

Version No. 024
Terrorism (Community Protection) Act 2003

No. 7 of 2003

Version incorporating amendments as at
3 November 2011

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Terrorism (Community Protection) Act 2003

No. 7 of 2003

Version incorporating amendments as at
3 November 2011

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purposes

The main purposes of this Act are—

- (a) to provide new powers and obligations relating to the prevention of, and the response to, terrorist acts; and
- (b) to provide for the application for, and the grant and execution of, warrants authorising the covert search of premises by members of the police force; and
- (ba) to provide for the application for, and the making of, preventative detention orders; and
- (c) to provide for mandatory reporting of the theft or loss or discrepancies in quantity of certain chemicals and other substances; and
- (d) to provide for the operators of certain essential services to prepare risk management plans to identify and mitigate the risk of terrorist acts; and
- (e) to protect counter-terrorism methods from disclosure in legal proceedings.

S. 1(ba)
inserted by
No. 5/2006
s. 12.

S. 1(c)
amended by
No. 67/2004
s. 17(1)(a).

2 Commencement

- (1) This Part and Parts 3, 5, 7 and 8 come into operation on the day after the day on which this Act receives the Royal Assent.

- (2) Subject to subsection (3), Parts 2, 4 and 6 come into operation on a day or days to be proclaimed.
- (3) If a provision of this Act does not come into operation before 1 July 2004, it comes into operation on that day.

3 Definitions

In this Act—

S. 3 def. of
*Assistant
Commissioner*
substituted by
No. 30/2006
s. 4(1)(a).

Assistant Commissioner means an Assistant Commissioner of Police for Victoria;

S. 3 def. of
*Chief
Commissioner*
substituted by
No. 30/2006
s. 4(1)(b).

Chief Commissioner means the Chief Commissioner of Police for Victoria;

counter-terrorism information means information relating to covert methods of investigation of a terrorist act or suspected terrorist act;

declared essential service means an essential service or part of an essential service declared under section 28;

S. 3 def. of
*Deputy
Commissioner*
substituted by
No. 30/2006
s. 4(1)(c).

Deputy Commissioner means a Deputy Commissioner of Police for Victoria;

essential service has the meaning given by section 26;

member of the force has the same meaning as in the **Police Regulation Act 1958**;

operator, in relation to a declared essential service, means—

- (a) a person specified or in a class specified in relation to that declared essential service under section 28; or
- (b) if no person or class is specified in relation to the declared essential service, the person who is responsible for the day to day management of the declared essential service;

premises includes—

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

terrorist act has the meaning given by section 4;

thing includes any object, article or material.

4 What is a terrorist act?

- (1) In this Act, ***terrorist act*** means an action or threat of action where—
 - (a) the action falls within subsection (2) and does not fall within subsection (3); and
 - (b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
 - (c) the action is done or the threat is made with the intention of—
 - (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or

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Part 1—Preliminary

s. 4

(ii) intimidating the public or a section of the public.

(2) Action falls within this subsection if it—

- (a) causes serious harm that is physical harm to a person; or
- (b) causes serious damage to property; or
- (c) causes a person's death; or
- (d) endangers a person's life, other than the life of the person taking the action; or
- (e) creates a serious risk to the health or safety of the public or a section of the public; or
- (f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to—

- (i) an information system; or
- (ii) a telecommunications system; or
- (iii) a financial system; or

(iv) a system used for the delivery of essential government services by any entity (whether publicly or privately owned); or

(v) a system used for, or by, an essential public utility (whether publicly or privately owned); or

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

(3) Action falls within this subsection if it—

(a) is advocacy, protest, dissent or industrial action; and

(b) is not intended—

- (i) to cause serious harm that is physical harm to a person; or

S. 4(2)(f)(iv)
amended by
No. 30/2006
s. 4(2)(a).

S. 4(2)(f)(v)
amended by
No. 30/2006
s. 4(2)(b).

- (ii) to cause a person's death; or
- (iii) to endanger the life of a person, other than the person taking action; or
- (iv) to create a serious risk to the health or safety of the public or a section of the public.

* * * * *

Note to s. 4
repealed by
No. 30/2006
s. 4(3).

4A Extraterritoriality of terrorist act no barrier

To avoid doubt, functions, powers or duties conferred by this Act in relation to a terrorist act may be exercised or performed whether or not the terrorist act has been, is being, or is likely to be, committed in Victoria.

S. 4A
inserted by
No. 5/2006
s. 7.

4B Providing documents or information facilitating terrorist acts

- (1) A person commits an offence if—
- (a) the person has possession or control of a document or information; and
 - (b) the person intentionally provides the document or information to another person; and
 - (c) the person does so with the intention of facilitating preparation for, the engagement of a person in or assistance in a terrorist act.

Penalty: Level 5 imprisonment (10 years maximum).

- (2) A person commits an offence under subsection (1) even if the terrorist act does not occur.

S. 4B
inserted by
No. 30/2006
s. 5.

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s. 4B

(3) If—

- (a) an act or omission by a person is both an offence against subsection (1) and an offence against Part 5.3 of the Criminal Code of the Commonwealth; and
- (b) the person has been punished for the offence under that Part—

the person is not liable to be punished for the offence against subsection (1).

PART 2—COVERT SEARCH WARRANTS

5 Jurisdiction

A covert search warrant under this Part may only be issued by the Supreme Court.

6 Covert search warrants

(1) A member of the force, with the approval of the Chief Commissioner, a Deputy Commissioner or an Assistant Commissioner, may apply to the Supreme Court for the issue of a warrant under this Part in respect of any premises if that member suspects or believes, on reasonable grounds, that—

(a) any of the following applies—

(i) a terrorist act has been, is being, or is likely to be, committed;

(ii) a person who resides at, or visits, those premises—

(A) has done an act in preparation for, or planning, a terrorist act; or

(B) has provided to, or received from, a terrorist organisation (within the meaning of Division 102 of the Criminal Code of the Commonwealth) training connected with preparation for, or planning, or engaging in or assisting, a terrorist act;

(iii) there has been, or is, activity on those premises connected with preparation for, or planning, or engaging in or assisting, a terrorist act; and

(b) the entry and search of the premises would substantially assist in preventing (including by gaining knowledge of an act being done

S. 6(1)(a)
substituted by
No. 5/2006
s. 8(1).

S. 6(1)(b)
amended by
No. 5/2006
s. 8(2)(a)(b).

in preparation for, or planning, a terrorist act or connected with the engagement of a person in, or assistance in, a terrorist act) or responding to a terrorist act or suspected terrorist act; and

(c) it is necessary for that entry and search to be conducted without the knowledge of any occupier of those premises.

S. 6(1A)
inserted by
No. 5/2006
s. 8(3).

(1A) An application for a warrant under this Part may be made even if the suspicion or belief does not relate to a specific terrorist act.

(2) An application for a warrant is to be heard in closed court.

7 Application for warrant

(1) An application for a warrant under this Part must be made in writing, supported by an affidavit, setting out the grounds on which the warrant is sought.

(2) The Supreme Court must not issue a warrant unless—

(a) the application for the warrant sets out the grounds on which the warrant is being sought; and

(b) the applicant has given the Court, either orally or in writing, any further information that it requires concerning the grounds on which the warrant is being sought; and

(c) the information given by the applicant is verified before the Court on oath (or affirmation) or by affidavit.

(3) A Judge of the Supreme Court may administer an oath or affirmation or take an affidavit for the purposes of an application for a warrant.

8 Determining the application

- (1) The Supreme Court may issue a warrant under this Part if the Court is satisfied that there are reasonable grounds for the suspicion or belief founding the application for the warrant.
- (2) In determining whether a warrant should be issued, the Court must have regard to—
 - (a) the nature and gravity of the terrorist act or suspected terrorist act; and
 - (b) the extent to which the exercise of powers under the warrant would assist the prevention of, or response to, the terrorist act or suspected terrorist act; and
 - (c) the extent to which the privacy of any person is likely to be affected; and
 - (d) any conditions to which the warrant may be made subject.
- (3) A warrant must specify—
 - (a) that the purpose of the warrant is to assist the prevention of, or response to, a terrorist act or suspected terrorist act; and
 - (b) the address or location of any premises to which the warrant relates; and
 - (c) the name of the applicant; and
 - (d) the name or a description of any other person who may enter premises named or described in the warrant; and
 - (e) whether more than one entry of premises named or described in the warrant is authorised; and
 - (f) the date on which the warrant is issued; and

- (g) the period during which the warrant is in force, being a period not exceeding 30 days; and
 - (h) if known, the names of occupiers of premises named or described in the warrant; and
 - (i) if relevant, the name or a description of the kind of thing to be searched for, seized, placed, copied, photographed, recorded, operated, printed, tested or sampled; and
 - (j) if applicable, any further conditions to which the warrant is subject.
- (4) Nothing in this Part prevents the issue of a further warrant in respect of premises in respect of which a warrant under this Part has previously been issued.

9 What does a warrant authorise?

- (1) A warrant issued under this Part authorises the person to whom it is directed, together with any other person named or described in the warrant and with any necessary equipment—
- (a) to enter, by force or impersonation if necessary, any premises named or described in the warrant, or other specified premises adjoining or providing access to the premises for any of the purposes referred to in paragraph (b), (c), (d), (e), (f) or (g); and
 - (b) to search the premises for any kind of thing named or described in the warrant; and
 - (c) if the warrant authorises seizure of a kind of thing, to seize any thing of that kind; and
 - (d) if the warrant authorises placing a kind of thing, to place any thing of that kind on the premises in substitution for a thing seized under paragraph (c); and

-
- (e) if the warrant authorises copying, photographing or otherwise recording a description of a kind of thing, to copy, photograph or otherwise record a description of any thing of that kind on the premises; and
 - (f) to operate any electronic equipment that is on the premises and copy, print or otherwise record information from that equipment; and
 - (g) if the warrant authorises testing, or taking and keeping a sample of, a kind of thing, to test, or take and keep a sample of, any thing of that kind.
- (2) The Supreme Court may direct that any thing seized under a warrant be returned to its owner, subject to any condition that the Court thinks fit, if in the opinion of the Court it can be returned consistently with the interests of justice.
 - (3) Except as provided by this Part, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants under this Part.

10 Warrant may be granted by telephone

- (1) If, in urgent circumstances, a member of the force considers it necessary to do so, the member may apply for a warrant under this Part by telephone in accordance with this section.
- (2) Before making the application, the member must prepare an affidavit setting out the grounds on which the warrant is sought, but may, if necessary, make the application before the affidavit has been sworn.
- (3) If transmission by facsimile machine is available, the member must transmit a copy of the affidavit, whether sworn or unsworn, to the Supreme Court.

