfy more than 1 requirement for a contact under subsection (4).

52 Monitoring contact with family members etc

- (1) The contact a person detained under a preventative detention order has with someone under section 47 (Contact with family members etc) or section 50 (Special contact rules for people with impaired decision-making ability) may take place only if it is conducted in a way that the contact, and the content and meaning of the communication that takes place during the contact, can be effectively monitored by a police officer exercising authority under the 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 may be a police officer.

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- (4) If the detained person asks for the contact to take place in a language other than English, the police officer detaining the person must arrange for an appropriate interpreter to be available for the contact unless it is impracticable to arrange for an appropriate interpreter to be available.

53 Monitoring contact with lawyer

- (1) The contact a person detained under a preventative detention order has with the person's lawyer must not be monitored unless a direction under subsection (2) requires the contact between them to be monitored.
- (2) A senior police officer may direct, in writing, that contact between the detained person and a lawyer named in the direction be monitored by a police officer, if the senior police officer believes, on reasonable grounds, that 1 or more of the following consequences may happen if the contact between them is not monitored:
- (a) interference with or harm to evidence of, or relating to, a serious offence;
 - (b) interference with or physical harm to a person;
 - (c) the alerting of a person who is suspected of having committed a serious offence, but has not been arrested for it;
 - (d) interference with the gathering of information about the commission, preparation or instigation of a terrorist act;
 - (e) making it more difficult to prevent a terrorist act because a person is alerted;
 - (f) making it more difficult to secure a person's apprehension for a terrorist act because a person is alerted.

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- (3) Before giving a direction under subsection (2), the senior police officer must—
 - (a) give the legal aid commission written notice that the officer is considering giving a direction under that subsection; and
 - (b) consult with the PIM appointed under subsection (4) about the proposed direction; and
 - (c) take into account any submissions made by the PIM.
- (4) On receiving notice under subsection (3) (a), the legal aid commission must appoint a person from the public interest monitor panel under section 59 to be the public interest monitor (*PIM*) for the proposed direction under subsection (2).
- (5) If the senior police officer gives a direction under subsection (2), the officer must—
 - (a) give a copy of the direction to—
 - (i) the person; and
 - (ii) the person’s lawyer; and
 - (iii) the nominated senior police officer; and
 - (b) record the reasons for giving the direction.
- (6) If a direction under subsection (2) is in force, the contact the detained person has with the lawyer may take place only if it is conducted in a way that the contact, and the content and meaning of the communication that takes place during the contact, can be effectively monitored by a police officer exercising authority under the preventative detention order.

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- (7) If subsection (6) applies, the contact may take place in a language other than English only if the content and meaning of the communication that takes place during the contact can be effectively monitored with the assistance of an interpreter.
- (8) Without limiting subsection (7), the interpreter may be a police officer.
- (9) If subsection (6) applies and the detained person asks for the contact to take place in a language other than English, the police officer detaining the person must arrange for an appropriate interpreter to be available for the contact unless it is impracticable to arrange for an appropriate interpreter to be available.
- (10) A communication that is monitored under this section must not be recorded.
- (11) A police officer commits an offence if—
 - (a) the police officer monitors contact between a person detained under a preventative detention order and the person’s lawyer; and
 - (b) the monitoring is not done in accordance with a direction under subsection (2).

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

54 Entitlement to contact subject to prohibited contact order

The following sections have effect subject to any prohibited contact order made in relation to a person's detention under a preventative detention order:

- section 47 (Contact with family members etc)
- section 49 (Contact with lawyer etc)
- section 50 (Special contact rules for people with impaired decision-making ability).

55 Questioning of detained person prohibited

- (1) A person must not question someone while that person is detained under a preventative detention order except for the purpose of—
 - (a) deciding whether the detained person is the person stated in the order; or
 - (b) ensuring the detained person's safety and wellbeing; or
 - (c) allowing the person to comply with a requirement of this part in relation to the detained person's detention under the order.
- (2) A person commits an offence if—
 - (a) the person questions someone while that person is detained under a preventative detention order; and
 - (b) the questioning is not done for a purpose mentioned in subsection (1) (a), (b) or (c).

