

Terrorism (Preventative Detention) Bill 2005

Explanatory Notes

General Outline

Objective of the Legislation

The object of the legislation is to give effect in Queensland to the agreement of the Council of Australian Governments (COAG) on 27 September 2005 that States and Territories introduce legislation on preventative detention for up to 14 days to prevent an imminent terrorist act or to preserve evidence following a recent terrorist act. The legislation is to complement Commonwealth legislation which provides for preventative detention for up to 48 hours. The Anti-Terrorism Bill (No 2) 2005, (the Commonwealth Bill), inserts the Commonwealth's preventative detention regime into the Commonwealth Criminal Code.

The legislation is essential because the nature of the terrorist threat means that police may need to intervene earlier to prevent a terrorist act with less knowledge than they would have had using traditional policing methods.

The Terrorism (Preventative Detention) Bill 2005, (the Bill) provides that applications for initial preventative detention orders are made by a police officer to a senior police officer who is an Assistant Commissioner or above. Initial preventative detention orders can have force for up to 24 hours from the time the person is first taken into custody. Applications for final preventative detention orders are made by a police officer to a Judge or retired Judge of the Supreme Court. Final preventative detention orders can have force for up to 14 days from the time the person is first taken into custody (including any period of detention pursuant to a Commonwealth preventative detention order).

A police officer in making an application for an initial or final preventative detention order must disclose all things known to the officer, both favourable and adverse to the issuing of the detention order. The Public Interest Monitor must also be notified of any application for a preventative detention order and may make representations to the issuing authority.

While in preventative detention, the person is entitled to contact those who are close to them to let them know that he or she is safe, and to contact a lawyer. These contact rights can be restricted by a police officer obtaining a prohibited contact order, preventing the person from contacting specified persons where the prohibition of such contact will assist in achieving the objectives of the preventative detention order in either preventing a terrorist act or preserving evidence following a terrorist act.

If the police officer who applied for a preventative detention order or a prohibited contact order is satisfied that the grounds on which the order was made no longer exist, the police officer must apply for the revocation of the order. Furthermore, a person detained under a preventative detention order may apply to the Supreme Court for revocation or variation of the order. This review is by way of reconsideration of the merits of the preventative detention order.

The Bill does not permit a preventative detention order to be made against a person who is under 16 years old. The legislation also provides for special treatment for persons who are 16 or 17 years old and for persons of impaired capacity. Such special treatment includes the person being permitted contact with a parent, guardian or another person who is able to represent the person's interests for a minimum of two hours each day.

The Bill requires that a person detained under a preventative detention order must be treated with humanity and respect for human dignity, and not be subjected to cruel, inhumane or degrading treatment. A person who contravenes this safeguard commits a criminal offence with a penalty of two years' imprisonment. Whilst a person is detained under a preventative detention order a police officer of the rank of Inspector or above must be appointed to oversee the detention. This officer must ensure that the police comply with their obligations to seek a revocation of the preventative detention order where the grounds on which it was made have ceased to exist, and may receive and consider any representations made by the detainee, the detainee's lawyer, or a person the detainee contacts regarding the performance by the police of this obligation and more generally regarding the person's treatment whilst in detention. The detainee may also contact the ombudsman or the crime and misconduct commission.

Additionally, where the person is a child or is of impaired capacity, the Department of Communities, or Disability Services Queensland (as applicable) will, subject to national security issues, have an officer visit the person detained within 24 hours of the detention commencing, in order to ensure that the person understands the nature of the preventative detention order and to monitor the welfare of the person.

After a preventative detention order has expired, the person who was detained may apply to the Supreme Court for compensation. The person must satisfy the court either that the preventative detention order should not have been made, or that the person's treatment whilst detained under the order contravened the legislation. The State is liable to pay any compensation ordered.

Means of Achieving Policy Objectives

The Bill achieves the objectives by the creation of the *Terrorism (Preventative Detention) Act 2005* and by amending the *Police Powers and Responsibilities Act 2005*. The Bill also provides that:

- the Queensland Police Service may take a person into custody under a preventative detention order despite the *Police Powers and Responsibilities Act 2000*;
- the Department of Corrective Services may take a person into custody under a preventative detention order despite the *Corrective Services Act 2000*; and
- the Department of Communities may take a person into custody under a preventative detention order despite the *Juvenile Justice Act 1992*.

Alternative Means of Achieving Policy Objectives

There are no other viable alternatives that would achieve the policy objectives other than the proposed Bill.

Estimated Cost for Government Implementation

Costs associated with the implementation of the Bill are not expected to significantly impact upon any of the agencies concerned and will be met from within existing agencies' budget allocations.

Consistency with Fundamental Legislative Principles

The Bill deals with policing powers which raise substantial issues about the liberty of the subject and the criminal justice process. However, the infringement of civil liberties through the detention of a person for the purpose of preventing a terrorist act or securing evidence following a terrorist act, is regarded as necessary, provided adequate safeguards are put in place.