-
- (4) Subject to sections 7(2) and 8(1) and having regard to the factors in section 8(2), the Supreme Court may issue a warrant on an application made by telephone after considering—
- (a) the terms of the affidavit; and
 - (b) any further information required by the Court concerning the grounds on which the warrant is sought.
- (5) If the Supreme Court issues a warrant on an application made by telephone, it must—
- (a) inform the applicant of the terms of the warrant and of the date on which and the time at which it was issued, and record on the warrant the reasons for issuing the warrant; and
 - (b) if transmission by facsimile machine is available, transmit a copy of the warrant to the applicant.
- (6) If a copy of the warrant has not been transmitted by facsimile machine, the applicant must—
- (a) complete a form of warrant in the terms furnished to the applicant by the Supreme Court and must write on it the name of the Judge who constituted the Court and the date on which and the time at which the warrant was issued; and
 - (b) not later than the day following the date of the execution of the warrant or the expiry of the warrant, whichever is earlier, send the form of warrant completed by the applicant to the Court.
- (7) If an application is made by telephone, whether or not a warrant is issued, the applicant must, not later than the day following the day on which the
-

application was made, send the original affidavit duly sworn to the Supreme Court.

- (8) In any proceeding, if it is material for a court to be satisfied that an entry, search or seizure was authorised in accordance with this section, and a warrant issued by the Supreme Court in accordance with this section authorising the entry, search or seizure is not produced in evidence, the court must assume, unless the contrary is proved, that the entry, search or seizure was not authorised by such a warrant.

11 Report to court

- (1) The person to whom a warrant is issued under this Part must, no later than 7 days after the warrant expires, make a report in accordance with this section to the Supreme Court.

Penalty: Level 8 imprisonment (1 year maximum) or a level 8 fine (120 penalty units maximum) or both.

- (2) The report must—
- (a) state which powers were exercised under the warrant; and
 - (b) give details of the compliance with the conditions, if any, to which the warrant was subject; and
 - (c) state the period during which the entry and search was conducted; and
 - (d) state the name or description of any person who entered premises named or described in the warrant; and
 - (e) if known, state the names of the occupiers of premises entered; and

- (f) give details of the seizure, placement, copying, photographing, recording, operation, printing, testing or sampling of any thing; and
- (g) if known, give details of the benefit of the execution of the warrant to the prevention of or response to the terrorist act or suspected terrorist act.

12 No publication of report of proceeding

A person must not publish—

- (a) a report of the whole or any part of a proceeding on an application for a warrant under this Part; or
- (b) any information derived from a proceeding referred to in paragraph (a); or
- (c) a report of, or any information derived from, a report to the Supreme Court made under section 11(1)—

unless the Supreme Court orders otherwise.

Penalty: In the case of a natural person, level 7 imprisonment (2 years maximum) or a level 7 fine (240 penalty units maximum) or both;

In the case of a body corporate, 1000 penalty units for a first offence and 20 000 penalty units for a subsequent offence.

13 Annual reports

- (1) The Chief Commissioner must submit a report relating to this Part to the Minister that includes the following information in respect of each financial year—

-
- (a) the number of applications by, and the number of warrants issued to, members of the force during that year; and
 - (b) the number of telephone applications during that year; and
 - (c) the number of applications by members of the force that were refused; and
 - (d) the number of premises covertly entered; and
 - (e) the number of occasions on which items were seized; and
 - (f) the number of occasions on which items were placed; and
 - (g) the number of occasions on which electronic equipment was operated; and
 - (h) any other information that the Minister considers appropriate.
- (2) The report must be submitted to the Minister as soon as practicable, but within 3 months, after the end of each financial year.
 - (3) The Minister must cause the report to be laid before each House of the Parliament, within 12 sitting days of that House, after it is received by the Minister.
-

S. 13(2)
amended by
No. 25/2009
s. 53.

s. 13A

PART 2A—PREVENTATIVE DETENTION ORDERS

Division 1—Preliminary

Pt 2A
(Headings
and ss 13A–
13ZV)
inserted by
No. 5/2006
s. 4.

13A Object of Part

The object of this Part is to allow a person to be taken into custody and detained for up to 14 days in order to—

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

Note

Section 13ZK provides that, while a person is being detained under a preventative detention order, the person may only be questioned for very limited purposes.

S. 13A
inserted by
No. 5/2006
s. 4.

13B Definitions

- (1) In this Part—

AFP member has the same meaning as in Part 5.3 of the Criminal Code of the Commonwealth;

authorised member of the force means a member of the force appointed by the Chief Commissioner of Police under subsection (2);

Commonwealth control order has the same meaning as *control order* has in Part 5.3 of the Criminal Code of the Commonwealth;

corresponding preventative detention law means—

- (a) Division 105 of the Criminal Code of the Commonwealth; or

S. 13B
inserted by
No. 5/2006
s. 4.

-
- (b) a law of another State or of a Territory, or particular provisions of a law of another State or of a Territory, that—
- (i) corresponds or correspond to this Part; or
 - (ii) is or are declared by the regulations to correspond to this Part;

identification material, in relation to a person, means samples taken from a part of the person's body from which a DNA profile may be derived, 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 other than video recordings made in the ordinary course of operation of a security camera fitted at, or in the immediate vicinity of, a place where the person is being detained under a preventative detention order) of the person;

interim preventative detention order means an interim preventative detention order made by the Supreme Court under section 13E;

* * * * *

S. 13B(1)
def. of
*juvenile
justice facility*
repealed by
No. 48/2006
s. 42(Sch.
item 35.1(a)).

lawyer means an Australian lawyer within the meaning of the **Legal Profession Act 2004**;

police gaol has the same meaning as in the **Corrections Act 1986**;

s. 13B

prescribed authority has the same meaning as in Division 3 of Part III of the Australian Security Intelligence Organisation Act 1979 of the Commonwealth;

preventative detention order means an order made under section 13E, as varied under section 13N or 13O, and includes an interim preventative detention order;

prison has the same meaning as in the **Corrections Act 1986**;

prohibited contact order means an order made under section 13L or 13M, as varied under section 13N or 13O;

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;

youth justice facility means a service established under section 478 of the **Children, Youth and Families Act 2005**.

S. 13B(1)
def. of
seizable item
amended by
No. 48/2006
s. 42(Sch.
item 35.1(b)).

S. 13B(1)
def. of
youth justice facility
inserted by
No. 48/2006
s. 42(Sch.
item 35.1(c)).

- (2) The Chief Commissioner of Police may appoint in writing members of the force, or a class or classes of members of the force, to be authorised members of the force for the purpose of making applications under section 13C, 13I and 13M.
- (3) Unless the context otherwise requires, a reference in this Part to a provision of this Act is, in relation to a person who is being detained under an order for the person's detention made under a corresponding preventative detention law, to be

construed as a reference to the corresponding provision of that law.

Division 2—Preventative detention orders

13C Application for preventative detention order

S. 13C
inserted by
No. 5/2006
s. 4.

(1) An authorised member of the force (the *applicant*) may apply to the Supreme Court for a preventative detention order in relation to a person (the *subject*) if—

(a) the applicant is satisfied that—

(i) there are reasonable grounds to suspect that the subject—

(A) will engage in a terrorist act; or

(B) possesses or has under his or her control (whether solely or jointly with any other person) a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or

(C) has done an act in preparation for, or planning, a terrorist act; and

(ii) making the order would substantially assist in preventing a terrorist act occurring; and

(iii) detaining the subject for the period for which the applicant is seeking to have him or her detained under the order is reasonably necessary for the purpose referred to in subparagraph (ii); or

(b) the applicant is satisfied that—

(i) a terrorist act has occurred within the last 28 days; and

s. 13D

- (ii) it is necessary to detain the subject to preserve evidence of, or relating to, the terrorist act; and
 - (iii) detaining the subject for the period for which the applicant is seeking to have him or her detained under the order is reasonably necessary for the purpose referred to in subparagraph (ii).
- (2) A terrorist act referred to in subsection (1)(a) must be one—
- (a) that is imminent; and
 - (b) that is expected to occur, in any event, at some time in the next 14 days.

S. 13D
inserted by
No. 5/2006
s. 4.

13D Form and content of application

- (1) An application under section 13C must—
- (a) be made in writing; and
 - (b) set out the facts and other grounds on which the applicant considers that the preventative detention order should be made; and
 - (c) specify the period for which the applicant is seeking to have the person detained under the order and set out the facts and other grounds on which the applicant 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 capacity to manage his or her affairs; and
 - (e) set out the following—
 - (i) the outcomes and particulars of all previous applications for preventative detention orders in relation to the person;

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- (ii) the information (if any) that the applicant has about—
- (A) the outcomes and particulars of all previous requests for Commonwealth control orders (including the outcomes of the hearings to confirm the orders) in relation to the person;
 - (B) the outcomes and particulars of all previous applications for variations of Commonwealth control orders made in relation to the person;
 - (C) the outcomes of all previous applications for revocations of Commonwealth control orders made in relation to the person; and
- (f) set out the information (if any) that the applicant has about any periods for which the person has been detained under an order made under a corresponding preventative detention law; and
- (g) set out a summary of the grounds on which the applicant considers that the order should be made.
- (2) To avoid doubt, subsection (1)(g) does not require information to be included in the summary if the disclosure of the information is likely to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004 of the Commonwealth).
- (3) 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
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- (b) the person is taken into custody 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 based that became available only after the preventative detention order referred to in paragraph (a) was made.

Note

See section 13K(1).

- (4) If—
 - (a) an order for a person's detention is made under a corresponding preventative detention law on the basis of assisting in preventing a terrorist act occurring within a particular period; and
 - (b) the person is taken into custody under that order; and
 - (c) an application is made for a 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 based that became available only after the order referred to in paragraph (a) was made.

Note

See section 13K(2).

- (5) The information in the application must be sworn by the applicant.

Note

The information may be affirmed instead of sworn—see the definition of *sworn* in section 38 of the **Interpretation of Legislation Act 1984**.

- (6) An application may only be made without notice of it being given to the person in relation to whom a preventative detention order is being sought if that person is not then being detained under an order for the person's detention made under a corresponding preventative detention law.
- (7) The applicant must give notice of the application to the Secretary to the Department of Human Services if the person in relation to whom a preventative detention order is being sought is under 18 years of age.
- (8) The validity of an application is not affected by a failure to comply with subsection (7).

S. 13D(7)
inserted by
No. 30/2006
s. 6(1).

S. 13D(8)
inserted by
No. 30/2006
s. 6(1).

13E Preventative detention orders

- (1) The Supreme Court may, on an application under section 13C, make a preventative detention order in relation to a person if—
- (a) satisfied on reasonable grounds that—
- (i) the person—
- (A) will engage in a terrorist act; or
- (B) possesses or has under his or her control (whether solely or jointly with any other person) a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or

S. 13E
inserted by
No. 5/2006
s. 4.

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- (C) has done an act in preparation for, or planning, a terrorist act; and
- (ii) making the order would substantially assist in preventing a terrorist act occurring; and
- (iii) detaining the person for the period for which he or she is to be detained under the order is reasonably necessary for the purpose referred to in subparagraph (ii); or
- (b) satisfied on reasonable grounds that—
- (i) a terrorist act has occurred within the last 28 days; and
- (ii) it is necessary to detain the person to preserve evidence of, or relating to, the terrorist act; and
- (iii) detaining the person for the period for which he or she is to be detained under the order is reasonably necessary for the purpose referred to in subparagraph (ii).
- (2) A terrorist act referred to in subsection (1)(a) must be one—
- (a) that is imminent; and
- (b) that is expected to occur, in any event, at some time in the next 14 days.
- (3) The Supreme Court may refuse to make a preventative detention order unless the authorised member of the force applying for it gives the Court any further information that it requests concerning the grounds on which the order is sought.
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- (4) If the application to the Supreme Court is made without notice of it being given to the person in relation to whom a preventative detention order is being sought, the Supreme Court may, if in its opinion it is desirable to do so, make an interim preventative detention order pending the hearing and final determination of the application.