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

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- (a) the person consents in writing; or
 - (b) the police officer believes, on reasonable grounds, that it is necessary to take the material to confirm the person's identity as the person stated in the order.
- (3) A police officer may use the force that is reasonable and necessary to take identification material from the person under subsection (2) (b).
- (4) Subject to this section, if the person has impaired decision-making ability, a police officer must not take identification material (other than prints of the person's hands, fingers, feet or toes) from the person under this section unless the Supreme Court orders that the material be taken.
- (5) If the person has impaired decision-making ability, the taking of identification material from the person must be done in the presence of—
- (a) a parent or guardian of the person; or
 - (b) if a parent or guardian of the person is not acceptable to the person—another appropriate person.
- (6) In this section:
- appropriate person***, for a person with impaired decision-making ability, means someone who—
- (a) can represent the person's interests; and
 - (b) is, as far as practicable, acceptable to the person and to the police officer detaining the person; and
 - (c) is not a police officer; and
 - (d) is not an AFP employee (within the meaning of the *Australian Federal Police Act 1979* (Cwlth)); and

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- (e) is not a member (however described) of a police force of a State or another Territory; and
- (f) is not an officer or employee of the Australian Security Intelligence Organisation.

57 Using identification material

- (1) Identification material taken under section 56 from a person detained under a preventative detention order must not be used by a person for a purpose other than deciding whether the detained person is the person stated in the order.
- (2) A person commits an offence if the person engages in conduct that contravenes subsection (1).

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

58 Destroying identification material

- (1) The chief police officer must ensure that identification material taken under section 56 from a person detained under a preventative detention order is destroyed no later than the end of whichever of the following periods ends first:
 - (a) if a relevant proceeding has not been started within 1 year after the day the material is taken—1 month after the end of the 1-year period;
 - (b) if a relevant proceeding is, or relevant proceedings are, started within 1 year after the day the material is taken—1 month after the proceeding, or the last of the proceedings, is discontinued or finally decided.

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- (2) In this section:

relevant proceeding means a proceeding in relation to the preventative detention order, including, for example, the detained person's treatment by anyone exercising authority under the order or implementing or enforcing it.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Division 2.12 Preventative detention orders—public interest monitor panel

59 Public interest monitor panel

- (1) The Minister must appoint people to a public interest monitor panel.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) The Minister must not appoint a person to the public interest monitor panel unless satisfied that the person—

- (a) is a lawyer; and
- (b) has qualities and experience making the person suitable to be a public interest monitor (*PIM*); and
- (c) has an appropriate security clearance.

Note The PIM has a role under the following sections:

- s 15 (Appointment of PIM for applications etc)
- s 53 (Monitoring contact with lawyer).

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Part 3 Special powers

Division 3.1 Special powers—preliminary

60 Definitions—pt 3

In this part:

investigative authorisation means an investigative authorisation given by an order under section 70.

preventative authorisation means a preventative authorisation given by an order under section 63.

special powers authorisation means—

- (a) preventative authorisation; or
- (b) investigative authorisation.

target area, in relation to a special powers authorisation, means an area named or described as a target area in the authorisation.

target person, in relation to a special powers authorisation, means a person named or described as a target person in the authorisation.

target vehicle, in relation to a special powers authorisation, means a vehicle named or described as a target vehicle in the authorisation.

vehicle means anything designed or used to transport a person or goods by road, rail, air or water.

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Division 3.2 Special powers authorisation— preventative authorisation

61 Applying for preventative authorisation

- (1) The chief police officer may apply to the Supreme Court or the Magistrates Court for a preventative authorisation.
- (2) The chief police officer may make the application only if—
 - (a) the chief police officer believes, on reasonable grounds, that a terrorist act is happening or will happen some time within the next 14 days; and
 - (b) the chief police officer is satisfied, on reasonable grounds, that the authorisation would substantially assist in preventing the terrorist act, reducing its impact or both; and
 - (c) the making of the application has been approved, in writing, by the Chief Minister.

62 Application for preventative authorisation—contents

- (1) An application under section 61 for a preventative authorisation must—
 - (a) be in writing; and
 - (b) state when the authorisation sought is to start and end; and
 - (c) describe the general nature of the terrorist act for which the authorisation is sought; and

- (d) name or describe (if appropriate using a picture, map or other visual depiction) 1 or more of the following:
 - (i) an area in which the powers under division 3.4 may be exercised in relation to the terrorist act;
 - (ii) a person sought in relation to the terrorist act;
 - (iii) a vehicle sought in relation to the terrorist act; and
- (e) explain why the authorisation sought would substantially assist in preventing the terrorist act, reducing its impact or both; and
- (f) if the authorisation sought is for or includes an area—explain why it is reasonable and necessary for the authorisation to be given for that area; and
- (g) set out the other facts and grounds on which the chief police officer considers the authorisation should be given.