The Bill seeks to minimise infringements of fundamental legislative principles by:

- making rights and liberties dependent on the administrative power to detain by sufficiently defining the power, restricting the circumstances of its exercise, including a role for the public interest monitor as early in the process and as far as is practicable, and by making the exercise of such administrative power subject to appropriate review by the Supreme Court;
- ensuring that, as far as practicable, the exercise of the power to detain is not, in so far as serving judges are concerned, incompatible with their judicial office;
- ensuring that, as far as practicable, and consistent with the objects of the legislation and the public interest in preventing terrorist acts, principles of natural justice are respected;
- ensuring that the administrative power to detain is not delegable;
- conferring police powers, including power to detain, enter premises, and search for persons, only pursuant to appropriate authorisation under a preventative detention order;
- prohibiting the questioning of a detainee while detained under a preventative detention order; and
- not imposing obligations or removing rights retrospectively.

Consultation conducted in Development of the Bill

Extensive consultation has occurred in the development of the Bill within the Department of the Premier and Cabinet, Queensland Police Service and Department of Justice and the Attorney-General. Consultation was also conducted with:

- Department of Corrective Services;
- Department of Communities;
- Department of Child Safety;
- Commission for Children and Young People and Child Guardian; and
- Office of the Queensland Parliamentary Counsel.

Notes on Provisions

Cross-references to comparable sections of the Commonwealth Criminal Code, as proposed in the Anti-Terrorism Bill (No. 2) 2005 (Cth) are given in parentheses.

Part 1 Preliminary

Short title

Clause 1 specifies the short title of the Bill.

Commencement

Clause 2 provides for the commencement of the Bill on a day to be fixed by proclamation.

Object (Cwlth 105.1)

Clause 3 sets out the objectives of the Bill. The objects are to enable the police to take a person into custody and detain that person for a short period of time, being no longer than 14 days, in order to prevent an imminent terrorist act occurring, or to preserve evidence of, or relating to, a recent terrorist act. The note indicates that a person detained under a preventative detention order may only be questioned for very limited purposes, in accordance with clause 53. This note clarifies that extended questioning is not an object of preventative detention orders.

Definitions

Clause 4 provides that definitions of particular words used in the Bill are contained in the schedule. These definitions are necessary to complement the Bill.

Act binds all persons

Clause 5 clarifies that the Crown is bound by the Act but is not liable for offences.

Extraterritoriality of terrorist act no barrier

Clause 6 clarifies the extraterritorial aspects of the Bill. The Bill permits an issuing authority to issue a preventative detention order in respect of a person who is present in Queensland, even though the relevant actions that are the subject of the requisite suspicion under clause 8 of the Bill have not occurred, are not occurring and are not likely to occur in Queensland, or outside Queensland.

Issuing authorities etc (Cwlth 105.2)

Clause 7 sets out who may be an issuing authority for preventative detention orders.

Subclause 7(1) sets out who may be an issuing authority for the purposes of an initial preventative detention order.

Subclause 7(2) sets out who may be an issuing authority for the purposes of a final preventative detention order.

Subclause 7(3) sets out who may be an issuing authority for an application to extend, further extend or revocation of a preventative detention. The subclause clarifies that the issuing authority does not have to be the same person who granted the original order but must be an issuing authority for the specific type of preventative detention order.

Subclause 7(4) sets out that a judge or retired judge can only perform a function as an issuing authority for a final order if the judge or retired judge has consented, in writing, to performing the function and the person has not revoked that consent.

Subclause 7(5) clarifies that a senior police officer cannot delegate a power to make an order under this Act to a police officer who is not a senior police officer.

Part 2 Preventative detention orders

Division 1 General

Basis for applying for, and making a preventative detention order (Cwlth 105.4)

Subclause 8(1) provides that a preventative detention order may only be applied for by a police officer who satisfies subclause (3) or (5). Similarly, subclause 8(2) provides that a preventative detention order may only be made by an issuing authority who satisfies subclause (3) or (5).

Subclause 8(3) provides that police officer applying for a preventative detention order, and the issuing authority making a preventative detention order, meet the criteria in subclause (3) if they are satisfied that there are reasonable grounds to suspect that a person will engage in a terrorist act, or possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act, or has done an act in preparation for, or planning, a terrorist act; further, that they are satisfied that making the order would substantially assist in preventing a terrorist act occurring and that detaining the person for the period for which detention is to occur is reasonably necessary for preventing this act. This ensures the police officer who applies for an order, and the issuing authority who makes an order, must specifically consider the duration for which the person should be detained.

Subclause 8(4) qualifies the operation of subclause (3) by providing that the terrorist act must be imminent and in any event must be expected to occur in the next 14 days.

The combined operation of these subclauses creates a high threshold for applying for and issuing a preventative detention order because it is necessary to show not only that the subject had, for example, done something in preparation for a terrorist act, but also that the terrorist act is imminent, and that making the order would assist in preventing a terrorist act.

A person does not satisfy subclause (3) where even one of these criteria is not established. For example, if the terrorist act was not imminent, but was expected to occur in three weeks' time, the criteria would not be met and it would not be possible to obtain a preventative detention order. However, in such cases, it might be possible to use other investigatory tools, such as surveillance or listening devices.