Note

The maximum period during which a person may be detained under an interim order is 48 hours or until the final determination of the application, whichever is the later: see subsection (6) and section 13G(2).

- (5) If the Supreme Court makes an interim preventative detention order, it must—
- (a) specify a day on which, and time at which, the hearing of the application is to be resumed; and
 - (b) direct the applicant to cause notice of the resumed hearing to be given to—
 - (i) the person in relation to whom the interim order is made; and
 - (ii) if the applicant is aware of the identity of a lawyer who acts for that person in relation to any matter, that lawyer.
- (6) An interim preventative detention order that, but for this subsection, would cease to have effect before the application is finally determined, continues to have effect, subject to section 13G(1), until the application is finally determined.
- (7) On finally determining an application following the making of an interim preventative detention order, the Supreme Court may by order—
- (a) confirm the order without variation or vary the period specified in the order as the period during which the person in relation to whom

s. 13E

it is made may be detained under it or vary the order to include, or omit, a provision of a kind referred to in section 13F(6); or

Note

The period of detention in the confirmed order may be extended, or further extended, under section 13I.

(b) revoke the order if not satisfied as mentioned in subsection (1).

S. 13E(8)
amended by
No. 48/2006
s. 42(Sch.
item 35.2).

(8) If the person in relation to whom the interim preventative detention order is made is being detained in a prison or youth justice facility, the applicant for that order must cause a copy of any order made under subsection (7) to be given to the Secretary to the Department of Justice or the Secretary to the Department of Human Services (as the case requires) as soon as practicable after it is made.

(9) On the hearing by the Supreme Court of an application under section 13C (including a resumed hearing referred to in subsection (5))—

(a) the person in relation to whom a preventative detention order is being sought (including a person in relation to whom an interim preventative detention order is in force) is entitled to appear and give evidence, call witnesses, examine and cross-examine witnesses, adduce material and make submissions; but

(b) the absence of that person does not prevent the Supreme Court from determining, or finally determining, the application.

(10) If the person who is the subject of an application to the Supreme Court under section 13C is not legally represented on the hearing of the application (including a resumed hearing referred to in subsection (5)), the Supreme Court may

order Victoria Legal Aid to provide legal representation for that person on that hearing if satisfied that it is in the interests of justice to do so having regard to the financial circumstances of that person or any other circumstances.

- (11) Despite anything in the **Legal Aid Act 1978**, Victoria Legal Aid must provide legal representation in accordance with an order under subsection (10).

13F Nature of preventative detention order

S. 13F
inserted by
No. 5/2006
s. 4.

- (1) A preventative detention order is an order that the person in relation to whom it is made may be—
- (a) taken into custody (unless he or she is already being detained under a preventative detention order, or an order for his or her detention made under a corresponding preventative detention law, that is in force or was in force immediately before the making of the new order); and
 - (b) detained during the period that—
 - (i) starts when the person is first taken into custody or detained under the order (the *start*); and
 - (ii) ends a specified period of time after the start.
- (2) The order must be in writing.
- (3) Subject to section 13G, the period of time specified in the order under subsection (1)(b)(ii) must not exceed 14 days.
- (4) 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

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- (c) the place or places where the person may be, or must not be, detained under the order or, if the person is under 18 years of age, the place or class of place where the person must be detained under the order; and

Note

See subsection (8) for rules as to where a person under 18 years of age may be detained.

- (d) the date on which, and the time at which, the order is made; and
- (e) whether the person is allowed to have any further contact with a person under section 13ZD(4) and, if so—
- (i) the person or persons with whom he or she may have contact;
 - (ii) the period for which he or she may have contact on any day and the number of days on which he or she may have such contact;
 - (iii) any other conditions applicable to the contact; and
- (f) if applicable, particulars of the order for the person's detention made under a corresponding preventative detention law on the ceasing to have effect of which the order is to start to have effect; and

Note

See section 13H(1).

- (g) if applicable, the date and time after which the person may not be taken into custody under the order; and

Note

See section 13H(2).

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- (h) a summary of the grounds on which the order is made.
- (5) To avoid doubt, subsection (4)(h) does not require information to be included in the summary if the disclosure of the information is likely to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004 of the Commonwealth).
- (6) A preventative detention order may contain a provision directing that the contact that the person in relation to whom it is made has with a lawyer under section 13ZF must not be monitored in accordance with section 13ZG if the Supreme Court is satisfied that it is appropriate to give such a direction.
- (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 13ZH(2) is the period of more than 2 hours that is specified in the order.
- (8) If the person in relation to whom the order is made is under 18 years of age, the order must provide that the person must be detained in a youth justice facility unless the Supreme Court, having considered any evidence given or submissions made by or on behalf of the Secretary to the Department of Human Services, is satisfied that it is reasonably necessary for the person to be detained at a place other than a youth justice facility having regard to—

S. 13F(8)
amended by
Nos 30/2006
s. 6(2),
48/2006
s. 42(Sch.
item 35.3(a)).

Terrorism (Community Protection) Act 2003
No. 7 of 2003
Part 2A—Preventative Detention Orders

s. 13F

S. 13F(8)(b)
amended by
No. 48/2006
s. 42(Sch.
item 35.3(a)).

- (a) the person's age and vulnerability;
- (b) the likely impact that detention in a place other than a youth justice facility will have on the person;

S. 13F(8)(d)(ii)
amended by
No. 48/2006
s. 42(Sch.
item 35.3(a)).

- (c) the grounds on which the order is made;
- (d) the risk posed by the person to—
 - (i) the national or international security of Australia; or
 - (ii) other persons detained in a youth justice facility; or

S. 13F(8)(d)(iii)
amended by
No. 48/2006
s. 42(Sch.
item 35.3(a)).

- (iii) the good order and safe operation of a youth justice facility;

S. 13F(8)(e)
amended by
No. 48/2006
s. 42(Sch.
item 35.3(a)).

- (e) the availability of a place in a youth justice facility for the person to be detained in compliance with the terms of the order;

- (f) any other factor that the Supreme Court considers relevant.

S. 13F(8A)
inserted by
No. 69/2009
s. 54(Sch. Pt 1
item 55.1).

- (8A) Nothing in subsection (8) prevents the application of Part 3.10 of the **Evidence Act 2008**.

- (9) Nothing in a preventative detention order about the place or places where the person may be, must be, or must not be, detained under the order prevents the person being taken to another place or class of place and detained there in connection with the carrying out of an examination for, or the provision of, any necessary medical, dental,

psychiatric, physiological or pharmaceutical services.

Note

Division 3 of Part 8 of the **Corrections Act 1986** (as modified by section 13W(6) of this Act) provides for the issue of a custodial community permit to a person detained in a prison for a purpose relating to his or her health. Section 597 of the **Children, Youth and Families Act 2005** (as applied by section 13WA(5) of this Act) provides for medical services and operations in the case of a person detained in a youth justice facility.

Note to s. 13F(9) amended by No. 48/2006 s. 42(Sch. item 35.3(b)).

- (10) The senior police officer nominated under section 13P(4) in relation to the preventative detention order must—
- (a) notify the Ombudsman under the **Ombudsman Act 1973** and the Director, Police Integrity under section 7 of the **Police Integrity Act 2008** in writing of the making of the order; and
 - (b) give the Ombudsman and the Director, Police Integrity 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 Ombudsman and the Director, Police Integrity in writing that the person has been taken into custody under the order.

S. 13F(10)(a) amended by No. 34/2008 s. 143(Sch. 2 item 13.1).

13G Duration of preventative detention orders

- (1) Subject to subsection (2), the maximum period (including that period, as extended, or further extended, under section 13I) that may be specified in a preventative detention order made by the Supreme Court as the period during which a person may be detained under the order is 14 days less any period during which the person is actually detained under an order for the person's detention made under a corresponding preventative detention law on the same basis.

S. 13G inserted by No. 5/2006 s. 4.

s. 13H

- (2) The maximum period that may be specified in an interim preventative detention order made by the Supreme Court as the period during which a person may be detained under the order is 48 hours.

Note

The order may continue to have effect after the 48 hours: see section 13E(6).

- (3) To avoid doubt, for the purposes of subsection (1) orders are made on the same basis if—
- (a) in the case of orders made on the basis of preventing a terrorist act from occurring, they relate to the same terrorist act occurring within the same period; and
 - (b) in the case of orders made on the basis of preserving evidence of, or relating to, a terrorist act, they relate to the same terrorist act.

S. 13H
inserted by
No. 5/2006
s. 4.

13H When order starts and ceases to have effect

- (1) A preventative detention order in relation to a person starts to have effect—
- (a) if the preventative detention order so provides, on an order for the person's detention made under a corresponding preventative detention law ceasing to have effect; or
 - (b) in any other case, when it is made.

Note

When the order starts to have effect it authorises the person to be taken into custody, if necessary (see section 13F(1)(a)). The period for which the person may be detained under the order only starts to run when the person is first taken into custody or detained under the order (see section 13F(1)(b)).

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- (2) A preventative detention order in relation to a person under which the person is required to be taken into custody 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 a preventative detention order does not cease to have effect under subsection (2), it 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 13I—that period as extended or further extended;
- (b) the revocation of the order under section 13E, 13N or 13O.

Note

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

13I Extension of preventative detention order

S. 13I
inserted by
No. 5/2006
s. 4.

- (1) If—
- (a) a preventative detention order is made by the Supreme Court in relation to a person on the final determination of an application under section 13C; and
- (b) the order is in force in relation to the person—
- an authorised member of the force may apply to the Supreme Court for an extension, or a further extension, of the period for which the order is to be in force in relation to the person.

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- (2) The application must—
- (a) be made in writing; and
 - (b) set out the facts and other grounds on which the applicant considers that the extension, or further extension, is reasonably necessary for the purpose for which the order was made; and

Note

See section 13E(1) for the purpose for which a preventative detention order may be made.

- (c) set out the outcomes and particulars of all previous applications for extensions, or further extensions, of the order.
- (3) The information in the application must be sworn by the applicant.

Note

The information may be affirmed instead of sworn—see the definition of *sworn* in section 38 of the **Interpretation of Legislation Act 1984**.

- (4) The applicant must cause notice of the application to be given to the person in relation to whom the preventative detention order is in force.
- (5) The person in relation to whom the preventative detention order is in force is entitled to appear on the hearing and give evidence, call witnesses, examine and cross-examine witnesses, adduce material and make submissions. However, his or her absence does not prevent the Supreme Court from determining the application.
- (6) The Supreme Court may, by order, extend, or further extend, the period for which the order is to be in force in relation to the person if it is satisfied 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.