63 Making preventative authorisation order

On application under section 61, the Supreme Court or the Magistrates Court may, by order, authorise the exercise of powers under division 3.4 if the court is satisfied, on reasonable grounds—

- (a) that a terrorist act is happening or will happen some time within the next 14 days; and
- (b) that the authorisation would substantially assist in preventing the terrorist act, reducing its impact or both; and
- (c) if the authorisation is for or includes an area—that it is reasonable and necessary to give the authorisation for that area.

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64 Court may require further information—preventative authorisation application

If the Supreme Court or the Magistrates Court asks the chief police officer for further information about the application, the court may refuse to make an order under section 63 on the application unless the information is given to the court in the way the court requires.

Examples of how information may be required

- 1 the court may require evidence to be given on oath before the court
- 2 the court may require information to be given by affidavit

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

65 Preventative authorisation—contents

- (1) A preventative authorisation must—
 - (a) be in writing; and
 - (b) be directed to all police officers; and
 - (c) state that it is a preventative authorisation; and
 - (d) state the time when it starts; and
 - (e) state the time when it ends (unless sooner set aside); and
 - (f) describe the general nature of the terrorist act to which it applies; and
 - (g) name or describe (if appropriate by using a picture, map or other visual depiction) 1 or more of the following:
 - (i) an area in which the powers under division 3.4 may be exercised (a *target area*) in relation to the terrorist act;

- (ii) a person sought in relation to the terrorist act (a *target person*);
 - (iii) a vehicle sought in relation to the terrorist act (a *target vehicle*).
- (2) The time stated under subsection (1) (e) must not be more than 7 days after the preventative authorisation is given.
- (3) The authorisation may include conditions and restrictions on the exercise of the powers under the authorisation.

66 Setting aside or amending preventative authorisation

On application by the chief police officer or an interested person, the Supreme Court or the Magistrates Court may, by order, set aside or amend a preventative authorisation made by the court.

67 No extension of preventative authorisation

- (1) A preventative authorisation cannot be extended.
- (2) However, subsection (1) does not prevent the Supreme Court or the Magistrates Court making another special powers authorisation for the same terrorist act, whether the authorisation is to start immediately after the end of the preventative authorisation or at a later time.

- (d) name or describe (if appropriate using a picture, map or other visual depiction) 1 or more of the following:
 - (i) an area in which the powers under division 3.4 may be exercised in relation to the terrorist act;
 - (ii) a person sought in relation to the terrorist act;
 - (iii) a vehicle sought in relation to the terrorist act; and
- (e) explain why the authorisation sought would substantially assist in achieving 1 or more of the purposes mentioned in section 68 (2) (b); and
- (f) if the authorisation sought is for or includes an area—explain why it is reasonable and necessary for the authorisation to be given for that area; and
- (g) set out the other facts and grounds on which the chief police officer considers the authorisation should be given.

70 Making investigative authorisation order

On application under section 68, the Supreme Court or the Magistrates Court may, by order, authorise the exercise of powers under division 3.4 if the court is satisfied, on reasonable grounds—

- (a) that a terrorist act has happened within the last 28 days, is happening or will happen some time within the next 14 days; and
- (b) that the authorisation would substantially assist in achieving 1 or more of the following purposes:
 - (i) apprehending a person responsible for the terrorist act;
 - (ii) investigating the terrorist act (including preserving evidence of, or relating to, the terrorist act);

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- (iii) reducing the impact of the terrorist act; and
- (c) if the authorisation is for or includes an area—that it is reasonable and necessary to give the authorisation for that area.

71 Court may require further information—investigative authorisation application

If the Supreme Court or the Magistrates Court asks the chief police officer for further information about the application, the court may refuse to make an order under section 70 on the application unless the information is given to the court in the way the court requires.

Examples of how information may be required

- 1 the court may require evidence to be given on oath before the court
- 2 the court may require information to be given by affidavit

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

72 Investigative authorisation—contents

- (1) An investigative authorisation must—
 - (a) be in writing; and
 - (b) be directed to all police officers; and
 - (c) state that it is an investigative authorisation; and
 - (d) state the time when it starts; and
 - (e) state the time when it ends (unless sooner set aside); and
 - (f) describe the general nature of the terrorist act to which it applies; and

- (g) name or describe (if appropriate by using a picture, map or other visual depiction) 1 or more of the following:
 - (i) an area in which the powers under division 3.4 may be exercised (a *target area*) in relation to the terrorist act;
 - (ii) a person sought in relation to the terrorist act (a *target person*);
 - (iii) a vehicle sought in relation to the terrorist act (a *target vehicle*).
- (2) The time stated under subsection (1) (e) must not be more than 24 hours after the investigative authorisation is given.
- (3) The authorisation may include conditions and restrictions on the exercise of the powers under the authorisation.

