

South Australia

Terrorism (Preventative Detention) Act 2005

An Act to authorise temporary detention in order to prevent the occurrence of a terrorist act or preserve evidence of, or relating to, a recent terrorist act; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

2—Object

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

- (a) prevent an imminent terrorist act occurring; or

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

Note—

Section 42 provides that, while a person is being detained under a preventative detention order, the person may only be questioned for very limited purposes.

3—Interpretation

- (1) In this Act, unless the contrary intention appears—

Australian anti-terrorism law means a law of the Commonwealth, of this State, or of another State or a Territory directed at preventing the commission of terrorist acts;

corresponding preventative detention law means a law of the Commonwealth or of another State or a Territory providing for the making of preventative detention orders;

frisk search means—

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

identification material, in relation to a person, means prints of the person's hands, fingers, feet or toes, recordings of the person's voice, samples of the person's handwriting or photographs (including video recordings) of the person;

issuing authority—see section 4;

Judge means a Judge or a retired Judge of the Supreme Court or the District Court;

lawyer means a person enrolled as a legal practitioner of the High Court of Australia or the Supreme Court of a State or Territory;

national security has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004* of the Commonwealth;

nominated senior police officer for an order—see section 19;

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

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

seizable item means anything that—

- (a) would present a danger to a person; or
- (b) could be used to assist a person to escape from lawful custody; or
- (c) could be used to contact another person or to operate a device remotely;

senior police officer means a police officer of or above the rank of Assistant Commissioner;

subject means the person for whose detention a preventative detention order is made, or applied for, under this Act;

terrorist act has the same meaning as in Part 5.3 of the Criminal Code of the Commonwealth.

- (2) This Act applies to a terrorist act, or apprehended terrorist act, whether the act has been, or may be, committed within or outside the State or Australia.

4—Issuing authorities and limitation on powers

- (1) The Minister may, by writing, appoint a Judge as an issuing authority for preventative detention orders.
- (2) The Minister must not appoint a Judge as an issuing authority unless—
- (a) the Judge has, by writing, consented to the appointment; and
 - (b) the consent is in force.
- (3) A senior police officer is an issuing authority for a preventative detention order if—
- (a) there is an urgent need for the order; and
 - (b) it is not reasonably practicable in the circumstances to have the application for a preventative detention order dealt with by a Judge.
- (4) The powers of a senior police officer who acts as an issuing authority for preventative detention orders are limited as follows:
- (a) the senior police officer may only authorise detention up to a maximum period of detention ending 24 hours after the subject is first taken into custody under the order;
 - (b) the senior police officer may not exercise, in relation to the subject, any other power conferred on an issuing authority under this Act after the end of the period limited by paragraph (a) except the power to revoke an order.
- (5) The fact that a preventative detention order has been made or extended by a senior police officer does not prevent an issuing authority who is a Judge from exercising any other power conferred on an issuing authority under this Act:
- (a) to extend the period of detention beyond the period limited by subsection (4)(a); or
 - (b) to deal in any other way with the order or the subject.

5—Police officer detaining person under preventative detention order

If—

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

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

Note—

See also section 28(2)(c).

Part 2—Preventative detention orders

6—Basis for applying for, and making, preventative detention orders

- (1) A police officer may apply for a preventative detention order in relation to a person (the *subject*) only if the police officer meets the requirements of subsection (3) or (5).
- (2) An issuing authority may, on application by a police officer, make a preventative detention order in relation to a person (the *subject*) only if the issuing authority meets the requirements of subsection (3) or (5).
- (3) A police officer or issuing authority meets the requirements of this subsection if the officer or authority—
 - (a) suspects, on reasonable grounds, that the subject—
 - (i) will engage in a terrorist act; or
 - (ii) possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or
 - (iii) has done an act in preparation for, or planning, a terrorist act; and
 - (b) is satisfied on reasonable grounds that—
 - (i) making the order would substantially assist in preventing a terrorist act occurring; and
 - (ii) detaining the subject for the period for which the subject is to be detained under the order is reasonably necessary for the purposes referred to in subparagraph (i).
- (4) A terrorist act referred to in subsection (3)—
 - (a) must be one that is imminent; and
 - (b) must be one that is expected to occur, in any event, at some time in the next 14 days.
- (5) A police officer or issuing authority meets the requirements of this subsection if—
 - (a) a terrorist act has occurred within the last 28 days; and
 - (b) the officer or authority is satisfied on reasonable grounds that—
 - (i) it is necessary to detain the subject to preserve evidence of, or relating to, the terrorist act; and
 - (ii) detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for the purpose referred to in subparagraph (i).
- (6) An issuing authority may refuse to make a preventative detention order unless the police officer applying for the order gives the issuing authority any further information that the issuing authority requests concerning the grounds on which the order is sought.

7—No preventative detention order in relation to person under 16 years of age

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

Note—

See also section 10(7), section 39 and section 43(4) to (9) and (11) for the special rules for people who are under 18 years of age.

- (2) If—
- (a) a person is being detained under a preventative detention order or a purported preventative detention order; and
 - (b) the police officer who is detaining the person is satisfied on reasonable grounds that the person is under 16 years of age,

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

8—Restrictions on multiple preventative detention orders

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

another preventative detention order cannot be applied for, or made, in relation to the person on the basis of assisting in preventing the same terrorist act occurring within that period.

Note—

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

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

another preventative detention order cannot be applied for, or made, in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period unless the application, or the order, is based on information that became available to be put before an issuing authority only after the preventative detention order referred to in paragraph (a) was made.

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

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

- (4) If a person has been detained under a corresponding preventative detention law on the basis of assisting in preventing a terrorist act within a particular period, the period for which the person may be placed in preventative detention on the same basis under this Act is reduced by the period for which the person has been in detention under the corresponding preventative detention law and, if that period amounts to 14 days or more, a preventative detention order cannot be made under this Act on the same basis.
- (5) If a person has been detained under a corresponding preventative detention law on the basis of preserving evidence of, or relating to, a terrorist act, the period for which the person may be placed in preventative detention on the same basis under this Act is reduced by the period for which the person has been in detention under the corresponding preventative detention law and, if that period amounts to 14 days or more, a preventative detention order cannot be made under this Act on the same basis.

9—Application for preventative detention order

- (1) A police officer may apply to an issuing authority for a preventative detention order in relation to a person.
- (2) The application must—
 - (a) be made in writing; and
 - (b) set out the facts and other grounds on which the police officer considers that the order should be made; and
 - (c) specify the period for which the person is to be detained under the order and set out the facts and other grounds on which the police officer considers that the person should be detained for that period; and
 - (d) set out the information (if any) that the applicant has about the person's age; and
 - (e) set out the outcomes and particulars of all previous applications for preventative detention orders under this Act or a corresponding preventative detention law in relation to the person; and
 - (f) set out the outcomes and particulars of all other applications or proceedings made or taken in relation to the person under other Australian anti-terrorism laws; and
 - (g) set out the information (if any) that the applicant has about any periods for which the person has been detained under a corresponding preventative detention law; and
 - (h) set out a summary of the grounds on which the police officer considers that the order should be made.
- (2a) To avoid doubt, subsection (2)(h) does not require information to be included in the summary if the disclosure of the information is likely to prejudice national security.
- (3) The information in the application must be sworn or affirmed by the police officer but, in a case of urgency, the issuing authority may issue the preventative detention order on the police officer undertaking to swear or affirm the information as soon as practicable after the order is made.