In circumstances where one or more terrorist acts have already occurred and intelligence indicates that further terrorist acts are imminent, it is possible for a preventative detention order to be made provided the other criteria in subclause (3) are met.

Subclause (5) provides an alternative basis for requesting, or making, a preventative detention order. This subclause is satisfied if the police officer or issuing authority is satisfied that a terrorist act has occurred within the last 28 days, that it is necessary to detain the subject to preserve evidence of, or relating to, the terrorist act, and that detaining the subject for the period for which detention is to occur is reasonably necessary for preserving this evidence.

Unlike subclause (3), a preventative detention order under subclause (5) can only be made where a terrorist act has already occurred.

Subclause 8(6) provides that an issuing authority may require the police officer applying for the order to provide further information before making a preventative detention order. This provides flexibility in cases where the information provided during the application process is not sufficient for the making of an order, but the police officer is able to provide such additional information as will enable the issuing authority to make such an order.

No preventative detention order for person under 16 years of age (Cwlth 105.5)

Subclause 9(1) prohibits a police officer from applying for, and an issuing authority making, a preventative detention order in relation to a person who is under 16 years of age.

It is possible that a police officer could apply for, and an issuing authority could make, a preventative detention order in relation to a person without knowing that the person is under 16 years of age. Therefore, as an additional safeguard, subclause (2) provides that if a police officer detaining a person under a preventative detention order is satisfied on reasonable grounds that the person is under 16 years of age, the police officer must release the person from detention as soon as practicable.

Multiple preventative detention orders

Clause 10 clarifies that multiple initial and final preventative detention orders may be made for the detention of a person subject to the restriction of clauses 11 and 12.

Restrictions on subject matter of multiple preventative detention orders (Cwlth 105.6)

Subclause 11(1) clarifies the circumstances where subclauses (2) and (4) do not prevent the making of multiple preventative detention orders.

Subclause 11(2) prevents a police officer from obtaining a preventative detention order in relation to a person has already be detained under a preventative detention order under this Act or a preventative detention order of another State on the basis of the preventing the same terrorist act within that particular period.

The note indicates that this provision does not prevent the making of a preventative detention order to preserve evidence in relation to the terrorist act, if it occurs. For example, a person could be taken into preventative detention under a preventative detention order or under a corresponding state law to prevent the person committing a terrorist act in the next 14 days. Following release from detention, a terrorist act could occur. In those circumstances, provided the criteria for making an initial preventative detention order in relation to the person were satisfied, it would be possible to apply for and make an initial preventative detention order in relation to the person and take the person into preventative detention for the purposes of preserving evidence of a terrorist act.

Subclause 11(3) prevents a police officer from obtaining multiple initial preventative detention orders, where the person is detained under an order under this Act or an order made under a corresponding law of another State, in relation to the same person on the basis of assisting in preventing different terrorist acts occurring within a particular period, unless the order is based on information that became available only after the preventative detention order was made.

Subclause 11(4) prevents a police officer from obtaining multiple initial preventative detention orders, where the person is detained under an order under this Act or an order made under a corresponding law of another State, in relation to the same person on the basis of preserving evidence of the same terrorist act.

Restrictions on period of detention under multiple preventative detention orders

Clause 12 clarifies the maximum periods of time a person can be detained under preventative detention orders which includes any period of detention under a corresponding law.

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

Clause 13 sets out who may be given notice of and who may attend an application for a preventative detention order or any subsequent extension.

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

Clause 14 clarifies what must be given to the public interest monitor when the public interest monitor is required to be notified of an application to an issuing authority. The clause provides that the public interest monitor has a right of appearance and may make representations in person or by other means.

Division 2 Initial orders**Applications for initial preventative detention order (Cwlth 105.7)**

Clause 15 contains the scheme by which a police officer may apply to an issuing authority for an initial preventative detention order and sets out the information that must be provided in the application including all matters both favourable and adverse to the making of the order. Additionally if the person is a child or of impaired capacity the application must provide reasons if an order is sought restricting contact with the relevant chief executive's delegate under clause 60.

PIM must be notified

Clause 16 sets out the requirements for the notification of the public interest monitor and contains a scheme for the application to proceed when the public interest monitor cannot reasonably be contacted. However if the public interest monitor cannot be contacted, the officer must attempt to contact any deputy public interest monitors before an application proceeds.

Issuing authority may make initial order (Cwlth 105.8)

Clause 17 enables a senior police officer to make a initial preventative detention order and sets out what the order may authorise and what the order must state. The maximum period of time a person may be detained under an initial order is 24 hours. If the order is for the detention of a

person who a child or of impaired capacity, the order may provide for contact under clause 60(2) for more than the minimum of two hours per day, or whether the person may not be contacted pursuant to clause 61.

Duration of initial order (Cwlth 105.9)

Clause 18 sets out when the initial order takes effect and if the person is detained, when the order ceases to have effect. The clause also specifies the period the order is valid for taking the person into custody.

The note in subclause (3) indicates that where a person is released from detention under an order (eg, for the purposes of a warrant under section 34D of the *Australian Security Intelligence Organisation Act 1979 (ASIO Act)*), the order does not cease to have effect.