73 Setting aside or amending investigative authorisation

On application by the chief police officer or an interested person, the Supreme Court or the Magistrates Court may, by order, set aside or amend an investigative authorisation made by the court.

74 No extension of investigative authorisation

- (1) An investigative authorisation cannot be extended.
- (2) However, subsection (1) does not prevent the Supreme Court or the Magistrates Court making another special powers authorisation for the same terrorist act, whether the authorisation is to start immediately after the end of the investigative authorisation or at a later time.

Division 3.4 Authorised special powers

75 Exercising authorised special powers—general provisions

- (1) While a special powers authorisation is in force, the powers under this division may be exercised by any police officer, subject to any conditions or restrictions in the authorisation, for the purposes of—
 - (a) for a preventative authorisation—preventing the terrorist act to which the authorisation applies, reducing its impact or both; and
 - (b) for an investigative authorisation, 1 or more of the following purposes:
 - (i) apprehending a person responsible for the terrorist act to which the authorisation applies;
 - (ii) investigating the terrorist act (including preserving evidence of, or relating to, the terrorist act);
 - (iii) reducing the impact of the terrorist act.
- (2) A police officer may exercise the powers—
 - (a) without any other authority; and
 - (b) even if the officer does not have a copy of the special powers authorisation.
- (3) Before, when or as soon as possible after a police officer exercises a power under this division in relation to a person, the officer must—
 - (a) if asked by the person—tell the person the reason for exercising the power; and
 - (b) if the officer is not in uniform—show the person evidence that the officer is a police officer.

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- (4) If a person was searched, or a person's vehicle or premises were searched, under this part, the person may, not later than 1 year after the day of the search, ask the chief police officer, in writing, for a written statement that the search was conducted in accordance with this Act.
- (5) The chief police officer must either—
 - (a) give the person the written statement asked for; or
 - (b) tell the person, in writing, that the chief police officer cannot give the written statement asked for and explain why.

76 Power to require personal details under special powers

- (1) A police officer may require a person to give the officer all or any of the person's personal details if the details are unknown to the officer and the officer suspects, on reasonable grounds, that the person—
 - (a) is a target person; or
 - (b) is in the company of a target person in suspicious circumstances; or
 - (c) is about to enter, is in or on, or has recently left, a target vehicle; or
 - (d) is about to enter, is in, or has recently left, a target area.
- (2) If the police officer suspects, on reasonable grounds, that a personal detail given by the person is false, the officer may require the person to provide proof of the correctness of the detail.
- (3) A person commits an offence if—
 - (a) a police officer makes a requirement of the person under subsection (1) or (2); and

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(b) the person fails to comply with the requirement.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Note **Fail** includes refuse (see Legislation Act, dict, pt 1).

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

(5) In this section:

personal details, of a person, means—

- (a) the person's full name; or
- (b) the person's date of birth; or
- (c) the address of the place where the person is living; or
- (d) the address of the place where the person usually lives.

77 Power to search people under special powers

(1) A police officer may stop and search a person, and anything in the person's possession or under the person's control, if the officer suspects, on reasonable grounds, that the person—

- (a) is a target person; or
- (b) is in the company of a target person in suspicious circumstances; or
- (c) is about to enter, is in or on, or has recently left, a target vehicle; or
- (d) is about to enter, is in, or has recently left, a target area.

(2) Schedule 1 applies to a search conducted under this section.

(3) A police officer may detain a person for as long as is reasonable and necessary to conduct a search under this section.

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- (4) A person commits an offence if—
- (a) a police officer makes a requirement of the person under this section (including under schedule 1 as it applies in relation to this section); and
 - (b) the person fails to comply with the requirement.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Note **Fail** includes refuse (see Legislation Act, dict, pt 1).

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

78 Power to search vehicles under special powers

- (1) A police officer may stop and search a vehicle, and anything in or on the vehicle, if the officer suspects, on reasonable grounds, that—
- (a) the vehicle is a target vehicle; or
 - (b) a person who is about to enter, is in or on, or has recently left, the vehicle is a target person; or
 - (c) the vehicle is about to enter, is in, or has recently left, a target area.
- (2) A police officer may detain a vehicle for as long as is reasonable and necessary to conduct a search under this section.
- (3) A police officer may detain a person who is in or on a vehicle stopped under this section for as long as is reasonable and necessary to conduct a search under this section.