- (4) If—
- (a) a preventative detention order is made in relation to a person on the basis of assisting in preventing a particular terrorist act occurring within a particular period; and
 - (b) the person is detained under the order; and
 - (c) an application is made for another preventative detention order in relation to the person on the basis of assisting in preventing a different terrorist act occurring within that period,

the application must also identify the information on which the application is made that became available only after the preventative detention order referred to in paragraph (a) was made.

Note—

See section 8(2).

10—Making of preventative detention order

- (1) On application by a police officer, an issuing authority may make a preventative detention order in relation to a person.
- (2) Subsection (1) has effect subject to sections 6, 7 and 8.
- (3) A preventative detention order is an order that the person specified in the order may be—
 - (a) taken into custody; and
 - (b) detained during the period that—
 - (i) starts when the person is first taken into custody under the order; and
 - (ii) ends a specified period of time after the person is first taken into custody under the order.
- (4) The order must be in writing.
- (5) The period of time specified in the order under subsection (3)(b)(ii) must not exceed—
 - (a) if the issuing authority is a senior police officer—24 hours;
 - (b) if the issuing authority is a Judge—14 days.
- (6) A preventative detention order must set out—
 - (a) the name of the person in relation to whom it is made; and
 - (b) the period during which the person may be detained under the order; and
 - (c) the date on which, and the time at which, the order is made; and
 - (d) the date and time after which the person may not be taken into custody under the order; and
 - (e) a summary of the grounds on which the order is made.

Note—

Paragraph (d)—see section 11(2).

- (6a) To avoid doubt, subsection (6)(e) does not require information to be included in the summary if the disclosure of the information is likely to prejudice national security.
- (7) If the person in relation to whom the order is made is—
- (a) under 18 years of age; or
 - (b) incapable of managing his or her affairs,
- the order may provide that the period each day for which the person is entitled to have contact with another person under section 39(2) is the period of more than 2 hours that is specified in the order.
- (8) The nominated senior police officer for the order must—
- (a) notify the Police Ombudsman in writing of the making of the order; and
 - (b) give the Police Ombudsman a copy of the order; and
 - (c) if the person in relation to whom the order is made is taken into custody under the order—notify the Police Ombudsman in writing that the person has been taken into custody under the order.

11—Duration of preventative detention order

- (1) A preventative detention order in relation to a person starts to have effect when it is made.

Note—

The order comes into force when it is made and authorises the person to be taken into custody (see section 10(3)(a)). The period for which the person may then be detained under the order only starts to run when the person is first taken into custody under the order (see section 10(3)(b)(i)).

- (2) A preventative detention order in relation to a person ceases to have effect at the end of the period of 48 hours after the order is made if the person has not been taken into custody under the order within that period.
- (3) If the person is taken into custody under the order within 48 hours after the order is made, the order ceases to have effect when whichever of the following first occurs:
- (a) the end of—
 - (i) the period specified in the order as the period during which the person may be detained under the order; or
 - (ii) if that period is extended or further extended under section 12—that period as extended or further extended;
 - (b) the revocation of the order under section 15.

Note—

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

12—Extension of preventative detention order

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

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

- (1a) Before making an application, the police officer must—
 - (a) notify the person of the proposed application; and
 - (b) inform the person that, when the proposed application is made, any material that the person gives the police officer in relation to the proposed application will be put before the issuing authority to whom the application is made.
- (2) The application must—
 - (a) be made in writing; and
 - (b) set out the facts and other grounds on which the police officer considers that the extension, or further extension, is reasonably necessary for the purposes 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; and
 - (d) set out a summary of the grounds on which the police officer considers that the period for which the order is to be in force in relation to the person should be extended or further extended.

Note—

Paragraph (b)—see section 6(3) and (5) for the purpose for which a preventative detention order may be made.

- (2a) To avoid doubt, subsection (2)(d) does not require information to be included in the summary if the disclosure of the information is likely to prejudice national security.
- (3) The information in the application must be sworn or affirmed by the police officer.
- (3a) The police officer must put before the issuing authority all material that the person has given the police officer in relation to the application.
- (4) The issuing authority may extend, or further extend, the period for which the order is to be in force in relation to the person if the issuing authority is satisfied, on reasonable grounds, that detaining the person under the order for the period as extended, or further extended, is reasonably necessary for the purpose for which the order was made.
- (5) The extension, or further extension, must be made in writing.
- (6) The period as extended, or further extended, must end—
 - (a) if the issuing authority granting the extension, or further extension, is a senior police officer—no later than 24 hours after the person is first taken into custody under the order;
 - (b) if the issuing authority granting the extension, or further extension, is a Judge—no later than 14 days after the person is first taken into custody under the order.
- (7) The nominated senior police officer for the order must—
 - (a) notify the Police Ombudsman in writing of the extension or further extension; and

- (b) give the Police Ombudsman a copy of the extension or further extension.

12A—Basis for applying for, and making, prohibited contact orders

- (1) A police officer may apply for a prohibited contact order in relation to a person only if the police officer meets the requirements of subsection (3).
- (2) An issuing authority may make a prohibited contact order in relation to the detention of a person under a preventative detention order only if the issuing authority meets the requirements of subsection (3).
- (3) A person meets the requirements of this subsection if the person is satisfied that making the prohibited contact order is reasonably necessary—
 - (a) to avoid a risk to action being taken to prevent a terrorist act occurring; or
 - (b) to prevent serious harm to a person; or
 - (c) to preserve evidence of, or relating to, a terrorist act; or
 - (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; or
 - (e) to avoid a risk to—
 - (i) the arrest of a person who is suspected of having committed an offence against this Part; or
 - (ii) the taking into custody of a person in relation to whom a preventative detention order is in force, or in relation to whom a preventative detention order is likely to be made; or
 - (iii) the service on a person of a control order under Part 5.3 of the *Criminal Code* of the Commonwealth.
- (4) An issuing authority may refuse to make a prohibited contact order unless the police officer applying for the order gives the issuing authority further information that the issuing authority requests concerning the grounds on which the order is sought.

13—Prohibited contact order (person in relation to whom preventative detention order is being sought)

- (1) A police officer who applies to an issuing authority for a preventative detention order in relation to a person (the *subject*) may also apply for a prohibited contact order in relation to the subject's detention under the preventative detention order.
- (2) The application must set out—
 - (a) the terms of the order sought; and
 - (b) the facts and other grounds on which the police officer considers that the order should be made.
- (3) The information in the application for the prohibited contact order must be sworn or affirmed by the police officer but, in a case of urgency, the issuing authority may make the prohibited contact order on the police officer undertaking to swear or affirm the information as soon as practicable after the order is made.

- (4) If the issuing authority makes the preventative detention order, the issuing authority may make a prohibited contact order that the subject is not, while being detained under the preventative detention order, to contact a person specified in the prohibited contact order.

Note—

Section 12A sets out the basis on which the order may be made.

- (5) The prohibited contact order must be in writing.
- (6) The nominated senior police officer for the preventative detention order must—
 - (a) notify the Police Ombudsman in writing of the prohibited contact order; and
 - (b) give the Police Ombudsman a copy of the order.