- (7) The extension, or further extension, must not result in the preventative detention order specifying a period in excess of the maximum period permissible under section 13G(1).
- (8) If the person in relation to whom the order is in force is being detained in a prison or youth justice facility and the Supreme Court makes an order under subsection (6) that extends, or further extends, the period for which the order is to be in force, the applicant must cause a copy of the order under that subsection to be given to the Secretary to the Department of Justice or the Secretary to the Department of Human Services (as the case requires) as soon as practicable after it is made.

S. 13(8)
amended by
No. 48/2006
s. 42(Sch.
item 35.4).

13J No preventative detention order in relation to person under 16 years of age

S. 13J
inserted by
No. 5/2006
s. 4.

- (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 13ZH and section 13ZL(4) to (10) 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 member of the force who is detaining the person is satisfied on reasonable grounds that the person is under 16 years of age—

the member must release the person or arrange in writing for his or her release, as soon as practicable, from detention under the order or purported order.

s. 13JA

S. 13JA
inserted by
No. 5/2006
s. 4.

13JA Special assistance for person with inadequate knowledge of English language or disability

If the member of the force who is detaining a person under a preventative detention order has reasonable grounds to believe that the person is unable because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in that language—

- (a) the member has an obligation under section 13Z(3) to arrange for the assistance of an interpreter in informing the person about—
 - (i) the effect of the order or any extension, or further extension, of the order; and
 - (ii) the person's rights in relation to the order; and
- (b) the member has an obligation under section 13ZF(4) to give the person reasonable assistance to—
 - (i) choose a lawyer to act for the person in relation to the order; and
 - (ii) contact the lawyer.

S. 13K
inserted by
No. 5/2006
s. 4.

13K 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 being detained under that order—

another preventative detention order cannot be applied for, or made, under this Division 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 only after the preventative detention order referred to in paragraph (a) was made.

- (2) If—
- (a) an order for a person's detention is made under a corresponding preventative detention law on the basis of assisting in preventing a terrorist act occurring within a particular period; and
 - (b) the person is being detained under that order—

a preventative detention order cannot be applied for, or made, under this Division 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 only after the order referred to in paragraph (a) was made.

13KA Basis for applying for, and making, prohibited contact order

S. 13KA
inserted by
No. 5/2006
s. 4.

- (1) An authorised member of the force may apply for a prohibited contact order in relation to a person only if the member is satisfied as set out in subsection (4).
- (2) The Supreme Court may make a prohibited contact order in relation to a person's detention under a preventative detention order only if the Court is satisfied as set out in subsection (4).
- (3) The person in relation to whose detention the prohibited contact order is applied for, or made, is the *subject* for the purposes of this section.
- (4) The authorised member of the force and the Supreme Court must be satisfied that making the prohibited contact order is reasonably necessary—

s. 13L

- (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 Part 5.3 of the Criminal Code of the Commonwealth; or
 - (ii) the taking into custody of a person in relation to whom the 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 Commonwealth control order.
- (5) The Supreme Court may refuse to make a prohibited contact order unless the authorised member of the force applying for the order gives the Court any further information that it requests concerning the grounds on which the order is sought.

S. 13L
inserted by
No. 5/2006
s. 4.

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

- (1) An authorised member of the force who applies for a preventative detention order in relation to a person (the *subject*) may also apply for a prohibited contact order under this section in

relation to the subject's detention under the preventative detention order.

- (2) The application must set out—
 - (a) the terms of the order sought; and
 - (b) the facts and other grounds on which the applicant considers that the order should be made.
- (3) The information in the application must be sworn by the applicant.

Note

The information may be affirmed instead of sworn—see the definition of *sworn* in section 38 of the **Interpretation of Legislation Act 1984**.

- (4) The person in relation to whose detention an application for a prohibited contact order is made to the Supreme Court under this section is entitled to be given notice of the application and to appear and give evidence, call witnesses, examine and cross-examine witnesses, adduce material and make submissions in relation to it. However, his or her absence does not prevent the Supreme Court from determining the application.
- (5) If the Supreme Court—
 - (a) makes the preventative detention order; and
 - (b) is satisfied as set out in section 13KA(4)—the Court 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

See section 13E(1) for the purpose for which a preventative detention order may be made.

- (6) The prohibited contact order must be in writing.

s. 13M

(7) The senior police officer nominated under section 13P(4) in relation to the preventative detention order must—

S. 13L(7)(a) amended by No. 34/2008 s. 143(Sch. 2 item 13.2).

- (a) notify the Ombudsman under the **Ombudsman Act 1973** and the Director, Police Integrity under section 7 of the **Police Integrity Act 2008** in writing of the making of the prohibited contact order; and
- (b) give the Ombudsman and the Director, Police Integrity a copy of the prohibited contact order.

S. 13M inserted by No. 5/2006 s. 4.

13M Prohibited contact order (person in relation to whom preventative detention order is already in force)

- (1) If a preventative detention order is in force in relation to a person (the *subject*), an authorised member of the force may apply to the Supreme Court for a prohibited contact order under this section in relation to the subject's detention under the preventative detention order.
- (2) The application must set out—
 - (a) the terms of the order sought; and
 - (b) the facts and other grounds on which the applicant considers that the order should be made.
- (3) The information in the application must be sworn by the applicant.

Note

The information may be affirmed instead of sworn—see the definition of *sworn* in section 38 of the **Interpretation of Legislation Act 1984**.

- (4) The person in relation to whose detention under a preventative detention order an application for a prohibited contact order is made to the Supreme Court under this section is entitled to be given

notice of the application and to appear and give evidence, call witnesses, examine and cross-examine witnesses, adduce material and make submissions in relation to it. However, his or her absence does not prevent the Supreme Court from determining the application.

- (5) If the Supreme Court is satisfied as set out in section 13KA(4), the Court 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

See section 13E(1) for the purpose for which a preventative detention order may be made.

- (6) The prohibited contact order must be in writing.
- (7) The senior police officer nominated under section 13P(4) in relation to the preventative detention order must—

- (a) notify the Ombudsman under the **Ombudsman Act 1973** and the Director, Police Integrity under section 7 of the **Police Integrity Act 2008** in writing of the making of the prohibited contact order; and
- (b) give the Ombudsman and the Director, Police Integrity a copy of the prohibited contact order.

S. 13M(7)(a) amended by No. 34/2008 s. 143(Sch. 2 item 13.3).

13N Application by detainee for revocation or variation of preventative detention order or prohibited contact order

S. 13N inserted by No. 5/2006 s. 4.

- (1) A person in relation to whom a preventative detention order made by the Supreme Court is in force may, with the leave of the Supreme Court, apply to the Supreme Court for—
- (a) the revocation or a variation of the order; or

-
- (b) the revocation or a variation of any prohibited contact order that is in force in relation to the person's detention under the preventative detention order.
- (2) The Supreme Court must not grant leave to apply for the revocation or a variation of an order unless it is satisfied that new facts or circumstances have arisen since the making of the order.
- (3) To avoid doubt, an application for leave to apply for the revocation or a variation of an order does not operate as a stay of the order.
- (4) If—
- (a) a preventative detention order made by the Supreme Court is in force in relation to a person; and
 - (b) the Supreme Court grants leave to that person to apply for the revocation or a variation of the order; and
 - (c) the Supreme Court is satisfied, on the application of that person, that because of new facts or circumstances that have arisen since the making of the order that it is appropriate that the order be revoked or varied—
- the Court, by order, must revoke or vary the order.
- (5) To avoid doubt, if the variation applied for relates to the place or places where the person may be, must be, or must not be, detained under the preventative detention order, the Supreme Court must have regard to the requirements of section 13F(8).
- (6) If the person in relation to whom a preventative detention order made by the Supreme Court is in force is being detained in a prison or youth justice facility and the order is revoked or varied under

subsection (4), the member of the force who is detaining the person under the order must cause a copy of the order made under that subsection to be given to the Secretary to the Department of Justice or the Secretary to the Department of Human Services (as the case requires) as soon as practicable after it is made.

(7) If—

- (a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order made by the Supreme Court; and
- (b) the Supreme Court grants leave to that person to apply for the revocation or a variation of the prohibited contact order; and
- (c) the Supreme Court is satisfied, on the application of that person, that because of new facts or circumstances that have arisen since the making of the prohibited contact order that it is appropriate that the order be revoked or varied—

the Court, by order, must revoke or vary the order.

- (8) If the person in relation to whose detention under a preventative detention order a prohibited contact order is in force is being detained in a prison or youth justice facility and the prohibited contact order is revoked or varied under subsection (7), the member of the force who is detaining the person under the preventative detention order must cause a copy of the order made under that subsection to be given to the Secretary to the Department of Justice or the Secretary to the Department of Human Services (as the case requires) as soon as practicable after it is made.

**S. 13N(8)
amended by
No. 48/2006
s. 42(Sch.
item 35.4).**

S. 130
inserted by
No. 5/2006
s. 4.

130 Application by police for revocation or variation 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 member of the force who is detaining the person under the order is satisfied that the grounds on which the order was made have ceased to exist—

the member must apply for the revocation of the order to the Supreme Court.

(2) If—

- (a) a preventative detention order is in force in relation to a person; and
- (b) the member of the force who is detaining the person under the order is satisfied that, because of new facts or circumstances that have arisen since the making of the order, it is appropriate that the order be varied—

the member must apply for a variation of the order to the Supreme Court.

(3) If—

- (a) a preventative detention order is in force in relation to a person; and
- (b) the Supreme Court is satisfied, on application by a member of the force under subsection (1) or (2), that it is appropriate that the order be revoked or varied—

the Court, by order, must revoke or vary the order.

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- (4) To avoid doubt, if the variation applied for relates to the place or places where the person may be, must be, or must not be, detained under the preventative detention order, the Supreme Court must have regard to the requirements of section 13F(8).
- (5) If the person in relation to whom the preventative detention order is in force is being detained in a prison or youth justice facility and the order is revoked or varied under subsection (3), the applicant for the revocation or variation must cause a copy of any order made under that subsection to be given to the Secretary to the Department of Justice or the Secretary to the Department of Human Services (as the case requires) as soon as practicable after it is made.
- (6) If—
- (a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and
 - (b) the member of the force who is detaining the person under the preventative detention order is satisfied that because of new facts or circumstances that have arisen since the making of the prohibited contact order that it is appropriate that the prohibited contact order be revoked or varied (including that the grounds on which the order was made have ceased to exist)—
- the member must apply for the revocation or a variation of the prohibited contact order to the Supreme Court.
- (7) If—
- (a) a prohibited contact order is in force in relation to a person's detention under a preventative detention order; and

S. 130(5)
amended by
No. 48/2006
s. 42(Sch.
item 35.4).

s. 13P

(b) the Supreme Court is satisfied, on application by a member of the force under subsection (6), that it is appropriate that the prohibited contact order be revoked or varied—

the Court, by order, must revoke or vary the prohibited contact order.

S. 13O(8)
amended by
No. 48/2006
s. 42(Sch.
item 35.4).

- (8) If the person in relation to whose detention under a preventative detention order a prohibited contact order is in force is being detained in a prison or youth justice facility and the prohibited contact order is revoked or varied under subsection (7), the applicant for the revocation or variation must cause a copy of any order made under that subsection to be given to the Secretary to the Department of Justice or the Secretary to the Department of Human Services (as the case requires) as soon as practicable after it is made.
- (9) A person in relation to whom a preventative detention order is in force may make representations to the senior police officer nominated under section 13P(4) in relation to the order with a view to having the order, or a prohibited contact order that is in force in relation to the person's detention under the preventative detention order, revoked or varied under this section.