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79 Power to move vehicles under special powers

- (1) A police officer may move or cause to be moved a vehicle that is parked or left standing in a target area if the officer considers, on reasonable grounds, that the vehicle is—
 - (a) a danger to other vehicles or people in the target area; or
 - (b) causing or likely to cause traffic congestion in the target area; or
 - (c) hindering the exercise of powers under this division in the target area.
- (2) A police officer acting under this section may—
 - (a) enter a vehicle, using any reasonable and necessary force, for the purpose of moving it; and
 - (b) move the vehicle, or cause it to be moved, to the nearest convenient place.

80 Power to enter and search premises under special powers

- (1) A police officer may enter and search premises in a target area.
- (2) A police officer may enter and search any premises for a target person or target vehicle if the officer suspects, on reasonable grounds, that the person or vehicle is at, on or in the premises.
- (3) A police officer may detain a person who is at, on or in premises entered under this section for as long as is reasonable and necessary to conduct a search of the premises.

81 Power to cordon target area etc under special powers

- (1) A police officer may cordon off a target area or any part of it.
- (2) If an area is cordoned off—
 - (a) the cordon may include any form of physical barrier, including a roadblock on any road in or near the target area; and
 - (b) reasonable steps must be taken to ensure that the existence of the cordon is apparent to people approaching the cordon; and
 - (c) a police officer must remain near the cordoned off area.
- (3) A police officer may require a person—
 - (a) not to enter; or
 - (b) to leave; or
 - (c) to remain in;a target area or a cordoned off area.
- (4) A police officer may require a person in charge of a vehicle—
 - (a) not to take the vehicle into; or
 - (b) to remove the vehicle from; or
 - (c) not to remove the vehicle from;a target area or a cordoned off area.

- (5) A person commits an offence if—
- (a) a police officer makes a requirement of the person under subsection (3) or (4); and
 - (b) the person fails to comply with the requirement.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Note **Fail** includes refuse (see Legislation Act, dict, pt 1).

- (6) Subsection (5) does not apply if the person has a reasonable excuse.

82 Power to seize things under special powers

- (1) A police officer may, in relation to a search under this division, seize—
- (a) all or part of a thing (including a vehicle) that the officer suspects, on reasonable grounds, may be used, or may have been used, to carry out a terrorist act; or
 - (b) all or part of a thing (including a vehicle) that the officer suspects, on reasonable grounds, may provide evidence of, or relating to, a serious offence (whether or not related to a terrorist act).
- (2) A power under this section to seize a thing includes—
- (a) power to remove the thing from the place where it is found; and
 - (b) power to guard the thing at, in or on the place where it is found.

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83 Use of force by police under div 3.4

- (1) A police officer exercising a power under this division may use the force that is reasonable and necessary for exercising the power (including force reasonable and necessary to break into premises or a vehicle or anything in or on premises, a vehicle or a person).
- (2) However, the officer must take all reasonable steps to ensure that any harm to a person or damage to a thing or premises arising from the exercise of a power under this division by the officer is not more than is reasonable and necessary for the effective exercise of the power.

**Division 3.5 Authorised special powers—
miscellaneous**

84 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a power under this part, a police officer must take all reasonable steps to ensure that the officer, and anyone assisting the officer, causes as little inconvenience, detriment and damage as practicable.
- (2) If a police officer, or a person assisting a police officer, damages anything in the exercise or purported exercise of a power under this part, the officer must give written notice of the particulars of the damage to the person the officer believes, on reasonable grounds, is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

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85 Compensation for exercise of special powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a power under this part by a police officer or a person assisting a police officer.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

86 Power to give directions to departments etc for special powers

- (1) The chief police officer may, to facilitate the exercise of another power under this part, give the responsible chief executive of a department or territory entity directions in relation to the exercise of functions of the department or entity.
- (2) The responsible chief executive is authorised and required to comply with the direction.
- (3) In this section:

department—see the *Financial Management Act 1996*, dictionary.

responsible chief executive, of a department or territory entity—see the *Auditor-General Act 1996*, dictionary.

territory entity—see the *Auditor-General Act 1996*, dictionary.