14—Prohibited contact order (person in relation to whom preventative detention order is already in force)

- (1) If a preventative detention order is in force, a police officer may apply to an issuing authority for a prohibited contact order in relation to the subject's detention under the preventative detention order.
- (2) The application must set out—
 - (a) the terms of the order sought; and
 - (b) the facts and other grounds on which the police officer considers that the order should be made.
- (3) The information in the application for the prohibited contact order must be sworn or affirmed by the police officer but, in a case of urgency, the issuing authority may make the prohibited contact order on the police officer undertaking to swear or affirm the information as soon as practicable after the order is made.
- (4) The issuing authority may make a prohibited contact order under this section that the subject is not, while being detained under the preventative detention order, to contact a person specified in the prohibited contact order.

Note—

Section 12A sets out the basis on which the order may be made.

- (5) The prohibited contact order must be in writing.
- (6) The nominated senior police officer for the preventative detention order must—
 - (a) notify the Police Ombudsman in writing of the prohibited contact order; and
 - (b) give the Police Ombudsman a copy of the order.

15—Revocation of preventative detention order or prohibited contact order

- (1) If—
 - (a) a preventative detention order is in force in relation to a person; and
 - (b) the police officer who is detaining the person under the order is satisfied that the grounds on which the order was made have ceased to exist,the police officer must apply to an issuing authority for the revocation of the order.

- (2) If—
- (a) a preventative detention order is in force in relation to a person; and
 - (b) an issuing authority is satisfied, on application by a police officer, that the grounds on which the order was made have ceased to exist,
- the issuing authority must revoke the order.
- (3) If—
- (a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and
 - (b) the police officer who is detaining the person under the preventative detention order is satisfied that the grounds on which the prohibited contact order was made have ceased to exist,
- the police officer must apply to an issuing authority for the revocation of the prohibited contact order.
- (4) If—
- (a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and
 - (b) an issuing authority is satisfied, on application by a police officer, that the grounds on which the prohibited contact order was made have ceased to exist,
- the issuing authority must revoke the prohibited contact order.
- (5) A person being detained under a preventative detention order may make representations to the nominated senior police officer for the order with a view to having the order revoked.
- (6) The nominated senior police officer for the preventative detention order must notify the Police Ombudsman in writing of the revocation of the order or of a prohibited contact order in relation to the person's detention under the preventative detention order.

16—Status of person making preventative detention order

- (1) An issuing authority who—
- (a) makes, extends or revokes a preventative detention order; or
 - (b) makes or revokes a prohibited contact order in relation to a person's detention under a preventative detention order,
- has, in the performance of his or her duties under this Act, the same protection and immunity as a Judge of the Supreme Court.
- (2) A function of—
- (a) making or revoking a preventative detention order; or
 - (b) extending, or further extending, the period for which a preventative detention order is to be in force; or
 - (c) making or revoking a prohibited contact order in relation to a person's detention under a preventative detention order,

that is conferred on a Judge is conferred on the Judge in a personal capacity and not as a court or a member of a court.

Part 3—Review of preventative detention orders

17—Review of preventative detention order

- (1) As soon as practicable after a person (the *subject*) is detained under a preventative detention order, the police officer detaining the subject must bring him or her before the Supreme Court for a review of the order.
- (2) The Supreme Court may, however, relieve the police officer from the obligation to bring the subject before the Court and conduct the review proceedings by audio/videolink or audiolink if satisfied that it is appropriate in the circumstances to do so.
- (3) On a review the Supreme Court may exercise any of the following powers:
 - (a) it may quash the order and release the subject from detention;
 - (b) it may remit the matter to the issuing authority with a direction to reduce the period of detention under the order, or not to extend the period of detention beyond a specified limitation;
 - (c) it may award compensation against the Crown if satisfied that the subject has been improperly detained;
 - (d) it may give directions about the issue of further preventative detention orders against the subject.

18—Review not to affect extension etc of preventative detention order

- (1) Subject to any direction made in the review proceedings by the Supreme Court, an issuing authority may, during the course of those proceedings, exercise powers under this Act—
 - (a) to extend or further extend the preventative detention order; or
 - (b) to revoke the order.
- (2) Subject to any direction made in the review proceedings by the Supreme Court, the police officer detaining the subject may exercise powers under this Act to release the subject from detention during the course of the review proceedings.

Part 4—Carrying out preventative detention orders

19—Power to detain person under preventative detention order

- (1) While a preventative detention order is in force in relation to a person—
 - (a) any police officer may take the person into custody; and
 - (b) any police officer may detain the person.
- (2) When a preventative detention order is made, the Commissioner of Police must nominate a senior police officer (the *nominated senior police officer*) to oversee the exercise of powers under, and the performance of obligations in relation to, the preventative detention order.

- (3) The nominated senior police officer must be someone who was not involved in the making of the application for the preventative detention order.
- (4) The nominated senior police officer must—
 - (a) oversee the exercise of powers under, and the performance of obligations in relation to, the preventative detention order; and
 - (b) without limiting paragraph (a), ensure that the provisions of section 15 (which deals with the revocation of preventative detention orders and prohibited contact orders) are complied with in relation to the preventative detention order; and
 - (c) receive and consider any representations that are made under subsection (5).
- (5) The following persons:
 - (a) the subject;
 - (b) a lawyer acting for the subject in relation to the preventative detention order;
 - (c) a person with whom the subject has contact under section 39(2),are entitled to make representations to the nominated senior police officer in relation to—
 - (d) the exercise of powers under, and the performance of obligations in relation to, the preventative detention order; and
 - (e) without limiting paragraph (a), compliance with the provisions of section 15 (which deals with the revocation of preventative detention orders and prohibited contact orders) in relation to the preventative detention order; and
 - (f) the subject's treatment in connection with the subject's detention under the preventative detention order.

20—Endorsement of order with date and time person taken into custody

As soon as practicable after a person is first taken into custody under a preventative detention order, the police officer who is detaining the person under the order must endorse on the order the date on which, and time at which, the person is first taken into custody under the order.

21—Requirement to provide name etc

- (1) If a police officer believes on reasonable grounds that a person whose name or address is, or whose name and address are, unknown to the police officer may be able to assist the police officer in executing a preventative detention order, the police officer may request the person to provide his or her name or address, or name and address, to the police officer.
- (2) If a police officer—
 - (a) makes a request of a person under subsection (1); and
 - (b) informs the person of the reason for the request; and
 - (c) if the police officer is not in uniform—shows the person evidence that the police officer is a police officer; and

- (d) complies with subsection (4) if the person makes a request under that subsection,

the person must not—

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

Maximum penalty: \$2 000.

- (3) Subsection (2) does not apply if the person has a reasonable excuse.
- (4) If a police officer who makes a request of a person under subsection (1) is requested by the person to provide to the person any of the following:
 - (a) his or her name;
 - (b) the address of his or her place of duty;
 - (c) his or her identification number,

the police officer must not—

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

Maximum penalty: \$500.

22—Power to enter premises

- (1) Subject to subsection (2), if—
 - (a) a preventative detention order is in force in relation to a person; and
 - (b) a police officer believes on reasonable grounds that the person is on any premises,

the police officer may enter the premises, using such force as is necessary and reasonable in the circumstances and with such assistance from other police officers as is necessary, at any time of the day or night for the purpose of searching the premises for the person or taking the person into custody.