Division 3—Carrying out preventative detention orders

13P Power to detain person under preventative detention order

S. 13P
inserted by
No. 5/2006
s. 4.

- (1) While a preventative detention order is in effect in relation to a person—
- (a) any member of the force may take the person into custody; and

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- (b) any member of the force may detain the person.
- (2) A member of the force may, for the purpose of taking a person into custody under a preventative detention order or preventing him or her from escaping from detention under the order, exercise any of the powers that he or she would have if he or she were apprehending the person under a belief on reasonable grounds that the person had committed an indictable offence in Victoria or was escaping from legal custody.
- (3) Subsection (2) does not apply to the extent to which particular powers are provided for in this Part.
- (4) If a preventative detention order is made in relation to a person, the Chief Commissioner of Police must nominate a member of the force of or above the rank of superintendent (the *nominated senior police officer*) to oversee the exercise of powers under, and the performance of obligations in relation to, the preventative detention order.
- (5) The nominated senior police officer must be someone who was not involved in the making of the application for the preventative detention order.
- (6) 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 13O (which deals with the revocation or variation of preventative detention orders and prohibited contact orders) are complied with in relation to the preventative detention order; and
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S. 13P(7)(b)
amended by
No. 34/2008
s. 143(Sch. 2
item 13.4).

(c) receive and consider any representations that are made under subsection (7).

(7) The following persons—

(a) the person being detained under a preventative detention order;

(b) the Ombudsman under the **Ombudsman Act 1973** or the Director, Police Integrity under the **Police Integrity Act 2008**;

(c) a lawyer acting for the person being detained under a preventative detention order in relation to the order or a prohibited contact order;

(d) a person with whom the person being detained under a preventative detention order has contact under section 13ZH(2);

(e) a person exercising authority under the order or implementing or enforcing the order (including a person taken to be such a person by force of section 13W(5)(b))—

are entitled to make representations to the nominated senior police officer in relation to—

(f) the exercise of powers under, and the performance of obligations in relation to, the preventative detention order; and

(g) without limiting paragraph (f), compliance with the provisions of section 13O (which deals with the revocation or variation of preventative detention orders and prohibited contact orders) in relation to the preventative detention order; and

(h) the person's treatment in connection with the person's detention under the preventative detention order.

13Q Endorsement of order with date and time person taken into custody or detained

S. 13Q
inserted by
No. 5/2006
s. 4.

As soon as practicable after a person is first taken into custody or detained under a preventative detention order, the member of the force who is detaining the person under the order must endorse on the order—

- (a) the date on which, and time at which, the person is first taken into custody or detained under the order; and
- (b) particulars of where the person is being detained.

13R Requirement to provide name etc.

S. 13R
inserted by
No. 5/2006
s. 4.

- (1) If a member of the force believes on reasonable grounds that a person whose name or address is, or whose name and address are, unknown to the member may be able to assist the member in executing a preventative detention order, the member may request the person to provide his or her name or address, or name and address, to the member.
- (2) If a member of the force—
 - (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 member is not in uniform—shows the person evidence that he or she is a member of the force; 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.

Penalty: 20 penalty units.

- (3) Subsection (2) does not apply if the person has a reasonable excuse.
- (4) If a member of the force 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 if he or she has an identification number;
 - (d) his or her rank if he or she does not have an identification number—

the member must not—

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

Penalty: 5 penalty units.

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

S. 13S
inserted by
No. 5/2006
s. 4.

13S 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 member of the force believes on reasonable grounds that the person is on any premises—

the member may enter the premises, using such force as is necessary and reasonable in the circumstances and with such assistance from other members of the force 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 member of the force must not enter any premises that are used for residential purposes at any time during the period commencing at 9 p.m. on a day and ending at 6 a.m. on the following day unless the member believes on reasonable grounds that—
- (a) it would not be practicable to take the person into custody, either at those premises 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.

13T Power to conduct search

S. 13T
inserted by
No. 5/2006
s. 4.

- (1) A member of the force 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 member suspects on reasonable grounds—
- (a) that it is prudent to do so in order to ascertain whether the person is carrying any seizable items; or
 - (b) that the person is carrying—
 - (i) evidence of, or relating to, a terrorist act; or
 - (ii) a seizable item—
- conduct a search of the person in the prescribed manner 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.
- (2) Any thing seized under subsection (1) must be dealt with in accordance with the regulations.

S. 13U
inserted by
No. 5/2006
s. 4.

13U Warrant under section 34D of the Australian Security Intelligence Organisation Act 1979 of the Commonwealth

- (1) This section applies if—
 - (a) a person is being detained under a preventative detention order; and
 - (b) a warrant under section 34D of the Australian Security Intelligence Organisation Act 1979 of the Commonwealth is in force in relation to the person; and
 - (c) a copy of the warrant is given to the member of the force who is detaining the person under the preventative detention order.
- (2) The member of the force 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 member of the force may, under section 13V, release, or arrange in writing for the release of, the person from detention under the preventative detention order so that the person may be dealt with in accordance with the warrant.
- (4) To avoid doubt, the fact that the person is released from detention under the preventative detention order so that the person may be—
 - (a) questioned before a prescribed authority under the warrant; or
 - (b) detained under the warrant in connection with that questioning—

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

Note

See section 13V(6)(a).

13V Release of person from preventative detention

S. 13V
inserted by
No. 5/2006
s. 4.

- (1) The member of the force who is detaining a person under a preventative detention order may release the person from detention under the order or arrange in writing for his or her release from detention under the order.

Note

A person may be released, for example, so that the person may be arrested and otherwise dealt with under Subdivision (30A) of Division 1 of Part III of the **Crimes Act 1958**.

- (2) The member of the force who releases, or arranges in writing for the release of, a person from detention under a preventative detention order must give the person a written statement that the person is being released from that detention. The statement must be signed by the member.
- (3) Subsection (2) does not apply if the member of the force releases, or arranges in writing for the release of, the person from detention so that the person may be dealt with—
- (a) under Subdivision (30A) of Division 1 of Part III of the **Crimes Act 1958**; or
 - (b) in accordance with a warrant under section 34D of the Australian Security Intelligence Organisation Act 1979 of the Commonwealth; or
 - (c) under the provisions of Division 4 of Part IAA, or Part IC, of the Crimes Act 1914 of the Commonwealth.
- (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

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- (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 13ZC 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 in relation to the person; and

Note

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

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

13W Arrangement for detainee to be held in prison

S. 13W
inserted by
No. 5/2006
s. 4.

- (1) The member of the force who is detaining a person under a preventative detention order may request the Secretary to the Department of Justice to authorise the transfer of that person to a prison.

Note

A person being detained under a preventative detention order may be received into a police gaol and thus be deemed to enter the legal custody of the Chief Commissioner of Police under section 6D(1) of the **Corrections Act 1986**.

- (2) A request under subsection (1) must be accompanied by a copy of—
- (a) the preventative detention order on which is endorsed the date on which, and time at which, the person was first taken into custody or detained under the order; and
 - (b) any extension or further extension of the order under section 13I; and
 - (c) any prohibited contact order in force in relation to the person's detention.
- (3) To avoid doubt, a request may be made under subsection (1) in respect of a person who is under 18 years of age if the preventative detention order provides for the person to be detained in a prison.

Note

See section 13ZBA for the rules as to how persons under 18 are to be detained.

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- (4) If requested to do so under subsection (1), the Secretary to the Department of Justice may, by instrument, authorise the transfer to a prison of a person being detained under a preventative detention order from a police gaol or other place where he or she is being detained.

Note

The Secretary may delegate this power under section 8(1) of the **Corrections Act 1986**.

- (5) If a person is being detained in a prison under a preventative detention order—
- (a) the preventative detention order is taken to authorise the Governor of the prison to detain the person at the prison while the order is in force in relation to the person; and
 - (b) section 13ZB applies in relation to the person's detention under the order at the prison as if—
 - (i) the Governor of that prison; or
 - (ii) any other person involved in the person's detention at that prison—were a person exercising authority under the order or implementing or enforcing the order; and
 - (c) the member of the force who made the request under subsection (1) is taken, while the person is detained at the prison, to be the member of the force detaining the person for the purposes of Divisions 4 and 5; and
 - (d) a member of the force may at any time enter the prison and visit the person being detained in the prison in connection with the exercise of powers under, and the performance of obligations in relation to, the order.
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- (6) The **Corrections Act 1986** applies in respect of the detention of a person in a prison or police gaol under a preventative detention order or an order for his or her detention made under a corresponding preventative detention law as if the following provisions of that Act did not form part of it—
- (a) section 11(7A);
 - (b) section 28;
 - (c) section 31;
 - (d) sections 37(1), 38(2) and (4), 40 and 41;
 - (e) section 47;
 - (f) sections 47A to 47D;
 - (g) Division 5 of Part 6;
 - (h) Part 7;
 - (i) section 56AA;
 - (j) section 56AB;
 - (k) section 56AC;
 - (l) paragraphs (b) and (c) of section 57(1) and paragraph (a) of that section to the extent that it relates to a purpose other than the purpose referred to in section 57A(1)(a);
 - (m) sections 57(2), 57A(1)(b) to (e), 57A(3)(a), 57B and 57C;
 - (n) section 84H.
- (7) The provisions of Division 2 of Part 6 of the **Corrections Act 1986** that apply in respect of the detention of a person in a prison under a preventative detention order or an order for his or her detention made under a corresponding preventative detention law apply as if—

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- (a) in the definition of *visitor* in section 33—
- (i) paragraphs (i) and (j) were omitted;
 - (ii) in paragraph (h) for the reference to section 37 there were substituted a reference to section 13ZD, 13ZF or 13ZH of this Act;
 - (iii) in paragraph (k) after "force" the words "visiting under section 13W(5)(d) of the **Terrorism (Community Protection) Act 2003**" were inserted;
 - (iv) in paragraph (l) the words "or a residential visiting programme" were omitted;
- (b) in section 37(2)—
- (i) for the reference to a relative or friend who visits a prisoner there were substituted a reference to a person who visits a prisoner under section 13ZD, 13ZF or 13ZH of this Act;
 - (ii) the words "or residential visiting programme" were omitted;
- (c) in section 37(3) for the word "under" there were substituted the words "referred to in";
- (d) in section 38(1) for the reference to a prisoner's family and friends there were substituted a reference to persons who visit a prisoner under section 13ZD, 13ZF or 13ZH of this Act;
- (e) in section 38(3) the words "or a residential visiting programme" were omitted;

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- (f) in section 39(1) or (2) for the reference to a relative or friend or person wishing to visit, or visiting, a prisoner under section 37 or 38 there were substituted a reference to a person wishing to visit, or visiting, a prisoner under section 13ZD, 13ZF or 13ZH of this Act;
- (g) section 43 prevented a senior police officer nominated under section 13P(4) in relation to the order being made the subject of an order under that section.
- (8) If a provision of the **Corrections Act 1986** applies (with or without modification) in respect of the detention of a person in a prison or police gaol under a preventative detention order or an order for his or her detention made under a corresponding preventative detention law, any provision of the regulations made under that provision, or under that Act for or with respect to that provision, also applies in respect of that detention with any necessary modifications.
- (9) The **Corrections Act 1986**, in its application in respect of the detention of a person in a prison or police gaol under a preventative detention order or an order for his or her detention made under a corresponding preventative detention law, has effect subject to this Part and to the terms of the order under which the person is detained and, in the event of any inconsistency between that Act and this Part or the order, this Part or the order (as the case requires) prevails over that Act.
- (10) Nothing in this section prevents an AFP member entering a prison and visiting a person being detained in the prison in connection with the exercise of powers under, and the performance of obligations in relation to, an order for the person's detention made under a corresponding preventative detention law.