Application for extension of initial order (Cwlth 105.10)

Clause 19 contains the scheme by which a police officer may apply to an issuing authority for an extension of an initial preventative detention order and sets out the information that must be provided in the application. Additionally if the person is a child or of impaired capacity the application must provide reasons if an order is sought restricting contact with the relevant chief executive's delegate under clause 60.

PIM must be notified

Clause 20 sets out the requirements for the notification of the public interest monitor and contains a scheme for the application to proceed when the public interest monitor cannot reasonably be contacted. However if the public interest monitor cannot be contacted, the officer must attempt to contact any deputy public interest monitors before an application proceeds.

Issuing authority may extend initial order

Clause 21 enables a senior police officer to extend an initial preventative detention order and sets out what the order may authorise and what must be stated in the order. However, any extended initial order must end no later than 24 hours after the person was first taken into custody. If the order is for the detention of a person who a child or of impaired capacity, the order may provide for contact under clause 60(2) for more than the minimum of two hours per day, or whether the person may not be contacted pursuant to clause 61.

Division 3 Final orders

Application for final order (Cwlth 105.11)

Clause 22 contains the scheme by which a police officer may apply to an issuing authority for a final order and sets out the information that must be provided in the application. The application must contain all matters both favourable and adverse to the making of the final order. If the person is a child or of impaired capacity the application must also state the grounds for requesting a delay of the special contact rules under clause 59 and the period after the 24 hour period in which the person must be contacted.

Notice to and representations by the person

Clause 23 sets out the material that the applicant for a final order must provide to the person to whom the application relates.

Subclause (3) and (4) provides for the right of appearance of the person and the person's lawyer and an entitlement to make representations and ask questions. Subclause (5) provides for disclosure exemptions.

PIM must be notified

Clause 24 requires the public interest monitor to be notified of the application.

Issuing authority may make a final order (Cwlth 105.12)

Clause 25 enables the issuing authority to make a final preventative detention order and sets out what the order may authorise and what matters must be stated in the order.

Duration of final order (Cwlth 105.13)

Clause 26 sets out when the final order takes effect and when the order ceases to have effect.

The note in subclause (2) provides that where a person is released from detention under an order (eg, for the purposes of a warrant under section 34D of the *ASIO Act*, the order does not cease to have effect.

Application for extension of final order (Cwlth 105.14)

Clause 28 contains the scheme by which a police officer may apply to an issuing authority for an extension of a final order and sets out the information that must be provided in the application.

Notice to and representations by the person

Clause 29 sets out the material that the applicant for a final order must provide to the person to whom the application relates.

Subclauses (3) and (4) provides for the right of appearance of the person and the person's lawyer and an entitlement to make representations and ask questions. Subclause (5) provides for disclosure exemptions.

PIM must be notified

Clause 30 requires the public interest monitor to be notified of the application.

Issuing authority may extend final order

Clause 31 enables an issuing authority to extend a final order and sets out what the order may authorise and what must be stated in the order.

Division 4 Prohibited contact orders**Prohibited contact order for person for whom preventative detention order is being sought (Cwlth 105.15)**

Clause 32 enables a police officer who is applying to an issuing authority for a detention order to apply for an order prohibiting the person to be detained from having contact with specified persons during the person's detention under a preventative detention order.

Prohibited contact order for person for whom preventative detention order is already in force (Cwlth 105.16)

Clause 33 enables a police officer to apply to an issuing authority for an order prohibiting the person from having contact with specified persons during the person's detention under a preventative detention order.

Notice to the person and public interest monitor

Clause 34 sets out who can be notified and who can appear dependent upon the type of preventative detention order is associated with the application for the prohibited contact order.

Division 5 Revocation of orders by issuing authority**Revocation of preventative detention order or prohibited contact order (Cwlth 105.17)**

Clause 35 sets out the obligation of the police to apply to the issuing authority for a revocation of a preventative detention order or prohibited contact order when satisfied that the grounds on which the relevant order was made have ceased to exist.

PIM must be notified

Clause 36 requires the public interest monitor to be notified of the application.

Part 3 Carrying out preventative detention orders**Power to detain person under preventative detention order (Cwlth 105.19)**

Clause 37 enables any police officer to take a person who is subject of a preventative detention order into custody and detain the person while a preventative detention order is in force. Subclauses 34(2) and (3) clarify that the power of a police officer to detain and prevent the escape of the detainee is the same as that which is applicable under State legislation, however, where a function or power is provided for in this part, this provisions under this Act prevail.

The clause also provides for the oversight by a police officer nominated by the Commissioner or Deputy Commissioner of police

Nominated police officer to oversee functions and powers (Cwlth 105.19(5))

Clause 38 requires the Commissioner or Deputy Commissioner of Police to nominate a senior police officer (being an officer who was not involved in making the application for the preventative detention order) to oversee the exercise of functions and powers by the police under the preventative detention order and to receive and consider representations from any of the detained person, the detained person's lawyer and any person with whom the detained person has contact under clause 60(2) and clause 61, regarding the performance by the police of their functions and the exercise of their powers in relation to the preventative detention order, and the person's treatment in connection with the preventative detention order.