- (2) A police officer must not enter a dwelling house under subsection (1) at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the police officer believes on reasonable grounds that—
 - (a) it would not be practicable to take the person into custody, either at the dwelling house or elsewhere, at another time; or
 - (b) it is necessary to do so in order to prevent the concealment, loss or destruction of evidence of, or relating to, a terrorist act.

- (3) In subsection (2)—

dwelling house includes a conveyance, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

23—Use of force

- (1) 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 necessary and reasonable—
 - (a) to take the person into custody; or
 - (b) to prevent the escape of the person after being taken into custody.
- (2) Subsection (1) does not however prevent the lawful use of force in self-defence or defence of another.

24—Power to conduct a frisk search

A police officer who takes a person into custody under a preventative detention order, or who is present when the person is taken into custody, may, if the police officer suspects on reasonable grounds that it is prudent to do so in order to ascertain whether the person is carrying any seizable items—

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

25—Power to conduct an ordinary search

A police officer who takes a person into custody under a preventative detention order, or who is present when the person is taken into custody, may, if the police officer suspects on reasonable grounds that the person is carrying—

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

conduct an ordinary search of the person at, or soon after, the time when the person is taken into custody, and seize any such thing found as a result of the search.

26—Warrant under section 34E of the *Australian Security Intelligence Organisation Act 1979*

- (1) This section applies if—
 - (a) a person is being detained under a preventative detention order; and
 - (b) a warrant under section 34E of the *Australian Security Intelligence Organisation Act 1979* is in force in relation to the person; and
 - (c) a copy of the warrant is given to the police officer who is detaining the person under the preventative detention order.
- (2) The police officer must take such steps as are necessary to ensure that the person may be dealt with in accordance with the warrant.
- (3) Without limiting subsection (2), the police officer may, under section 27, release the person from detention under the preventative detention order so that the person may be dealt with in accordance with the warrant.

- (4) To avoid doubt, the fact that the person is released from detention under the preventative detention order so that the person may be—
- (a) questioned before a prescribed authority (within the meaning of Division 3 of Part 3 of the *Australian Security Intelligence Organisation Act 1979* of the Commonwealth) under the warrant; or
 - (b) detained under the warrant in connection with that questioning,

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

Note—

See section 27(6)(a).

27—Release of person from preventative detention

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

Note—

A person may be released, for example, so that the person may be arrested and otherwise dealt with for a suspected offence.

- (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 and identifies the police officer who signs it.
- (3) Subsection (2) does not apply if the police officer releases the person from detention so that the person may be dealt with—
- (a) in accordance with a warrant under section 34E of the *Australian Security Intelligence Organisation Act 1979*; or
 - (b) for a suspected offence.
- (4) To avoid doubt, a person may be taken to have been released from detention under a preventative detention order even if—
- (a) the person is informed that he or she is being released from detention under the order; and
 - (b) the person is taken into custody on some other basis immediately after the person is informed that he or she is being released from detention under the order.
- (5) To avoid doubt, a person is taken not to be detained under a preventative detention order during a period during which the person is released from detention under the order.

Note—

During this period, the provisions of this Part that apply to a person who is being detained under a preventative detention order (for example, section 34 which deals with the people the person may contact) do not apply to the person.

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

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

Note—

Paragraph (a)—this means that the time for which the person may be detained under the order continues to run while the person is released.

28—Arrangement for detainee to be held in prison or remand centre

- (1) A senior police officer may arrange for a person (the *subject*) who is being detained under a preventative detention order to be detained under the order at a prison or remand centre.
- (2) If an arrangement is made under subsection (1)—
 - (a) the preventative detention order is taken to authorise the person in charge of the prison or remand centre to detain the subject while the order is in force in relation to the subject; and
 - (b) section 33 applies in relation to the subject's detention under the order at the prison or remand centre as if—
 - (i) the person in charge of it; or
 - (ii) any other person involved in the subject's detention at the prison or remand centre,
were a person exercising authority under the order or implementing or enforcing the order; and
 - (c) the senior police officer who makes the arrangement is taken, while the subject is detained at the prison or remand centre, to be the police officer detaining the subject for the purposes of Part 5 and Part 6.

Part 5—Informing person detained about preventative detention order

29—Effect of preventative detention order to be explained to person detained

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

Notes—

- 1 A contravention of this subsection may be an offence under section 45.
- 2 A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see section 31(5)).

- (2) The matters covered by this subsection are—
 - (a) the fact that the preventative detention order has been made in relation to the person; and
 - (b) the fact that the person will have an opportunity to be heard on a review of the order under Part 3; and
 - (c) the period during which the person may be detained under the order; and

- (d) the restrictions that apply to the people the person may contact while the person is being detained under the order; and
- (da) the person's entitlement to make representations to the nominated senior police officer in relation to the order with a view to having the order revoked; and
- (e) if the period of detention is less than the maximum permissible under this Act—the fact that an application may be made for an extension of the period of detention; and
- (f) the person's right to make a complaint orally or in writing under Part 4 of the *Police (Complaints and Disciplinary Proceedings) Act 1985* in relation to—
 - (i) the application for, or the making of, the preventative detention order; or
 - (ii) the treatment of the person by a police officer in connection with the person's detention under the order; and
- (g) the fact that the person may seek from a court a remedy relating to—
 - (i) the order; or
 - (ii) the treatment of the person in connection with the person's detention under the order; and
- (h) the person's entitlement under section 37 to contact a lawyer; and
- (i) the name and work telephone number of the senior police officer nominated under section 19(2) to oversee the exercise of powers under and the performance of obligations in relation to the order.

Note—

Paragraph (g)—see section 51.

- (2a) Without limiting subsection (2)(d), the police officer detaining the person under the order must inform the person about the persons that he or she may contact under section 35 or 39.
- (3) Subsection (2)(d) does not require the police officer to inform the person being detained of—
 - (a) the fact that a prohibited contact order has been made in relation to the person's detention; or
 - (b) the name of a person specified in a prohibited contact order that has been made in relation to the person's detention.

30—Person being detained to be informed of extension of preventative detention order

If a preventative detention order is extended, or further extended, under section 12 the police officer detaining the person under the order must inform the person of the extension, or further extension, as soon as practicable after the extension, or further extension, is made.

Notes—

- 1 A contravention of this subsection may be an offence under section 45.

- 2 A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see section 31(5)).

31—Compliance with obligations to inform

- (1) Section 29(1) or section 30 does not apply if the actions of the person being detained under the preventative detention order make it impracticable for the police officer to comply with the relevant provision (but in legal proceedings the burden of adducing or pointing to evidence that suggests a reasonable possibility that the relevant provision did not apply for that reason lies on the police officer).
- (2) The police officer detaining the person under the preventative detention order complies with section 29(1) if the police officer informs the person in substance of the matters covered by section 29(2) (even if this is not done in language of a precise or technical nature).
- (3) The police officer who is detaining the person under the preventative detention order must arrange for the assistance of an interpreter in complying with section 29(1) or section 30 if the police officer has reasonable grounds to believe that the person is unable to communicate with reasonable fluency in the English language.
- (4) Without limiting subsection (3), the assistance of the interpreter may be provided by telephone.
- (5) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with section 29(1), section 30 or subsection (3) of this section.