S. 13W(9)
amended by
No. 30/2006
s. 17(1).

s. 13WA

13WA Arrangement for detainee to be held in youth justice facility

S. 13WA
(Heading)
amended by
No. 48/2006
s. 42(Sch.
item 35.5(a)).

S. 13WA
inserted by
No. 5/2006
s. 4.

S. 13WA(1)
amended by
No. 48/2006
s. 42(Sch.
item 35.5(b)).

- (1) If the preventative detention order in relation to a person who is under 18 years of age provides for him or her to be detained in a youth justice facility, the member of the force who is detaining the person under the order must request the Secretary to the Department of Human Services to authorise the transfer of that person to a youth justice facility.
- (2) A request under subsection (1) must be accompanied by a copy of—
 - (a) the preventative detention order on which is endorsed the date on which, and time at which, the person was first taken into custody or detained under the order; and
 - (b) any extension or further extension of the order under section 13I; and
 - (c) any prohibited contact order in force in relation to the person's detention.
- (3) If requested to do so under subsection (1), the Secretary to the Department of Human Services may, by instrument, authorise the transfer to a youth justice facility of a person being detained under a preventative detention order from any place where he or she is being detained.

S. 13WA(3)
amended by
No. 48/2006
s. 42(Sch.
item 35.5(b)).

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- (4) If a person is being detained in a youth justice facility under a preventative detention order—
- (a) the preventative detention order is taken to authorise the officer in charge of the facility to detain the person at the facility while the order is in force in relation to the person; and
 - (b) section 13ZB applies in relation to the person's detention under the order at the facility as if—
 - (i) the officer in charge of that facility; or
 - (ii) any other person involved in the person's detention at that facility—were a person exercising authority under the order or implementing or enforcing the order; and
 - (c) the member of the force who made the request under subsection (1) is taken, while the person is detained at the facility, to be the member of the force detaining the person for the purposes of Divisions 4 and 5; and
 - (d) a member of the force may at any time enter the facility and visit the person being detained in the facility in connection with the exercise of powers under, and the performance of obligations in relation to, the order.
- (5) No provision of the **Children, Youth and Families Act 2005** applies in respect of the detention of a person in a youth justice facility under a preventative detention order or an order for his or her detention made under a corresponding preventative detention law other than—

S. 13WA(4)
amended by
No. 48/2006
s. 42(Sch.
item 35.5(b)).

S. 13WA(5)
amended by
No. 48/2006
s. 42(Sch.
items
35.5(b)(c)).

Terrorism (Community Protection) Act 2003
No. 7 of 2003
Part 2A—Preventative Detention Orders

s. 13WA

S. 13WA(5)(a)
substituted by
No. 48/2006
s. 42(Sch.
item 35.5(d)).

(a) section 17(1) and, to the extent that it relates to section 597(3) or 597(4), section 17(2);

S. 13WA(5)(b)
substituted by
No. 48/2006
s. 42(Sch.
item 35.5(d)).

(b) section 482(1) other than paragraphs (b) to (d);

S. 13WA(5)(c)
substituted by
No. 48/2006
s. 42(Sch.
item 35.5(d)).

(c) section 482(2) other than paragraphs (a) and (b);

S. 13WA(5)(d)
substituted by
No. 48/2006
s. 42(Sch.
item 35.5(d)).

(d) section 482(3);

S. 13WA(5)(e)
substituted by
No. 48/2006
s. 42(Sch.
item 35.5(d)).

(e) section 483(1) and 483(1A);

S. 13WA(5)(f)
substituted by
No. 48/2006
s. 42(Sch.
item 35.5(d)).

(f) section 486;

S. 13WA(5)(g)
substituted by
No. 48/2006
s. 42(Sch.
item 35.5(d)).

(g) section 487 other than paragraph (f) to the extent that that paragraph applies to discriminatory treatment that is reasonable and necessary having regard to the nature of the person's detention;

S. 13WA(5)(h)
substituted by
No. 48/2006
s. 42(Sch.
item 35.5(d)).

(h) sections 488A to 488G;

Terrorism (Community Protection) Act 2003
No. 7 of 2003
Part 2A—Preventative Detention Orders

s. 13WA

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- (i) section 501;
- (j) section 597.
- (6) If a provision of the **Children, Youth and Families Act 2005** applies (with or without modification) in respect of the detention of a person in a youth justice facility under a preventative detention order or an order for his or her detention made under a corresponding preventative detention law, any provision of the regulations made under that provision, or under that Act for or with respect to that provision, also applies in respect of that detention with any necessary modifications.
- (7) The **Children, Youth and Families Act 2005**, in its application in respect of the detention of a person in a youth justice facility under a preventative detention order or an order for his or her detention made under a corresponding preventative detention law, has effect subject to this Part and to the terms of the order under which the person is detained and, in the event of any inconsistency between that Act and this Part or the order, this Part or the order (as the case requires) prevails over that Act.
- (8) Nothing in this section prevents an AFP member entering a youth justice facility and visiting a person being detained in the facility in connection with the exercise of powers under, and the performance of obligations in relation to, an order for the person's detention made under a corresponding preventative detention law.

S. 13WA(5)(i) substituted by No. 48/2006 s. 42(Sch. item 35.5(d)).

S. 13WA(5)(j) substituted by No. 48/2006 s. 42(Sch. item 35.5(d)).

S. 13WA(6) amended by No. 48/2006 s. 42(Sch. items 35.5(b)(c)).

S. 13WA(7) amended by No. 48/2006 s. 42(Sch. items 35.5(b)(c)).

S. 13WA(8) amended by No. 48/2006 s. 42(Sch. item 35.5(b)).

- (9) The Secretary to the Department of Human Services may, by instrument, delegate any function or power of the Secretary under this section (except this power of delegation) to any person, or class of person, employed in the Department of Human Services under Part 3 of the **Public Administration Act 2004**.

Division 4—Informing person detained about preventative detention order

13X Effect of preventative detention order to be explained to person detained

S. 13X
inserted by
No. 5/2006
s. 4.

- (1) As soon as practicable after a person is first detained under a preventative detention order, the member of the force 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 13ZN.
 - 2 A contravention of this subsection does not affect the lawfulness of the person's detention under the order (see section 13Z(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 period during which the person may be detained under the order; and
 - (c) the restrictions that apply to the people the person may contact while the person is being detained under the order; and

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- (d) the person's entitlement under section 13O(9) to make representations to the senior police officer nominated under section 13P(4) in relation to the order with a view to having the order, or a prohibited contact order, revoked or varied under section 13O; and
- (e) any right the person has to complain to the Ombudsman under the **Ombudsman Act 1973** or the Director, Police Integrity under Part IVA of the **Police Regulation Act 1958** in relation to—
- (i) the application for the preventative detention order or a prohibited contact order; or
 - (ii) the treatment of the person in connection with the person's detention under the preventative detention order; and
- (f) the fact that the person may seek from a court a remedy relating to—
- (i) the preventative detention order; or
 - (ii) a prohibited contact order; or
 - (iii) the treatment of the person in connection with the person's detention under the preventative detention order; and

Note

See section 13ZU.

**Note to
s. 13X(2)(f)
amended by
No. 30/2006
s. 17(2).**

- (g) the person's entitlement under section 13ZF to contact a lawyer; and

s. 13Y

(h) the name and work telephone number of the senior police officer who has been nominated under section 13P(4) to oversee the exercise of powers under, and the performance of obligations in relation to, the order.

(3) Without limiting subsection (2)(c), the member of the force who is detaining a person under a preventative detention order must inform the person under that subsection about the persons that he or she may contact under section 13ZD or 13ZH.

S. 13Y
inserted by
No. 5/2006
s. 4.

13Y Person being detained to be informed of extension of preventative detention order

If a preventative detention order is extended, or further extended, under section 13I, the member of the force 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.

Note

- 1 A contravention of this section may be an offence under section 13ZN.
- 2 A contravention of this section does not affect the lawfulness of the person's detention under the order (see section 13Z(5)).

S. 13Z
inserted by
No. 5/2006
s. 4.

13Z Compliance with obligations to inform

(1) Section 13X(1) or 13Y does not apply if the actions of the person being detained under the preventative detention order make it impracticable for the member of the force to comply with that section.

- (2) The member of the force detaining the person under the preventative detention order complies with section 13X(1) if the member informs the person in substance of the matters covered by section 13X(2) (even if this is not done in language of a precise or technical nature).
- (3) The member of the force who is detaining the person under the preventative detention order must arrange for the assistance of an interpreter in complying with section 13X(1) or 13Y if the member has reasonable grounds to believe that the person is unable, because of inadequate knowledge of the English language or a disability, to communicate with reasonable fluency in that 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 13X(1) or 13Y or subsection (3) of this section.

13ZA Copy of preventative detention order

S. 13ZA
inserted by
No. 5/2006
s. 4.

- (1) As soon as practicable after a person is first taken into custody or detained under a preventative detention order, the member of the force who is detaining the person under the order must give the person—
 - (a) a copy of the order and of any prohibited contact order in force in relation to his or her detention; and
 - (b) a summary of the grounds on which any prohibited contact order is made.

Note

A contravention of this subsection may be an offence under section 13ZN.

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- (2) To avoid doubt, subsection (1)(b) does not require information to be included in the summary if the disclosure of the information is likely to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004 of the Commonwealth).
 - (3) Despite section 13P(2), a member of the force does not need to have a copy of the preventative detention order with him or her, or to produce a copy of the order to the person being taken into custody when the member takes the person into custody.
 - (4) As soon as practicable after a preventative detention order is extended, or further extended, under section 13I, the member of the force who is detaining the person under the preventative detention order must give the person a copy of the order under section 13I(6).

Note

A contravention of this subsection may be an offence under section 13ZN.

- (5) A person who is being detained under a preventative detention order may request a member of the force who is detaining the person to arrange for a copy of—
 - (a) the preventative detention order or of any prohibited contact order in force in relation to his or her detention; or
 - (b) any summary given to the person under subsection (1)(b); or

(c) any order under section 13I(6)—
to be given to a lawyer acting for the person in
relation to the order.

Notes

- 1 Section 13ZF deals with the person's right to contact a lawyer and the obligation of the member of the force detaining the person to give the person assistance to choose a lawyer.
- 2 Section 13ZI prevents the person from contacting a lawyer who is specified in a prohibited contact order.