87 Return of things seized etc under special powers

- (1) A police officer who seizes a thing in exercising a power under this part must return the thing to the owner or person who had lawful possession of it before it was seized if the officer is satisfied that—
 - (a) its retention as evidence is not required; and
 - (b) it is lawful for the person to have possession of the thing.
- (2) This section is subject to any order made under section 88 (Disposal of seized property on application to court).

88 Disposal of seized property on application to court

- (1) On application by an interested person, a court may, order that property seized by a police officer exercising a power under this part—
 - (a) be delivered to the person who appears to be lawfully entitled to the property; or
 - (b) if that person cannot be ascertained—be dealt with as the court considers appropriate.
- (2) On application under subsection (1), the court may do any 1 or more of the following:
 - (a) adjust rights to property as between people who appear to be lawfully entitled to the same property or the same or different parts of property;
 - (b) make a finding or order about the ownership and delivery of property;

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- (c) make a finding or order about the liability for and payment of expenses incurred in keeping property in police custody;
- (d) if the person who is lawfully entitled to the property cannot be ascertained—order that the property be forfeited to the Territory;
- (e) make incidental or ancillary orders.

89 Records of exercise of authorised special powers

- (1) The chief police officer must ensure that records are made about the exercise of powers under this part.
- (2) A record made in relation to the exercise of a power under this part must be kept for at least 7 years after the day the power is exercised.
- (3) A regulation may make provision in relation to the keeping of records under this part.

Examples of provisions that may be prescribed by regulation

- 1 the scope, nature and content of records
- 2 who must make records and when they must be made
- 3 the storage of, or access to, records.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) In this section:
this part includes schedule 1 (Conduct of personal searches) as it applies in relation to this part.

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90 Human rights training

The chief police officer must ensure that police officers who exercise powers under this part are adequately trained about their obligations under human rights legislation applying in the ACT.

91 Relationship with other territory laws

- (1) This part is additional to any other territory law.
- (2) In particular, this part does not limit the powers that a police officer has under any other territory law.

92 Report to Minister about exercise of special powers etc

- (1) As soon as possible after a special powers authorisation ends, the chief police officer must give the Minister a written report about the authorisation and the exercise of powers under it.
- (2) The report must—
 - (a) include a copy of the special powers authorisation or set out its terms; and
 - (b) state the period during which it operated; and
 - (c) include a summary of the grounds that were relied on in applying for the authorisation; and
 - (d) describe generally the powers that were exercised under the authorisation and how they were exercised; and
 - (e) state the result of the exercise of the powers; and
 - (f) describe generally any inconvenience to, or adverse impact on, the community, sections of the community, businesses and individuals (other than individuals who were targets of the authorisation) arising out of the exercise of the powers.

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- (3) The Minister must present a copy of the report to the Legislative Assembly not later than 6 sitting days after the day the Minister receives the report.
- (4) Before the Minister presents a copy of the report to the Legislative Assembly, the report may be edited to exclude material that, in the Minister's opinion, may be subject to privilege or public interest immunity.
- (5) If the Minister edits the report under subsection (4), the report must state that fact.

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Part 4 Miscellaneous

93 Evidence obtained from torture inadmissible

- (1) In a proceeding under this Act, evidence obtained, directly or indirectly, from torture is inadmissible.
- (2) To remove any doubt, this section applies wherever the torture was carried out, whether in or outside the ACT (including outside Australia).
- (3) In this section:

torture—see the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, article 1, paragraph 1.

Note The text of the Convention is set out in the *Crimes (Torture) Act 1988* (Cwlth), schedule.

94 Delegation by chief police officer

- (1) The chief police officer may delegate a function under this Act to a senior police officer.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.
- (2) However, the chief police officer must not delegate the chief police officer's functions under any of the following provisions:
 - (a) section 17 (2) (Applying for preventative detention order);
 - (b) section 33 (1) and (5) (Nominated senior police officer);
 - (c) section 40 (Detention arrangements);
 - (d) section 61 (Applying for preventative authorisation);

- (e) section 68 (Applying for investigative authorisation);
- (f) section 86 (Power to give directions to departments etc for special powers etc);
- (g) section 92 (Report to Minister about exercise of special powers etc).

95 Annual report on use and effectiveness of Act

- (1) Each report prepared by the chief executive under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include a report about the use and effectiveness of this Act during the year.
- (2) The chief police officer must give the chief executive the information and other assistance the chief executive needs to comply with subsection (1).