32—Copy of preventative detention order

- (1) As soon as practicable after a person is first taken into custody under a preventative detention order, the police officer who is detaining the person under the order must give the person a copy of the order.
- (3) As soon as practicable after a preventative detention order is extended, or further extended, under section 12, the police officer who is detaining the person under the preventative detention order must give the person a copy of the extension or further extension.
- (4) A person who is being detained under a preventative detention order may request a police officer who is detaining the person to arrange for a copy of—
 - (a) the order; or
 - (c) any extension or further extension of the order under section 12,to be given to a lawyer acting for the person in relation to the order.

Notes—

- 1 Section 37 deals with the person's right to contact a lawyer and the obligation of the police officer detaining the person to give the person assistance to choose a lawyer.
- 2 Section 40 prevents the person from contacting a lawyer who is specified in a prohibited contact order.
- (5) The police officer must make arrangements for a copy of the order or the extension or further extension, to be given to the lawyer as soon as practicable after the request is made.

- (6) Without limiting subsection (5), the copy of the order or the extension or further extension, may be faxed or emailed to the lawyer.
- (7) To avoid doubt, subsection (5) does not entitle the lawyer to be given a copy of, or to see, a document other than the order or the extension or further extension.
- (8) Nothing in this section requires a copy of a prohibited contact order to be given to a person.
- (9) The police officer who gives—
 - (a) the person being detained under a preventative detention order; or
 - (b) a lawyer acting for the person,a copy of the preventative detention order under this section must endorse on the copy the date on which, and time at which, the person was first taken into custody under the order.
- (10) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with subsection (1), (3), (5) or (9).

Part 6—Treatment of person detained

33—Humane treatment of person being detained

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

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

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

Note—

A contravention of this section may be an offence under section 45.

33A—Detention of persons under 18

- (1) Subject to subsection (2), the police officer detaining a person who is under 18 years of age under a preventative detention order must ensure that the person is not detained together with persons who are 18 years of age or older.

Note—

A contravention of this subsection may be an offence under section 45.

- (2) Subsection (1) does not apply if a senior police officer approves the person being detained together with persons who are 18 years of age or older.
- (3) The senior police officer may give an approval under subsection (2) only if there are exceptional circumstances justifying the giving of the approval.
- (4) An approval under subsection (2) must—
 - (a) be given in writing; and
 - (b) set out the exceptional circumstances that justify the giving of the approval.

34—Restriction on contact with other people

Except as provided by sections 35, 36, 37 and 39, while a person is being detained under a preventative detention order, the person—

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

Notes—

- 1 This section will not apply to the person if the person is released from detention under the order (even though the order may still be in force in relation to the person).
- 2 A person's entitlement to contact other people under sections 35, 37 and 39 may be subject to a prohibited contact order made under section 13 or 14 (see section 40).

35—Contacting family members etc

- (1) The person being detained is entitled to contact—
 - (a) 1 of his or her family members; and
 - (b) if he or she—
 - (i) lives with another person and that other person is not a family member of the person being detained; or
 - (ii) lives with other people and those other people are not family members of the person being detained,that other person or 1 of those other people; and
 - (c) if he or she is employed—his or her employer; and
 - (d) if he or she employs people in a business—1 of the people he or she employs in that business; and
 - (e) if he or she engages in a business together with another person or other people—that other person or 1 of those other people; and
 - (f) if the police officer detaining the person agrees to the person contacting another person—that other person,by telephone, fax or email but solely for the purposes of letting the person contacted know that the person being detained is safe but is not able to be contacted for the time being.
- (2) To avoid doubt, the person being detained is not entitled, under subsection (1), to disclose—
 - (a) the fact that a preventative detention order has been made in relation to the person; or
 - (b) the fact that the person is being detained; or
 - (c) the period for which the person is being detained.

(3) In this section—

family member of a person means—

- (a) the person's spouse, de facto spouse or same sex partner; or
- (b) a parent, step parent or grandparent of the person; or
- (c) a child, step child or grandchild of the person; or
- (d) a brother, sister, step brother or step sister of the person; or
- (e) a guardian or carer of the person.

36—Contacting Police Ombudsman

The person being detained is entitled to contact the Police Ombudsman in accordance with the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

Note—

Section 17 of the *Police (Complaints and Disciplinary Proceedings) Act 1985* provides for the manner in which a person who is in custody may make a complaint to the Police Ombudsman under that Act.

37—Contacting lawyer

(1) The person being detained is entitled to contact a lawyer but solely for the purpose of—

- (a) obtaining advice from the lawyer about the person's legal rights in relation to—
 - (i) the preventative detention order; or
 - (ii) the treatment of the person in connection with the person's detention under the order; or
- (b) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, the review of the preventative detention order by the Supreme Court; or
- (c) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, proceedings in a court for a remedy relating to—
 - (i) the preventative detention order; or
 - (ii) the treatment of the person in connection with the person's detention under the order; or
- (d) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to the Police Ombudsman under the *Police (Complaints and Disciplinary Proceedings) Act 1985* in relation to—
 - (i) the application for, or the making of, the preventative detention order; or
 - (ii) the treatment of the person by a police officer in connection with the person's detention under the order; or
- (e) arranging for the lawyer to act for the person in relation to an appearance, or hearing, before a court that is to take place while the person is being detained under the order.

- (2) The form of contact that the person being detained is entitled to have with a lawyer under subsection (1) includes—
- (a) being visited by the lawyer; and
 - (b) communicating with the lawyer by telephone, fax or email.
- (3) If—
- (a) the person being detained asks to be allowed to contact a particular lawyer under subsection (1); and
 - (b) either—
 - (i) the person is not entitled to contact that lawyer because of section 40 (a prohibited contact order); or
 - (ii) the person is not able to contact that lawyer,
- the police officer who is detaining the person must give the person reasonable assistance to choose another lawyer for the person to contact under subsection (1).
- (3a) If the police officer who is detaining the person under the preventative detention order has reasonable grounds to believe that—
- (a) the person is unable to communicate with reasonable fluency in the English language; and
 - (b) the person may have difficulties in choosing or contacting a lawyer because of that inability,
- the police officer must give the person reasonable assistance (including, if appropriate, by arranging for the assistance of an interpreter) to choose and contact a lawyer under subsection (1).
- (4) In recommending lawyers to the person being detained as part of giving the person assistance under subsection (3) or (3a), the police officer who is detaining the person may give priority to lawyers who have been given a security clearance at an appropriate level.
- (5) Despite subsection (4) but subject to section 40, the person being detained is entitled under this section to contact a lawyer who does not have a security clearance of the kind referred to in subsection (4) .

38—Monitoring contact with family members etc or lawyer

- (1) The contact the person being detained has with another person under section 35 or 37 may take place only if it is conducted in such a way that the contact, and the content and meaning of the communication that takes place during the contact, can be effectively monitored by 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 referred to in that subsection may be a police officer.

- (4) If the person being detained indicates that he or she wishes the contact to take place in a language other than English, the police officer who is detaining the person must—
- (a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained; and
 - (b) if it is reasonably practicable to do so—arrange for those services to be provided as soon as practicable.
- (5) Any communication between—
- (a) a person who is being detained under a preventative detention order; and
 - (b) a lawyer,
- for a purpose referred to in section 37(1) is not admissible in evidence against the person in any proceedings in a court.