(6) The member of the force must make arrangements for a copy of an order or the summary to be given to the lawyer as soon as practicable after the request is made.

Note

A contravention of this subsection may be an offence under section 13ZN.

- (7) Without limiting subsection (6), the copy of an order or the summary may be faxed or emailed to the lawyer.
- (8) To avoid doubt, subsection (6) does not entitle the lawyer to be given a copy of, or see, a document other than the preventative detention order, the prohibited contact order, any summary given under subsection (1)(b) or any order under section 13I(6).
- (9) The member of the force who gives—
 - (a) the person being detained under a preventative detention order; or

s. 13ZB

(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 or detained under the order.

Note

A contravention of this subsection may be an offence under section 13ZN.

- (10) Subsection (1), (4), (6) or (9) does not apply if the actions of the person being detained under the preventative detention order make it impracticable for the member of the force to comply with that subsection.
- (11) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with subsection (1), (4), (6) or (9).

Division 5—Treatment of person detained

13ZB Humane treatment of person being detained

S. 13ZB
inserted by
No. 5/2006
s. 4.

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 13ZN.

13ZBA Detention of persons under 18

S. 13ZBA
inserted by
No. 5/2006
s. 4.

- (1) Subject to subsection (2), the member of the force 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 13ZN.

- (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.

13ZC Restriction on contact with other people

S. 13ZC
inserted by
No. 5/2006
s. 4.

- (1) Except as provided by sections 13ZD, 13ZE, 13ZF and 13ZH, 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.
- (2) While a person is being detained in a prison or youth justice facility under a preventative detention order or an order for the person's detention made under a corresponding preventative detention law, the person is required to give to a member of the force or a police officer

S. 13ZC(2)
amended by
Nos 48/2006
s. 42(Sch.
item 35.6),
34/2008
s. 143(Sch. 2
item 13.5).

s. 13ZC

(within the meaning of Part 5.3 of the Criminal Code of the Commonwealth), as the case requires, exercising authority under the order any letter that he or she wishes to send to any person other than the Ombudsman under the **Ombudsman Act 1973**, the Director, Police Integrity under the **Police Integrity Act 2008** or the Commonwealth Ombudsman under the Complaints (Australian Federal Police) Act 1981 of the Commonwealth.

S. 13ZC(3)
amended by
No. 48/2006
s. 42(Sch.
item 35.6).

- (3) A prison officer within the meaning of the **Corrections Act 1986** or the officer in charge of a youth justice facility who receives—

S. 13ZC(3)(a)
amended by
No. 48/2006
s. 42(Sch.
item 35.6).

- (a) from a person being detained in a prison or youth justice facility under an order referred to in subsection (2) a letter required by that subsection to be given to a member of the force or a police officer (within the meaning of Part 5.3 of the Criminal Code of the Commonwealth) exercising authority under the order; or

S. 13ZC(3)(b)
amended by
No. 48/2006
s. 42(Sch.
item 35.6).

- (b) a letter sent to a person being detained in a prison or youth justice facility under an order referred to in subsection (2)—

must as soon as practicable give that letter to such a member of the force or police officer.

S. 13ZC(4)
amended by
No. 48/2006
s. 42(Sch.
item 35.6).

- (4) This section applies to legal documents exchanged between a lawyer and a person being detained in a prison or youth justice facility under an order referred to in subsection (2) as if that document were a letter.

- (5) A person being detained in a prison or youth justice facility under an order referred to in subsection (2) may retain any legal documents that are in his or her possession, subject to reasonable quantity limits imposed by the Governor of the prison or the officer in charge of the youth justice facility (as the case requires).

S. 13ZC(5)
amended by
No. 48/2006
s. 42(Sch.
item 35.6).

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 13ZD, 13ZF and 13ZH may be subject to a prohibited contact order made under section 13L or 13M (see section 13ZI).

13ZD Contacting family members etc.

S. 13ZD
inserted by
No. 5/2006
s. 4.

- (1) 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.
- (2) The person being detained is entitled to contact once—
- (a) his or her parents or one of his or her other 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

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- (ii) lives with other people and those other people are not family members of the person being detained—
that other person or one of those other people; and
- (c) if he or she is employed—his or her employer; and
- (d) if he or she employs people in a business— one of the people he or she employs in that business; and
- (e) if he or she engages in a business together with another person or other people—that other person or one of those other people; and
- (f) if the member of the force detaining the person agrees to the person contacting another person—that person—
by telephone, fax or email but solely for the purposes of letting the person contacted know that the person being detained is safe and is being detained.
- (3) To avoid doubt, the person being detained is entitled, under subsection (2), to disclose—
- (a) the fact that a preventative detention order has been made in relation to the person; and
- (b) the fact that the person is being detained; and
- (c) the period for which the person is being detained.
- (4) If the preventative detention order so allows, the person being detained, in addition to any entitlement under subsection (2), is entitled, while being detained under the order, to have further contact with one or more of his or her family
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members or any other person or persons, as specified in the order.

- (5) To avoid doubt, the person being detained is entitled to disclose the following to a person with whom he or she has contact under subsection (4)—
- (a) the fact that a preventative detention order has been made in relation to the person;
 - (b) the fact that the person is being detained;
 - (c) the period for which the person is being detained.
- (6) The form of contact that the person being detained is entitled to have with another person under subsection (4) includes—
- (a) being visited by that other person; and
 - (b) communicating with that other person by telephone, fax or email.
- (7) The period for which the person being detained is entitled to have contact with another person on any day under subsection (4), and the number of days on which he or she is entitled to have such contact, is as is specified in the preventative detention order.

13ZE Contacting Ombudsman etc.

The person being detained is entitled to contact the Ombudsman under the **Ombudsman Act 1973** or the Director, Police Integrity under the **Police Integrity Act 2008**.

S. 13ZE
inserted by
No. 5/2006
s. 4,
amended by
No. 34/2008
s. 143(Sch. 2
item 13.6).

s. 13ZF

S. 13ZF
inserted by
No. 5/2006
s. 4.

13ZF 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) a prohibited contact order in force in relation to his or her detention; or
 - (iii) the treatment of the person in connection with the person's detention under the preventative detention order; or
 - (b) 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) a prohibited contact order in force in relation to his or her detention; or
 - (iii) the treatment of the person in connection with the person's detention under the preventative detention order; or
 - (c) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to the Ombudsman under the **Ombudsman Act 1973**, a complaint to the Director, Police Integrity under Part IVA of the **Police Regulation Act 1958** or an investigation by the Director, Police Integrity under Part 3 of the **Police Integrity Act 2008** in relation to—

S. 13ZF(1)(c)
amended by
No. 34/2008
s. 143(Sch. 2
item 13.7).

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- (i) the application for the preventative detention order or a prohibited contact order; or
 - (ii) the treatment of the person by a member of the force in connection with the person's detention under the preventative detention order; or
 - (d) arranging for the lawyer to act for the person in relation to an appearance, or hearing, before a court or tribunal in a proceeding to which the person is a party or in which he or she otherwise has standing to appear 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; and
 - (c) exchanging legal documents with the lawyer.
- (3) If—
- (a) the person being detained (or, if he or she is under 18 years of age or is incapable of managing his or her affairs, a person with whom he or she has contact under section 13ZH) 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 13ZI (prohibited contact order); or
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- (ii) the person is not able to contact that lawyer—

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

Note

A contravention of this subsection may be an offence under section 13ZN.

- (4) If the member of the force who is detaining a person under a preventative detention order has reasonable grounds to believe that—
- (a) the person is unable, because of inadequate knowledge of the English language, or a disability, to communicate with reasonable fluency in that language; and
 - (b) the person may have difficulties in choosing or contacting a lawyer because of that inability—

the member 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).

- (5) In recommending lawyers as part of giving a person assistance under subsection (3) or (4), the member of the force who is detaining the person may give priority to lawyers who have been given a security clearance at an appropriate level by the Attorney-General's Department of the Commonwealth.
- (6) Despite subsection (5) but subject to section 13ZI, the person is entitled under this section to contact a lawyer who does not have a security clearance of the kind referred to in subsection (5).

13ZG Monitoring contact under section 13ZD or 13ZF

S. 13ZG
inserted by
No. 5/2006
s. 4.

- (1) The contact the person being detained has with another person under section 13ZD or (unless the Supreme Court has otherwise directed under section 13F(6)) 13ZF 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 member of the force 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 member of the force.
- (4) If the person being detained indicates that he or she wishes the contact to take place in a language other than English, the member of the force 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

s. 13ZH

(b) a lawyer—

for a purpose referred to in section 13ZF(1)(a), (b), (c) or (d) is not admissible in evidence against the person in any proceedings in a court or tribunal.

- (6) The contact the person being detained has with a lawyer under section 13ZF must not be monitored in accordance with this section if the preventative detention order so provides under section 13F(6).

Note

A contravention of this subsection may be an offence under section 13ZN.

S. 13ZH
inserted by
No. 5/2006
s. 4.

13ZH 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 member of the force who is detaining the person; and
 - (iii) is not a member of the force; and
 - (iv) is not an AFP member or an AFP employee (within the meaning of the Australian Federal Police Act 1979 of the Commonwealth); and

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- (v) is not a member (however described) of a police force of another State or of 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 13ZI, 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 a 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
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- (b) such longer period as is specified in the preventative detention order.

Note

See section 13F(7).

- (6) Despite subsection (5), the member of the force 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 member of the force 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 member of the force.
- (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 member of the force 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.

(11) If—

- (a) the person being detained has contact under
subsection (2) with a parent or guardian of
the person; and
- (b) a prohibited contact order is in force in
relation to another parent or guardian of the
person—

the senior police officer nominated under
section 13P(4) in relation to the preventative
detention order must inform the parent or guardian
with whom the person being detained has had
contact that he or she must not disclose to the
other parent or guardian information of the kind
referred to in section 13ZJ(3)(b).

Note

A contravention of this subsection may be an offence under
section 13ZN.

**13ZI Entitlement to contact subject to prohibited contact
order**

S. 13ZI
inserted by
No. 5/2006
s. 4.

Sections 13ZD, 13ZF and 13ZH have effect
subject to any prohibited contact order made in
relation to the person's detention.

13ZJ Disclosure offences

S. 13ZJ
inserted by
No. 5/2006
s. 4.

- (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

s. 13ZJ

- (ii) the fact that the subject is being detained; or
- (iii) the fact that a prohibited contact order has been made in relation to the subject's detention; 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 13ZD, 13ZE, 13ZF or 13ZH.

Penalty: Level 6 imprisonment (5 years maximum).

- (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 13ZF or a person with whom the detainee has contact under section 13ZH contacts the lawyer as mentioned in subsection (3)(e)(ii) of this section; 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) any information that the detainee or other person 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 a court for a remedy relating to the preventative detention order, a prohibited contact order or the treatment of the detainee in connection with the detainee's detention under the preventative detention order; or
 - (ii) a complaint to the Ombudsman under the **Ombudsman Act 1973**, a complaint to the Director, Police Integrity under Part IVA of the **Police Regulation Act 1958** or an investigation by the Director, Police Integrity under Part 3 of the **Police Integrity Act 2008** in relation to the application for the preventative detention order or a prohibited contact order or the treatment of the detainee by a member of the force in connection with the detainee's detention under the preventative detention order; or
 - (iii) making representations to the senior police officer nominated under section 13P(4) in relation to the preventative detention order, or another member of the force 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.