Endorsement of order with date and time person taken into custody (Cwlth 105.20)

Clause 39 provides for the details of the date and time a person is first taken into custody to be endorsed on the order.

Requirement to provide name etc (Cwlth 105.21)

Clause 40 enables a police officer to require a person to provide their name, address or date of birth where the officer believes that such person may be able to assist the officer in executing a preventative detention order and informs the person of the reason for the request. Failure to comply with such a request or providing materially false or misleading information will in certain circumstances be punishable by a penalty of 20 units. Clause 40 also provides that a police officer making such request must provide certain identification details to that person and that failure to do so will be punishable by a penalty of 5 penalty units.

Power to enter premises (Cwlth 105.22)

Clause 41 provides a power for police to enter premises, using such force that is necessary and reasonable in the circumstances, in order to search for and take into custody a person for whom a preventative detention order is in force, and who the police officer reasonably believes to be on the premises. Subclause 41(2) imposes certain limitations on the ability of a police officer to enter a dwelling house for the above purposes.

Power to conduct a frisk search (Cwlth 105.23)

Clause 42 provides the police with a power to undertake a frisk search of a person taken into custody under a preventative detention order in order to determine whether the person is carrying any seizable items.

Power to conduct an ordinary search (Cwlth 105.24)

Clause 43 provides a police officer with a power to undertake an ordinary search of a person taken into custody under a preventative detention order where the officer suspects on reasonable grounds that the person is carrying evidence of or relating to a terrorist act or a seizable item.

ASIO warrant (Cwlth 105.25)

Clause 44 provides that, if a person is being detained under a preventative detention order and a warrant under section 34D of the *ASIO Act* is in force in relation to the person, and the police are given a copy of the relevant warrant, the police officer must take such steps as are necessary in order for the person to be dealt with in accordance with that warrant including releasing the person from detention under the preventative detention order so that the person may be dealt with in accordance with the warrant.

Subclause 44(4) clarifies that the detention of the person under the ASIO warrant does not extend the period for which the preventative detention order remains in force.

Release of person from preventative detention (Cwlth 105.26)

Clause 45 provides for a person released from detention under a preventative detention order to be given a written statement signed by the police, to the effect that he or she is being released from detention, unless the person is released from detention so that they may be dealt with under an ASIO warrant or under part 1AA, division 4 and part 1C of the *Crimes Act 1914*.(Cth).

Arrangement for detainee to be held (Cwlth 105.27)

Clause 46 authorises any person detained under a preventative detention order to be segregated from other persons and held in a police watch house, corrective services facility (whether or not the person is a child for purposes of the *Juvenile Justice Act 1992*) or detention centre. Subclauses 46(4) to (10) are designed to ensure that the the *Corrective Services Act*

2000 and *Juvenile Justice Act 2000* each support the operation of the preventative detention provisions of the Act.

Part 4 Informing person detained about preventative detention order

Effect of initial order to be explained to person detained (Cwlth 105.28)

Clause 47 requires the police officer who is detaining the person under an initial preventative detention order, as soon as practicable after the order is made, to inform the person of certain matters and to provide assistance to enable a person to exercise their right to ask the Supreme Court to grant a remedy relating to the preventative detention order or the treatment of the person under the order. A police officer is not required to disclose the existence of a prohibited contact order or the persons named in any prohibited contact order made in relation that person's detention.

Effect of final order to be explained to person detained (Cwlth 105.29)

Clause 48 requires the police officer, as soon as practicable after the final order is made, to inform the person being detained of certain matters and to provide assistance to enable the person ask the Supreme Court to revoke or vary the order or grant the person a remedy in connection with the final order or the treatment of the person while in detention under the final order. A police officer is not required to disclose the existence of a prohibited contact order or the persons named in any prohibited contact order made in relation to that person's detention.

Person being detained to be informed of extension of preventative detention order (Cwlth 105.31)

Clause 49 requires the police officer detaining the person under an extended order to inform the person of the extension, or further extension as soon as practicable after it is made.

Compliance with obligations to inform (Cwlth 105.31)

Clause 50 provides that a police officer is not required to comply with his or her obligations to inform the person detained of the matters set out in

Sections 47 and 48 if the actions of the person being detained under the preventative detention order made it impracticable to do so. Where a police officer has reasonable grounds to believe that the person being detained is unable to communicate with reasonable fluency in English, the police officer must arrange for the assistance of an interpreter in complying with the obligations to inform in Sections 47 and 48. However, failure of the police officer to comply with the requirements to inform, or to provide an interpreter, does not affect the lawfulness of the detention.

Copy of preventative detention order and summary of grounds (Cwlth 105.32)

Clause 51 requires that, as soon as practicable after a person is first detained under a preventative detention order, the person is to be given a copy of the order and a summary of the grounds on which the order was made; provided, however, that such summary is not required to include information the disclosure of which is likely to prejudice national security. The police are required, at the request of the person being detained under a preventative detention order, to arrange for a copy of the order and summary of the grounds on which it was made to be given to the lawyer acting for that person in relation to the preventative detention order. The police are not required to give a copy of a prohibited contact order to the person or his or her lawyer and failure of the police officer to comply with the requirements of Clause 51 does not affect the lawfulness of the detention.