39—Special contact rules for person under 18 or incapable of managing own affairs

- (1) This section applies if the person being detained under a preventative detention order—
- (a) is under 18 years of age; or
 - (b) is incapable of managing his or her affairs.
- (2) The person is entitled, while being detained under the order, to have contact with—
- (a) a parent or guardian of the person; or
 - (b) another person who—
 - (i) is able to represent the person's interests; and
 - (ii) is, as far as practicable in the circumstances, acceptable to the person and to the police officer who is detaining the person; and
 - (iii) is not a police officer; and
 - (iv) is not employed in duties related to the administration of the police force; and
 - (v) is not a member (however described) of a police force of the Commonwealth, another State or a Territory; and
 - (vi) is not an officer or employee of the Australian Security Intelligence Organisation.
- (3) To avoid doubt—
- (a) if the person being detained (the *detainee*) has 2 parents or 2 or more guardians, the detainee is entitled, subject to section 40, to have contact under subsection (2) with each of those parents or guardians; and
 - (b) the detainee is entitled to disclose the following to a person with whom the detainee has contact under subsection (2):
 - (i) the fact that the preventative detention order has been made in relation to the detainee;

- (ii) the fact that the detainee is being detained;
 - (iii) the period for which the detainee is being detained.
- (4) The form of contact that the person being detained is entitled to have with another person under subsection (2) includes—
- (a) being visited by that other person; and
 - (b) communicating with that other person by telephone, fax or email.
- (5) The period for which the person being detained is entitled to have contact with another person each day under subsection (2) is—
- (a) 2 hours; or
 - (b) such longer period as is specified in the preventative detention order.

Note—

Paragraph (b)—see section 10(7).

- (6) Despite subsection (5), the police officer who is detaining the person may permit the person to have contact with a person under subsection (2) for a period that is longer than the period provided for in subsection (5).
- (7) The contact that the person being detained has with another person under subsection (2) must be conducted in such a way that the content and meaning of any communication that takes place during the contact can be effectively monitored by a police officer exercising authority under the preventative detention order.
- (8) If the communication that takes place during the contact takes place in a language other than English, the contact may continue only if the content and meaning of the communication in that language can be effectively monitored with the assistance of an interpreter.
- (9) Without limiting subsection (8), the interpreter referred to in that subsection may be a police officer.
- (10) If the person being detained indicates that he or she wishes the communication that takes place during the contact to take place in a language other than English, the police officer who is detaining the person must—
- (a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained; and
 - (b) if it is reasonably practicable to do so—arrange for those services to be provided as soon as practicable.

40—Entitlement to contact subject to prohibited contact order

Sections 35, 37 and 39 have effect subject to any prohibited contact order made in relation to the person's detention.

41—Disclosure offences

- (1) A person (the *subject*) commits an offence if—
- (a) the subject is being detained under a preventative detention order; and
 - (b) the subject intentionally discloses to another person—

- (i) the fact that a preventative detention order has been made in relation to the subject; or
 - (ii) the fact that the subject is being detained; or
 - (iii) the period for which the subject is being detained under the order; and
- (c) the disclosure occurs while the subject is being detained under the order; and
- (d) the disclosure is not one that the subject is entitled to make under section 36, 37 or 39.

Maximum penalty: Imprisonment for 5 years.

- (2) A person (the *lawyer*) commits an offence if—
- (a) a person being detained under a preventative detention order (the *detainee*) contacts the lawyer under section 37; and
 - (b) the lawyer intentionally discloses to another person—
 - (i) the fact that a preventative detention order has been made in relation to the detainee; or
 - (ii) the fact that the detainee is being detained; or
 - (iii) the period for which the detainee is being detained; or
 - (iv) any information that the detainee gives the lawyer in the course of the contact; and
 - (c) the disclosure occurs while the detainee is being detained under the order; and
 - (d) the disclosure is not made for the purposes of—
 - (i) proceedings in the Supreme Court for a review of the preventative detention order; or
 - (ii) proceedings in a court for a remedy relating to the preventative detention order or the treatment of the detainee in connection with the detainee's detention under the order; or
 - (iii) a complaint to the Police Ombudsman under the *Police (Complaints and Disciplinary Proceedings) Act 1985* in relation to the application for, or making of, the preventative detention order or the treatment of the detainee by a police officer in connection with the detainee's detention under the order; or
 - (iv) making representations to the senior police officer nominated under section 19(2) in relation to the order, or another police officer involved in the detainee's detention, about the exercise of powers under the order, the performance of obligations in relation to the order or the treatment of the detainee in connection with the detainee's detention under the order.

Maximum penalty: Imprisonment for 5 years.

- (3) A person (the *parent/guardian*) commits an offence if—
- (a) a person being detained under a preventative detention order (the *detainee*) has contact with the parent/guardian under section 39; and

- (b) the parent/guardian intentionally discloses to another person—
 - (i) the fact that a preventative detention order has been made in relation to the detainee; or
 - (ii) the fact that the detainee is being detained; or
 - (iii) the period for which the detainee is being detained; or
 - (iv) any information that the detainee gives the parent/guardian in the course of the contact; and
- (c) the other person is not a person the detainee is entitled to have contact with under section 39; and
- (d) the disclosure occurs while the detainee is being detained under the order; and
- (e) the disclosure is not made for the purposes of—
 - (i) a complaint to the Police Ombudsman under the *Police (Complaints and Disciplinary Proceedings) Act 1985* in relation to the preventative detention order or the treatment of the detainee by a police officer in connection with the detainee's detention under the order; or
 - (ii) making representations to the senior police officer nominated under section 19(2) in relation to the order, or another police officer involved in the detainee's detention, about the exercise of powers under the order, the performance of obligations in relation to the order or the treatment of the detainee in connection with the detainee's detention under the order.

Maximum penalty: Imprisonment for 5 years.

- (4) To avoid doubt, a person does not contravene subsection (3) merely by letting another person know that the detainee is safe but is not able to be contacted for the time being.
- (4a) A person (the **parent/guardian**) commits an offence if—
 - (a) the parent/guardian is a parent or guardian of a person who is being detained under a preventative detention order (the **detainee**); and
 - (b) the detainee has contact with the parent/guardian under section 39; and
 - (c) while the detainee is being detained under the order, the parent/guardian discloses information of the kind referred to in subsection (3)(b) to another parent or guardian of the detainee (the **other parent/guardian**); and
 - (d) when the disclosure is made, the detainee has not had contact with the other parent/guardian under section 39 while being detained under the order; and
 - (e) the parent/guardian does not, before making the disclosure, inform the nominated senior police officer for the order that the parent/guardian is proposing to disclose information of that kind to the other parent/guardian.

Maximum penalty: Imprisonment for 5 years.

- (4b) If—
 - (a) a person (the **parent/guardian**) is a parent or guardian of a person being detained under a preventative detention order (the **detainee**); and

- (b) the parent/guardian informs the nominated senior police officer for the order that the parent/guardian proposes to disclose information of the kind referred to in subsection (3)(b) to another parent or guardian of the detainee (the *other parent/guardian*),

that nominated senior police officer may inform the parent/guardian that the detainee is not entitled to contact the other parent/guardian under section 39.

Note—

The parent/guardian may commit an offence against subsection (2) if the other parent/guardian is a person the detainee is not entitled to have contact with under section 39 and the parent/guardian does disclose information of that kind to the other parent/guardian. This is because of the operation of subsection (3)(c).

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

Maximum penalty: Imprisonment for 5 years.