96 Transitional provision—references to correctional centre

- (1) If this section commences before the *Crimes (Sentence Administration) Act 2005* commences, a reference in this Act to a correctional centre is a reference to a remand centre or a detention centre under the *Periodic Detention Act 1995*.
- (2) This section expires on the later of the following:
 - (a) the commencement of this section;
 - (b) the commencement of the *Crimes (Sentence Administration) Act 2005*.

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97 Transitional provision—references to public advocate

- (1) If this section commences before the *Public Advocate Act 2005* commences, a reference in this Act to the public advocate is a reference to the community advocate.
- (2) This section expires on the later of the following:
 - (a) the commencement of this section;
 - (b) the commencement of the *Public Advocate Act 2005*.

98 Review of Act after 3 years of operation

The Minister must—

- (a) review the operation and effectiveness of this Act after it has been in operation for 3 years; and
- (b) present a report of the review to the Legislative Assembly before the end of the Act's 4th year of operation.

99 Expiry of Act etc

- (1) This Act expires 5 years after the day it commences.
- (2) Any order in force under this Act immediately before its expiry ceases to have effect on the expiry.
- (3) An order may not be made under this Act after its expiry.
- (4) Subsections (2) and (3) have effect despite the Legislation Act, section 84 (Saving of operation of repealed and amended laws).

100 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Schedule 1 Conduct of personal searches

(see s 38 and s 77)

1.1 Application—sch 1

This schedule applies to a search of a person conducted, or authorised to be conducted, by a police officer under section 38 (Search of person taken into custody under preventative detention order) or section 77 (Power to search people under special powers).

1.2 Definitions—sch 1

(1) In this Act:

frisk search, of a person, means—

- (a) a search of the person conducted by quickly running the hands over the person's outer clothing or by passing an electronic metal detection device over or close 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 close to the thing.

ordinary search, of a person, means a search of the person or of anything in the person's possession, and may include—

- (a) requiring the person to remove only the person's overcoat, coat, jacket or a similar article of clothing and any footwear, gloves or headwear; and
- (b) an examination of them.

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strip search, of a person, means a search of the person or of anything in the person's possession, and may include—

- (a) requiring the person to remove the person's clothes; and
- (b) an examination of the person's body (but not of the person's body cavities) and of the person's clothes.

(2) In this section:

electronic metal detection device means an electronic device that can detect the presence of metallic objects.

1.3 Frisk searches and ordinary searches

- (1) A police officer who is authorised to search a person may conduct a frisk search or an ordinary search of the person for any purpose for which the search may be conducted.
- (2) In conducting a frisk search, a police officer may, if the officer has asked the person to remove an overcoat, coat, jacket or similar article of clothing, treat the person's outer clothing as being the person's outer clothing after that article of clothing has been removed.

1.4 Strip searches

- (1) A police officer who is authorised to search a person may conduct a strip search of the person if the officer suspects, on reasonable grounds, that—
 - (a) the person is a target person; and
 - (b) it is necessary to conduct a strip search of the person to find and seize something; and
 - (c) the thing can only be found and seized by conducting a strip search of the person.

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- (2) If a police officer conducts a strip search, the officer must record the reasons for conducting the search.

1.5 Preservation of privacy and dignity during search etc

- (1) A police officer who conducts a search of a person must—
- (a) comply with this section as far as practicable; and
 - (b) if not practicable to comply with this section in any respect—record the noncompliance and the reasons for it.
- (2) The police officer must tell the person—
- (a) whether the person will be required to remove clothing during the search; and
 - (b) if so, why it is necessary to remove the clothing.
- (3) If the person asks for the reasons for the search being conducted in a particular way, the police officer must tell the person the reasons.
- (3) The police officer must ask for the person's cooperation.
- (4) The police officer must conduct the search—
- (a) in a way that provides reasonable privacy for the person; and
 - (b) as quickly as is practicable.
- (5) The police officer must conduct the least invasive kind of search practicable.
- (6) The police officer must not search the genital area of the person searched or, for a female, the person's breasts unless the officer suspects, on reasonable grounds, that it is necessary to do so for the purposes of the search.

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- (7) If the person searched is of the opposite sex to the police officer, the officer may conduct the search only if the officer believes, on reasonable grounds, that the seriousness and urgency of the circumstances require the officer to conduct the search.
- (8) If the police officer acts under subsection (7), the officer must record the reasons for acting under that subsection.
- (9) A search must be conducted by—
 - (a) a police officer of the same sex as the person searched; or
 - (b) another person of the same sex as the person searched, under the direction of a police officer.
- (10) A search of the person must not be carried out while the person is being questioned.
- (11) If questioning has not been completed before the search is carried out, it must be suspended while the search is carried out.
- (12) If clothing is seized because of the search, the police officer must ensure the person searched is left with or given reasonably appropriate clothing.
- (13) In this section:
questioning, of a person, means questioning the person or carrying out an investigation (in which the person participates).