Part 5 Treatment of person detained

Division 1 General

Humane treatment of person being detained (Cwlth 105.33)

Clause 52 requires a person being detained under a preventative detention order to be treated with humanity and respect for human dignity.

Questioning of person prohibited while person is detained (Cwlth 105.42)

Clause 53 prohibits the police from questioning a person detained under a preventative detention order other than to ascertain whether the person is

the person stated in the order, or to ensure the person's safety and well-being, or to comply with a requirement in relation to the person's detention under the order.

Offences of contravening safeguards (Cwlth 105.45)

Clause 54 provides that it is an offence punishable by imprisonment for two years to contravene the safeguards contained in Clauses 47, 48, 49, 52, 53, 69 and 70.

Division 2 Contact provisions

Restriction on contact with other people (Cwlth 105.34)

Clause 55 provides that while a person is detained under a preventative detention order, the person is not entitled to contact another person and may be prevented from contacting another person.

Contacting family members etc (Cwlth 105.35)

Clause 56 provides that a person detained under a preventative detention order is entitled to contact by telephone or fax: their parents or one of their other family members, and (as applicable) a cohabitant who is not a family member, an employer, an employee, a business partner and any other person agreed to by the police officer, solely for the purposes of letting the person contacted know that the person being detained is safe but is being detained under a preventative detention order and may not be able to be contacted for up to 14 days.

Contacting ombudsman and crime and misconduct commission (Cwlth 105.36)

Clause 57 permits the person being detained to contact the ombudsman and the crime and misconduct commission.

Contacting lawyer (Cwlth 105.37)

Clause 58 permits the person being detained to contact a lawyer solely for the purposes of obtaining the lawyer's advice about his or her legal rights in relation to: the preventative detention order or the treatment of the person in connection with the preventative detention order; arranging for the

lawyer to make applications or seek remedies relating to the preventative detention order or the treatment of the person in connection with the person's detention under the order; or arranging for the lawyer to act for the person being detained in relation to a complaint before the ombudsman, or the crime and misconduct commission, or an appearance before a court that is to take place while the person is being detained under the order.

Monitoring contact under section 56, 58 or 61 (Cwlth 105.38)

Clause 59 provides that the contact permitted under clauses 56, 58 or 61 may only occur where it is conducted in a manner that ensures that the content and meaning of the communication can effectively be monitored by a police officer. While contact may take place in a language other than English, the content and meaning of the communication must be able to be effectively monitored with the assistance of an interpreter. The police officer is required, on being informed by the person being detained that he or she wishes the contact to take place in a language other than English, to arrange for the services of an appropriate interpreter if it is reasonably practicable to do so during the period of detention. Subclause 59(5) provides that permitted communications between a person being detained under a preventative detention order and his or her lawyer are not admissible in evidence against the person in any court proceedings.

Special contact rules for child or person of impaired capacity (Cwlth 105.39)

Clause 60 provides that persons detained under preventative detention orders who are children or of impaired capacity are entitled to have additional contact (including being visited and communication by telephone or fax) with their parents, guardians or another person able to represent their interests for a period of two hours per day, or longer if stated in the preventative detention order. Such persons are entitled to disclose to their parents, guardians or another contact the fact that they are being detained under a preventative detention order and the period for which they are being detained. The contact must be conducted in such a way that ensures that it may be effectively monitored and interpreters may be arranged for this purpose. The additional contact must take place within the first 24 hours after the person is detained.

Child or person of impaired capacity to be contacted by relevant chief executive

Clause 61 provides a mechanism for the police to notify the relevant chief executive where a person detained under a preventative detention order is a child or person of impaired capacity. The relevant chief executive is able to have such contact with the person detained that is necessary to ensure that the person being detained understands the effect of the order and to ascertain their welfare. Such contact must first occur within the first 24 hours of each of the following: being taken into custody under an initial and final preventative detention order, and being further detained under an extension or further extension of an initial or final preventative detention order. In relation to initial preventative detention orders, such first contact is subject to any contrary order made by the issuing authority. The relevant chief executive is required to notify the police prior to making such contact.

The relevant chief executive and the chief executive's delegate

Clause 62 specifies that the chief executive for purposes of Clause 61 is the chief executive within the meaning of the *Juvenile Justice Act 1992*, if the person being detained under a preventative detention order is a child; and the chief executive within the meaning of the *Disability Services Act 1992*, if the person being detained under a preventative detention order is a person of impaired capacity. The functions of the chief executive under Clause 61 may be delegated by the relevant chief executive to a person on approval of the police commissioner and the chief executive of the department responsible for administering the facility where the person is being detained.

Entitlement to contact subject to prohibited contact order (Cwlth 105.40)

Clause 63 clarifies that the contact entitlements contained in clauses 56, 58 and 60 are subject to any prohibited contact order made in relation to a person's detention.