- (6) A person (the *disclosure recipient*) commits an offence if—
 - (a) a person (the *earlier discloser*) intentionally discloses to the disclosure recipient—
 - (i) the fact that a preventative detention order has been made in relation to a person; or
 - (ii) the fact that a person is being detained under a preventative detention order; or
 - (iii) the period for which a person is being detained under a preventative detention order; or
 - (iv) any information that a person communicates to another while the person is being detained under a preventative detention order; and
 - (b) the disclosure by the earlier discloser to the disclosure recipient contravenes—
 - (i) subsection (1), (2), (3) or (5); or
 - (ii) this subsection; and
 - (c) the disclosure recipient discloses that information to another person; and

- (d) the disclosure by the disclosure recipient occurs while the person referred to in paragraph (a)(i), (ii), (iii) or (iv) is being detained under the order.

Maximum penalty: Imprisonment for 5 years.

- (7) A person (the *monitor*) commits an offence if—

- (a) the monitor is—

- (i) a police officer who monitors; or
- (ii) an interpreter who assists in monitoring,

contact that a person being detained under a preventative detention order (the *detainee*) has with a lawyer under section 37 while the detainee is being detained under the order; and

- (b) information is communicated in the course of that contact; and
- (c) the information is communicated for 1 of the purposes referred to in section 37(1); and
- (d) the monitor intentionally discloses that information to another person.

Maximum penalty: Imprisonment for 5 years.

Note—

See also section 38(5).

42—Questioning of person prohibited while person is detained

- (1) A police officer must not question a person while the person is being detained under a preventative detention order except for the purposes of—
 - (a) determining whether the person is the person specified in the order; or
 - (b) ensuring the safety and well being of the person being detained; or
 - (c) allowing the police officer to comply with a requirement of this Act in relation to the person's detention under the order.

Notes—

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

2 A contravention of this section may be an offence under section 45.

- (2) If a police officer questions a person while the person is being detained under a preventative detention order, the police officer who is detaining the person must ensure that—
 - (a) a video recording is made of the questioning if it is practicable to do so; or
 - (b) an audio recording is made of the questioning if it is not practicable for a video recording to be made of the questioning.

Note—

A contravention of this subsection may be an offence under section 45.

- (3) Subsection (2) does not apply if—
 - (a) the questioning occurs to—

- (i) ensure the safety and well being of the person being detained; or
 - (ii) determine whether the person is the person specified in the order; and
- (b) complying with subsection (2) is not practicable because of the seriousness and urgency of the circumstances in which the questioning occurs.
- (4) A recording made under subsection (2) must be kept for the period of 12 months after the recording is made.
- (5) As soon as practicable after a recording is made under subsection (2), the police officer who is detaining the person must give the person a written statement of the person's right to have the videotape or audiotape played over to the person or a lawyer acting for the person in a capacity referred to in section 37 (or both).
- (6) Arrangements must be made, at the request of a person being detained under a preventative detention order or a person who was so detained, for the playing of the videotape or audiotape at a reasonable time and place to be nominated by a police officer.
- (7) A person being detained under a preventative detention order or a person who has been so detained must be provided, on request and on payment of the fee fixed by the Minister, with—
 - (a) an audiotape of the soundtrack of a videotape recording made under subsection (2); or
 - (b) a copy of an audiotape recording made under subsection (2).
- (8) A request under subsection (6) or (7) must be made within 12 months after the recording is made.
- (9) A person must not play to another person a videotape or audiotape containing questioning recorded under subsection (2) except if the videotape or audiotape is played—
 - (a) for purposes related to the investigation of a complaint made to the Police Ombudsman; or
 - (b) for the purposes of, or purposes related to, legal proceedings, or proposed legal proceedings, to which the questioning is relevant; or
 - (c) with the permission of a court before which the videotape or audiotape has been tendered in evidence.

Note—

A contravention of this subsection may be an offence under section 45.

43—Taking identification material

- (1) A police officer must not take identification material from a person who is being detained under a preventative detention order except in accordance with this section.

Note—

A contravention of this subsection may be an offence under section 45.

- (2) A police officer who is of the rank of sergeant or higher may take identification material from the person, or cause identification material from the person to be taken, if—
- (a) the person consents in writing; or
 - (b) the police officer believes on reasonable grounds that it is necessary to do so for the purpose of confirming the person's identity as the person specified in the order.
- (3) A police officer may use such force as is necessary and reasonable in the circumstances to take identification material from a person under this section.
- (4) Subject to this section, a police officer must not take identification material (other than hand prints, fingerprints, foot prints or toe prints) from the person if the person—
- (a) is under 18 years of age; or
 - (b) is incapable of managing his or her affairs,
- unless a Magistrate orders that the material be taken.

Note—

A contravention of this subsection may be an offence under section 45.

- (5) In deciding whether to make such an order, the Magistrate must have regard to—
- (a) the age, or any disability, of the person; and
 - (b) such other matters as the Magistrate thinks fit.
- (6) The taking of identification material from a person who—
- (a) is under 18 years of age; or
 - (b) is incapable of managing his or her affairs,
- must be done in the presence of—
- (c) a parent or guardian of the person; or
 - (d) if a parent or guardian of the person is not acceptable to the person—another appropriate person.

Notes—

1 For *appropriate person*, see subsection (11).

2 A contravention of this subsection may be an offence under section 45.

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

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

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

- (9) This subsection applies if either—
- (a) a parent or guardian of the person; or
 - (b) if a parent or guardian is not acceptable to the person—another appropriate person,
- agrees in writing to the taking of the material.

Note—

For *appropriate person*, see subsection (11).

- (10) Despite this section, identification material may be taken from a person who—
- (a) is at least 18 years of age; and
 - (b) is capable of managing his or her affairs,
- if the person consents in writing.
- (11) A reference in this section to an *appropriate person* in relation to a person (the *subject*) who is under 18 years of age, or incapable of managing his or her affairs, is a reference to a person who—
- (a) is capable of representing the subject's interests; and
 - (b) as far as is practicable in the circumstances, is acceptable to the subject and the police officer who is detaining the subject; and
 - (c) is none of the following:
 - (i) a police officer;
 - (ii) a person employed in duties related to the administration of the police force;
 - (iii) a member (however described) of a police force of the Commonwealth, another State or a Territory;
 - (iv) an officer or employee of the Australian Security Intelligence Organisation.

44—Use of identification material

- (1) This section applies if identification material is taken under section 43 from a person being detained under a preventative detention order.
- (2) The material may be used only for the purpose of determining whether the person is the person specified in the order.

Note—

A contravention of this subsection may be an offence under section 45.

- (3) If—
- (a) a period of 12 months elapses after the identification material is taken; and
 - (b) proceedings in respect of—
 - (i) the preventative detention order; or
 - (ii) the treatment of the person in connection with the person's detention under the order,

have not been brought, or have been brought and discontinued or completed, within that period,

the material must be destroyed as soon as practicable after the end of that period.

45—Offences of contravening safeguards

A person commits an offence if—

- (a) the person intentionally engages in conduct; and
- (b) the conduct contravenes—
 - (i) section 29(1); or
 - (ii) section 30; or
 - (iii) section 33; or
 - (iiia) section 33A(1); or
 - (iv) section 42(1), (2), (5) or (9); or
 - (v) section 43(1), (4) or (6); or
 - (vi) section 44(2).

Maximum penalty: Imprisonment for 2 years.