1.6 Rules for conduct of strip searches

- (1) A police officer who conducts a strip search of a person must—
 - (a) comply with this section as far as practicable; and
 - (b) if not practicable to comply with this section in any respect—record the noncompliance and the reasons for it.

- (2) The search must be conducted in a private area or an area that provides reasonable privacy for the person searched.
- (3) Subject to subsection (9), the search must not be conducted in the presence or view of a person who is of the opposite sex to the person searched.
- (4) Except as provided by this section, the search must not be conducted in the presence or view of a person whose presence is not necessary for the search or the safety of everyone present.
- (5) If the police officer suspects, or has grounds to suspect, that the person searched is a child or a person with impaired decision-making ability, the search must be conducted in the presence of a parent or guardian of the person.
- (6) However, if the presence of a parent or guardian is not acceptable to the person searched, the search must be conducted in the presence of someone else who—
 - (a) is not a police officer; and
 - (b) can support and represent the interests of the person; and
 - (c) is acceptable to the person.
- (7) The search must not involve—
 - (a) the removal of more clothes than is reasonable and necessary to conduct the search; or
 - (b) the removal of more clothes at any time than is reasonable and necessary to conduct the search; or
 - (c) without limiting paragraph (b), both the upper and lower parts of the person's body being uncovered at any time.

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- (8) The search must not involve more visual inspection of the person's body than is reasonable and necessary to conduct the search and, in particular, any visual inspection of the person's genital area, anal area, buttocks and, for a female, breasts must be kept to a minimum.
- (9) The search may be conducted in the presence of a doctor or nurse, including a doctor or nurse of the opposite sex to the person searched, if the person has no objection to the doctor or nurse being present.
- (10) The person searched must be allowed to dress in private as soon as the search is finished.
- (11) This section is additional to the other requirements of this Act about searches.

1.7 Search of transgender or intersex person

- (1) If a transgender or intersex person is searched, the person may require that the search be conducted by either a male or a female.
- (2) If the transgender or intersex person requires that the search be conducted by a male, the person is taken, for this schedule, to be male.
- (3) If the transgender or intersex person requires that the search be conducted by a female, the person is taken, for this schedule, to be female.

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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:

- chief police officer
- exercise
- function
- human rights commissioner
- in relation to
- intersex person (see s 169B)
- legal aid commission
- public advocate
- transgender person (see s 169A (1) and (2)).

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

corresponding preventative detention law—see section 9.

corresponding preventative detention order—see section 9.

death—see the Criminal Code, dictionary.

engage in conduct means—

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

frisk search—see schedule 1, section 1.2.

harm, to a person—see the Criminal Code, dictionary.

identification material, for a person—see section 9.

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impaired decision-making ability—see the *Guardianship and Management of Property Act 1991*, section 6.

interim preventative detention order (or ***interim order***)—see section 9.

investigative authorisation—see section 60.

maximum 7-day period—see section 13.

maximum 24-hour period—see section 13.

nominated senior police officer, in relation to a preventative detention order made for a person—see section 33.

ordinary search—see schedule 1, section 1.2.

part 2 application—see section 9.

physical harm, to a person, includes unconsciousness, pain, disfigurement, infection with a disease and any physical contact with the person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time).

possession, of a thing, includes—

- (a) having control over the disposition of the thing; and
- (b) having joint possession of the thing.

premises includes—

- (a) land; and
- (b) a structure, building or vehicle; and
- (c) any part of a structure, building or vehicle; and
- (d) any place whether built on or not.

preventative authorisation—see section 60.

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preventative detention order—see section 9.

prohibited contact order—see section 9.

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

serious harm —see the Criminal Code, dictionary.

serious offence means an offence punishable by imprisonment for life or for a term of 5 years or longer.

special powers authorisation—see section 60.

strip search—see schedule 1, section 1.2.

target area, in relation to a special powers authorisation—see section 60.

target person, in relation to a special powers authorisation—see section 60.

target vehicle, in relation to a special powers authorisation—see section 60.

terrorist act—see section 6.

torture—see section 93.

vehicle—see section 60.

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Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2005.

2 Notification

Notified under the Legislation Act on 2005.

3 Republications of amended laws

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

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