Division 3 Disclosure offences

Lawyer

Clause 64 makes it an offence with a maximum penalty of two years' imprisonment for a lawyer who is contacted by a person under a preventative detention order pursuant to clause 58 to disclose to another person, during the period in which the person is being detained: the fact that a preventative detention order has been made in relation to that person; the fact that the detainee is being detained; the period of such detention; or any information that the detainee gives the lawyer in the course of the contact. However, it is not an offence for such a disclosure to occur where it is made for the purposes of: an application for the making or revocation of a preventative detention order for the detainee; any proceedings in a court for a remedy relating to a preventative detention order or the treatment of a detainee in connection with his or her detention under the order; a complaint to the ombudsman [or the crime and misconduct commission] in relation to the preventative detention order; or making representations to the nominated police officer pursuant to clause 38.

Parent/guardian

Clause 65 makes it an offence with a maximum penalty of two years' imprisonment for the parent or guardian of a person being detained under a preventative detention order to knowingly or recklessly disclose to another person (other than a person who is permitted to contact the person detained under any provision of Division 2 of Part 5 of the Act), during the period in which the person is being detained: the fact that a preventative detention order has been made in relation to that person; the fact that the detainee is being detained; the period of such detention; or any information that the interpreter obtains in the course of assisting in monitoring that contact. However, it is not an offence for such a disclosure to occur where it is made for the purposes of a complaint to the ombudsman or crime and misconduct commission in relation to the making of the preventative detention order, or a representation to the nominated police officer pursuant to Clause 38.

Interpreter

Clause 66 makes it an offence with a maximum penalty of two years' imprisonment for an interpreter who assists in monitoring the contact of a person under detention with his or her permitted contacts knowingly or recklessly disclose to another person, during the period in which the person

is being detained; the fact that a preventative detention order has been made in relation to that person; the fact that the detainee is being detained; the period of such detention; or any information that the interpreter obtains in the course of assisting in monitoring that contact.

Disclosure recipient

Clause 67 makes it an offence with a maximum penalty of two years' imprisonment for a person who receives information regarding another person's detention that is of such nature that the person making such disclosure has breached Clauses 64, 65 or 66, to knowingly or recklessly disclose such information to a further person while the person the subject of the preventative detention order is still under detention.

Persons who Monitor

Clause 68 provides a maximum penalty of two years' imprisonment for police officers who monitor a conversation between the detained person and his or her lawyer, or an interpreter who assists in monitoring such a conversation, to knowingly or recklessly disclose to another person information communicated in the course of the contact and within the parameters permitted under the Act.

Division 4 Identifying particulars

Taking identifying particulars (Cwlth 105.43)

Clause 69 sets out the extent to which, and manner in which, a police officer may take identifying particulars from a person being detained under a preventative detention order.

Use of identifying particulars (Cwlth 105.44)

Clause 70 provides that identifying particulars taken from a person being detained under a preventative detention order may only be used to ascertain whether the person is the person stated in the preventative detention order. Identifying particulars are required to be destroyed 12 months after they have been taken where proceedings for the preventative detention order or the person's treatment under a preventative detention order are no longer on foot.

Part 6 Reviews and remedies

Review by Supreme Court on application of detained person

Clause 71 permits a person who is detained pursuant to a final preventative detention order to apply to the Supreme Court for a revocation or variation of the order at any time after the final preventative detention order is served on him or her. The application may be made before or after the person is released from detention and whether or not representations have previously been made to the nominated police officer in accordance with clause 38. The public interest monitor shall be notified in writing of such application and is entitled to receive a copy of the notice and the grounds on which the application is made.

Review by Supreme Court initiated by police officer detaining a person

Clause 72 requires the Commissioner of Police to bring an application (on behalf of the detainee, who is taken to be the applicant) to the Supreme Court for a decision on whether to revoke or modify a preventative detention order or a prohibited contact order whenever a person is detained under a preventative detention order for seven days or more and has not himself or herself made an application to the Supreme Court to revoke or vary the order under clause 71.

Supreme Court hearing and decision

Clause 73 clarifies that the Supreme Court's consideration of an application to revoke or vary a preventative detention order under clause 71 or a preventative detention order or prohibited contact order under clause 72 as a reconsideration on the merits in which the record for the application shall include all material that was given to the issuing authority. The parties may also bring additional evidence and make additional submissions to the court. The public interest monitor is entitled to appear, examine witnesses and make submissions. Where the public interest monitor does appear, he or she shall be considered a party to the proceedings, however, he or she may not be made the subject of a costs order. The proceedings are to be considered an appeal for purposes of the provisions of the *Supreme Court of Queensland Act 1991* regarding the use of video link proceedings in the Supreme Court.

Stay of revocation pending outcome of appeal

Clause 74 requires that, where the Supreme Court revokes or varies a preventative detention order on the application of the detained person and the police as respondent informs the court that it intends to appeal, the revocation or variation of the order is stayed either: until the end of the appeal, where the appeal has been lodged within 12 hours of the revocation or variation; or at the expiry of 12 hours, in all other cases, unless the court orders otherwise.