Part 7—Miscellaneous

46—Nature of functions of Magistrate

- (1) A function of making an order conferred on a Magistrate by section 43 is conferred on the Magistrate in a personal capacity and not as a court or a member of a court.
- (2) Without limiting the generality of subsection (1), an order made by a Magistrate under section 43 has effect only by virtue of this Act and is not to be taken by implication to be made by a court.
- (3) A Magistrate performing a function of, or connected with, making an order under section 43 has the same protection and immunity as if he or she were performing that function as, or as a member of, the Magistrates Court.

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

- (1) Despite any rule or practice to the contrary, proceedings under this Act are not to be conducted in public nor publicised in any public list of the Supreme Court's business.
- (2) The Supreme Court must establish appropriate procedures to ensure that information about—
 - (a) the Court's proceedings on review of a preventative detention order under this Act; and
 - (b) any other proceedings brought before the Court in relation to a preventative detention order or a prohibited contact order,

is confined within the narrowest possible limits.

- (3) The Supreme Court is not, however, required to suppress the publication of information under this section if—
- (a) the Minister authorises its publication; or
 - (b) the Court determines that the publication of the information could not conceivably prejudice national security and that its publication should be authorised in the public interest.

48—Annual report

- (1) The Attorney-General must, as soon as practicable after each 30 June, cause to be prepared a report about the operation of this Act during the year ended on that 30 June.
- (2) Without limiting subsection (1), a report relating to a year must include the following matters:
- (a) the number of preventative detention orders made under section 10 during the year;
 - (b) whether a person was taken into custody under each of those orders and, if so, how long the person was detained for;
 - (c) particulars of any complaints in relation to the detention of a person under a preventative detention order made or referred during the year to—
 - (i) the Police Ombudsman; or
 - (ii) the internal investigation division of the police force;
 - (d) the number of prohibited contact orders made under sections 13 and 14 during the year;
 - (e) the number of preventative detention orders, and the number of prohibited contact orders, that a court has found not to have been validly made.
- (3) The Attorney-General must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

49—Police Ombudsman's functions and powers not limited

This Act does not derogate from a function or power of the Police Ombudsman under the *Police (Complaints and Disciplinary Proceedings) Act 1985*.

50—Law relating to legal professional privilege not affected

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

51—Legal proceedings in relation to preventative detention orders

Proceedings may be brought in a court for a remedy in relation to—

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

51A—Evidentiary provision

- (1) A certificate issued by an issuing authority certifying as to the making, terms or revocation of a preventative detention order or prohibited contact order is to be accepted in any legal proceedings as conclusive evidence of the matters so certified.
- (2) An apparently genuine document purporting to be a certificate of the issuing authority under subsection (1) is to be accepted in legal proceedings as such a certificate in the absence of proof to the contrary.

52—Sunset provision

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

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2005	71	<i>Terrorism (Preventative Detention) Act 2005</i>	8.12.2005	8.12.2005
2007	10	<i>Terrorism (Preventative Detention) (Miscellaneous) Amendment Act 2007</i>	5.4.2007	17.5.2007 (<i>Gazette 17.5.2007 p2020</i>)
2012	52	<i>Independent Commissioner Against Corruption Act 2012</i>	6.12.2012	Sch 3 (cl 74)—20.12.2012 (<i>Gazette 20.12.2012 p5742</i>)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 3		
s 3(1)		
nominated senior police officer	inserted by 10/2007 s 4	17.5.2007
Pt 2		
s 9		
s 9(2)	amended by 10/2007 s 5(1)	17.5.2007
s 9(2a)	inserted by 10/2007 s 5(2)	17.5.2007
s 10		
s 10(6)	amended by 10/2007 s 6(1)	17.5.2007
s 10(6a)	inserted by 10/2007 s 6(2)	17.5.2007
s 10(8)	inserted by 10/2007 s 6(3)	17.5.2007
	amended by 52/2012 Sch 3 cl 74	20.12.2012
s 12		
s 12(1a)	inserted by 10/2007 s 7(1)	17.5.2007
s 12(2)	amended by 10/2007 s 7(2)	17.5.2007

s 12(2a)	inserted by 10/2007 s 7(3)	17.5.2007
s 12(3a)	inserted by 10/2007 s7(4)	17.5.2007
s 12(7)	inserted by 10/2007 s 7(5)	17.5.2007
	amended by 52/2012 Sch 3 cl 74	20.12.2012
s 12A	inserted by 10/2007 s 8	17.5.2007
s 13		
s 13(4)	substituted by 10/2007 s 9(1)	17.5.2007
s 13(6)	inserted by 10/2007 s 9(2)	17.5.2007
	amended by 52/2012 Sch 3 cl 74	20.12.2012
s 14		
s 14(4)	substituted by 10/2007 s 10(1)	17.5.2007
s 14(6)	inserted by 10/2007 s 10(2)	17.5.2007
	amended by 52/2012 Sch 3 cl 74	20.12.2012
s 15		
s 15(5)	inserted by 10/2007 s 11	17.5.2007
s 15(6)	inserted by 10/2007 s 11	17.5.2007
	amended by 52/2012 Sch 3 cl 74	20.12.2012
Pt 4		
s 26		
s 26(1)	amended by 10/2007 s 12(1)	17.5.2007
s 26(4)	amended by 10/2007 s 12(2)	17.5.2007
s 27		
s 27(3)	amended by 10/2007 s 13	17.5.2007
Pt 5		
s 29		
s 29(2)	amended by 10/2007 s 14(1)	17.5.2007
s 29(2a)	inserted by 10/2007 s 14(2)	17.5.2007
s 32		
s 32(1)	(a) and (b) deleted by 10/2007 s 15(1)	17.5.2007
	amended by 10/2007 s 15(1)	17.5.2007
s 32(2)	<i>deleted by 10/2007 s 15(2)</i>	17.5.2007
s 32(4)	(b) deleted by 10/2007 s 15(3)	17.5.2007
s 32(5)—(7)	amended by 10/2007 s 15(4)	17.5.2007
Pt 6		
s 33A	inserted by 10/2007 s 16	17.5.2007
s 36	amended by 52/2012 Sch 3 cl 74	20.12.2012
s 37		
s 37(1)	amended by 52/2012 Sch 3 cl 74	20.12.2012
s 37(3a)	inserted by 10/2007 s 17(1)	17.5.2007
s 37(4)	amended by 10/2007 s 17(2)	17.5.2007
s 41		
s 41(2)	amended by 52/2012 Sch 3 cl 74	20.12.2012
s 41(3)	amended by 10/2007 s 18(1)	17.5.2007

	amended by 52/2012 Sch 3 cl 74	20.12.2012
s 41(4a) and (4b)	inserted by 10/2007 s 18(2)	17.5.2007
s 42		
s 42(1)	s 42 redesignated as s 42(1) by 10/2007 s 19	17.5.2007
s 42(2)—(8)	inserted by 10/2007 s 19	17.5.2007
s 42(9)	inserted by 10/2007 s 19	17.5.2007
	amended by 52/2012 Sch 3 cl 74	20.12.2012
s 45	amended by 10/2007 s 20(1), (2)	17.5.2007
Pt 7		
s 48		
s 48(2)	amended by 10/2007 s 21	17.5.2007
	amended by 52/2012 Sch 3 cl 74	20.12.2012
s 49	amended by 52/2012 Sch 3 cl 74	20.12.2012
s 51A	inserted by 10/2007 s 22	17.5.2007

Historical versions

17.5.2007