Proceedings in relation to preventative detention orders generally saved and right of compensation conferred (Cwlth 105.51)

Clause 75 clarifies that the Act does not limit proceedings that may be brought in a court for a remedy in relation to a preventative detention order or the treatment of a person in connection with their detention under a preventative detention order. This includes proceedings before the Supreme Court for compensation where, the Supreme Court revokes a preventative detention order. The Supreme Court may order the State to pay compensation where the court is satisfied that the preventative detention order should not have been made, or that the treatment of the person while under detention contravened the Act. However, a person making an application for compensation is not entitled to compensation merely because a preventative detention order or prohibited contact order is made.

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

Clause 76 clarifies that proceedings in relation to a preventative detention order that is in force shall not be conducted in public nor publicised in the public list of the Supreme Court's business. In this regard, the Supreme Court must establish appropriate procedures to ensure that information about proceedings on review of a preventative detention order and other proceedings brought before it in relation to a preventative detention order are confined within the narrowest limits. However, the Supreme Court is not required to suppress the publication of information where the Minister authorises publication or where the court decides that publication should be authorised in the public interest.

Part 7 Miscellaneous

Nature of functions of judge (Cwlth 105.18)

Clause 77 applies the provisions of the Supreme Court Act of Queensland Act 1991 providing for the protection and immunity of a Supreme Court judge, to Supreme Court judges and retired Supreme Court judges performing under this Act the functions of making or revoking a final preventative detention order, or extending or further extending the period for which a final preventative detention order is to be in force, or making or revoking a prohibited contact order in relation to a person's detention under a final preventative detention order.

Nature of functions of magistrate (Cwlth 105.46)

Clause 78 clarifies that any functions undertaken by a magistrate in this Act are conferred on the magistrate in a personal capacity. The provisions of the Magistrates Act 1991 regarding the protection or immunity of the magistrate are to apply to the magistrate in performing any functions under this Act.

Obtaining orders by telephone or similar facility

Clause 79 permits the police, in urgent circumstances, or due to other special circumstances (such as the police's remote location) to apply to an issuing authority for a preventative detention order by phone, fax, video link, email, radio or similar facility, where it is reasonably necessary to do so.

Offences

Clause 80 requires that proceedings for an offence against this Act, other than an indictable offence, must be taken summarily.

Other functions not affected (Cwlth 105.48)

Clause 81 clarifies that this Act does not affect any existing function of the ombudsman, the crime and misconduct commission or the public interest monitor under their respective legislation.

Law relating to legal professional privilege not effected (Cwlth 105.50)

Clause 82 clarifies that the Act does not operate to affect the law of legal professional privilege.

Sunset provision (Cwlth 105.53)

Clause 83 provides the sunset provision. The Act will expire at the end of 10 years following the day on which clause 82 commences. Any preventative detention order or prohibited contact order that is in force when the Act expires will immediately cease effect. However, matters arising before the Act's expiry, and matters arising under preventative detention orders and prohibited contact orders while they are in force, will continue to apply.

Regulation-making power

Clause 84 authorises the Governor in Council to make regulations under the Act.

**Part 8 Amendment of Police Powers
and Responsibilities Act 2000****Act amended and references**

Clause 85 amends the *Police Powers and Responsibilities Act 2000* by reference to the numbering of the provisions of that Act which existed prior to the *Cross-Border Law Enforcement Legislation Amendment Act 2005*. A reference in this part is then taken to be a reference to the provision of the *Police Powers and Responsibilities Act 2000* as renumbered under the *Cross-Border Law Enforcement Legislation Amendment Act 2005*.

Amendment of s 159 (Monitor's functions)

Clause 86 amends section 159 of the *Police Powers and Responsibilities Act 2000* so that the functions of the public interest monitor (and the deputy public interest monitors) shall include: (i) the exercise of powers conferred on the public interest monitor under sections 104.12, 104.14, 104.18, 104.19 and 104.23 of the Commonwealth Criminal Code; (ii) the exercise of powers conferred on the public interest monitor under clauses 14 and 73

of the *Terrorism (Preventative Detention) Act 2005*; the gathering of statistical information about the use and effectiveness of preventative detention orders under the Commonwealth Criminal Code and the *Terrorism (Preventative Detention) Act 2005* and, whenever the public interest monitor considers it appropriate, reporting to the Commissioner of Police on non-compliance by police officers with the *Terrorism (Preventative Detention) Act 2005*.

Amendment of s 160 (Monitor's annual report)

Clause 87 amends section 160 of the *Police Powers and Responsibilities Act 2000* to require the public interest monitor's annual report to include matters under the *Terrorism (Preventative Detention) Act 2005* such as the number of initial and final preventative detention orders made during the year, whether a person was taken into custody under each such order, and if so, for how long the person was detained, particulars of any complaints about the detention of a person under a preventative detention order made or referred during the year to the ombudsman or the crime and misconduct commission, the number of prohibited contact orders made during the year and the use of preventative detention orders and prohibited contact orders generally. An annual report must also include, in relation to control orders issued under Division 104 of the Commonwealth Criminal Code: the number of control orders confirmed, declared void, revoked or varied during the year, and the use of control orders generally.

Schedule

Dictionary

The dictionary contains definitions of particular terms used in the Act.