S. 13ZJ(2)(d)(ii)
amended by
No. 34/2008
s. 143(Sch. 2
item 13.7).

Penalty: Level 6 imprisonment (5 years maximum).

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- (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 13ZH; 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) 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 13ZH; 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 Ombudsman under the **Ombudsman Act 1973** or the Director, Police Integrity under Part IVA of the **Police Regulation Act 1958** in relation to the application for the preventative detention order or a prohibited contact order or the treatment of the detainee by a member of the force in connection with the detainee's detention under the preventative detention order; or
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- (ii) contacting a lawyer whom the detainee is entitled to contact under section 13ZF for any purpose for which the detainee is entitled to contact that lawyer under that section; or
- (iii) making representations to the senior police officer nominated under section 13P(4) in relation to the preventative detention order, or another member of the force 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.

Penalty: Level 6 imprisonment (5 years maximum).

- (4) A person who is employed in the Department of Human Services under Part 3 of the **Public Administration Act 2004** does not contravene subsection (3) merely by making a disclosure to another person employed in that Department in the exercise of powers or performance of functions under or in connection with any Act.

Note

A child may be in the custody or under the guardianship of the Secretary to the Department of Human Services under the **Children, Youth and Families Act 2005**. The Secretary may also be the guardian of a child under the **Adoption Act 1984**. The Secretary's functions may be delegated to staff in the Department.

Note to
s. 13ZJ(4)
amended by
No. 48/2006
s. 42(Sch.
item 35.7).

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

- (6) 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 13ZH; and
 - (c) while the detainee is being detained under the order, the parent/guardian intentionally 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 13ZH while being detained under the order; and
 - (e) when the disclosure is made, the parent/guardian has been informed under section 13ZH(11) by the senior police officer nominated under section 13P(4) in relation to the order that the parent/guardian must not disclose information of that kind to the other parent/guardian.

Penalty: Level 6 imprisonment (5 years maximum).

- (7) 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 senior police officer nominated under section 13P(4) in relation to 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 senior police officer may inform the parent/guardian that the detainee is not entitled to contact the other parent/guardian under section 13ZH.

Note

The parent/guardian may commit an offence against subsection (3) if the other parent/guardian is a person the detainee is not entitled to have contact with under section 13ZH 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).

- (8) 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) any information that 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.

Penalty: Level 6 imprisonment (5 years maximum).

- (9) A person (the *disclosure recipient*) commits an offence if—
- (a) a person (the *earlier discloser*) 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) any information that a person who is being detained under a preventative detention order communicates to a person while the person is being detained under the order; and
 - (b) the disclosure by the earlier discloser to the disclosure recipient contravenes—
 - (i) subsection (1), (2), (3), (6) or (8); or
 - (ii) this subsection; and
 - (c) the disclosure recipient intentionally 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) or (iii) is being detained under the order; and
 - (e) the disclosure is not made to a person exercising authority under the preventative detention order or implementing or enforcing the order or with responsibility for the safety

or well-being of the person being detained under the order.

Penalty: Level 6 imprisonment (5 years maximum).

- (10) A person (the *monitor*) commits an offence if—
- (a) the monitor is—
 - (i) a member of the force 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 13ZF 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 one of the purposes referred to in section 13ZF(1); and
 - (d) the monitor intentionally discloses that information to another person.

Penalty: Level 6 imprisonment (5 years maximum).

Note

See also section 13ZG(5).

13ZK Questioning of person prohibited while person is detained

S. 13ZK
inserted by
No. 5/2006
s. 4.

- (1) A member of the force 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 in relation to whom the order is made; or
 - (b) ensuring the safety and well-being of the person being detained; or
 - (c) allowing the member to comply with a requirement of this Part in relation to the person's detention under the order.
- (2) A member of the force must not question a person while the person is being detained under an order made under a corresponding preventative detention law.
- (3) If a member of the force questions a person while the person is being detained under a preventative detention order, the member of the force 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.
- (4) Subsection (3) does not apply if—
- (a) the questioning occurs to—
 - (i) determine whether the person is the person in relation to whom the order is made; or
 - (ii) ensure the safety and well-being of the person being detained; and
 - (b) complying with subsection (3) is not practicable because of the seriousness and urgency of the circumstances in which the questioning occurs.
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- (5) A recording made under subsection (3) must be kept for the period of 12 months after the recording is made.

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 13ZN.

13ZL Taking identification material

S. 13ZL
inserted by
No. 5/2006
s. 4.

- (1) A member of the force 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 13ZN.

- (2) A member of the force who is of or above the rank of sergeant 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 member believes on reasonable grounds that it is necessary to do so for the purpose of confirming the person's identity as the person in relation to whom the order is made; or
 - (c) the member believes on reasonable grounds that it is necessary to do so for the purpose of documenting an illness or injury suffered by the person while being detained under the order.
- (3) A member of the force 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 member of the force must not take identification material (other than hand prints, finger prints, foot prints or toe prints) from the person if the person—
- (a) is under 18 years of age; or
 - (b) is incapable of managing his or her affairs—
- unless the Magistrates' Court or the Children's Court (in the case of a person under 18 years of age) orders that the material be taken.

Note

A contravention of this subsection may be an offence under section 13ZN.

- (5) In deciding whether to make such an order, the Magistrates' Court or the Children's Court (as the case requires) must have regard to—
- (a) the age, or any disability, of the person; and
 - (b) such other matters as it 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 (10).
- 2 A contravention of this subsection may be an offence under section 13ZN.

-
- (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 the Children's Court orders that the material be taken.

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

- (8) For the purposes of subsection (7) this subsection is satisfied if the person agrees in writing to the taking of the material.
- (9) For the purposes of subsection (7) this subsection is satisfied 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 (10).

- (10) 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 member of the force who is detaining the subject; and

s. 13ZM

- (c) is none of the following—
- (i) a member of the force;
 - (ii) an AFP member or an AFP employee (within the meaning of the Australian Federal Police Act 1979 of the Commonwealth);
 - (iii) a member (however described) of a police force of another State or of a Territory;
 - (iv) an officer or employee of the Australian Security Intelligence Organisation.

S. 13ZM
inserted by
No. 5/2006
s. 4.

13ZM Use of identification material

- (1) This section applies if identification material is taken under section 13ZL 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 in relation to whom the order is made.

Note

A contravention of this subsection may be an offence under section 13ZN.

S. 13ZM(3)
amended by
No. 48/2006
s. 42(Sch.
item 35.6).

- (3) To avoid doubt, if the person is being detained in a prison or youth justice facility under the preventative detention order, the material may be provided to the Secretary to the Department of Justice or the Secretary to the Department of Human Services (as the case requires) and used by him or her only for the purpose of identifying the person while he or she is detained in the prison or youth justice facility.
- (4) 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 (including material provided to the Secretary to the Department of Justice or the Secretary to the Department of Human Services) must be destroyed as soon as practicable after the end of that period.

13ZN Offences of contravening safeguards

S. 13ZN
inserted by
No. 5/2006
s. 4.

- A person commits an offence if—
- (a) the person does an act or omits to perform an act; and
 - (b) the act or omission contravenes—
 - (i) section 13X(1); or
 - (ii) section 13Y; or
 - (iii) section 13ZA(1), (4), (6) or (9); or
 - (iv) section 13ZB; or
 - (v) section 13ZBA(1); or
 - (vi) section 13ZF(3); or
 - (vii) section 13ZG(6); or
 - (viii) section 13ZH(11); or
 - (ix) section 13ZK(1), (2) or (3); or
 - (x) section 13ZL(1), (4) or (6); or

s. 13ZO

(xi) section 13ZM(2).

Penalty: Level 7 imprisonment (2 years maximum).

Division 6—Miscellaneous

S. 13ZO
inserted by
No. 5/2006
s. 4.

13ZO Standard of proof

Any question of fact to be decided by a court on an application under this Part is to be decided on the balance of probabilities.

S. 13ZP
inserted by
No. 5/2006
s. 4.

13ZP Nature of proceedings

- (1) Proceedings on an application under this Part are civil in nature, except as otherwise provided by this Part.
- (2) Despite subsection (1), the rules regulating the practice and procedure of a court in civil proceedings do not apply to a proceeding on an application under this Part.
- (3) Proceedings before a court under this Part are subject to the operation of the National Security Information (Criminal and Civil Proceedings) Act 2004 of the Commonwealth.

S. 13ZQ
inserted by
No. 5/2006
s. 4.

13ZQ Member of the force detaining person under a preventative detention order

If—

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

the power or obligation is conferred or imposed at that time on the most senior of those members.

13ZR Annual report

S. 13ZR
inserted by
No. 5/2006
s. 4.

- (1) The Minister must, as soon as practicable after each 30 June, cause to be prepared a report about the operation of this Part 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 by the Supreme Court under section 13E during the year and the number of applications for such orders made during the year;
 - (b) whether a person was taken into custody or detained under each of those orders and, if so, for how long the person was detained;
 - (c) the number of persons in relation to whom a preventative detention order was made who were charged during the year with an offence against Part 5.3 of the Criminal Code of the Commonwealth;
 - (d) particulars of—
 - (i) any complaints made or referred during the year to the Ombudsman under the **Ombudsman Act 1973**;
 - (ii) any complaints made or referred during the year to the Director, Police Integrity under Part IVA of the **Police Regulation Act 1958**;
 - (iii) any investigations during the year by the Director, Police Integrity under Part 3 of the **Police Integrity Act 2008**—

S. 13ZR(2)(d)
substituted by
No. 34/2008
s. 143(Sch. 2
item 13.8).

in relation to the detention of a person under a preventative detention order;

s. 13ZS

- (e) the number of prohibited contact orders made under sections 13L and 13M during the year and the number of applications for such orders made during the year;
 - (f) the number of preventative detention orders, and the number of prohibited contact orders, that during the year a court has found not to have been validly made.
- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

S. 13ZS
inserted by
No. 5/2006
s. 4,
amended by
No. 34/2008
s. 143(Sch. 2
item 13.9).

13ZS Ombudsman etc. functions and powers not affected

This Part does not affect a function or power of the Ombudsman under the **Ombudsman Act 1973** or the Director, Police Integrity under Part IVA of the **Police Regulation Act 1958** or Part 3 or 4 of the **Police Integrity Act 2008**.

S. 13ZT
(Heading)
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 55.2).

13ZT Law relating to legal professional privilege and client legal privilege not affected

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

S. 13ZT
inserted by
No. 5/2006
s. 4,
amended by
No. 69/2009
s. 54(Sch. Pt 1
item 55.3).

13ZU Legal proceedings in relation to orders

- (1) Proceedings may be brought in a court for a remedy in relation to—
- (a) a preventative detention order; or
 - (b) a prohibited contact order; or

S. 13ZU
inserted by
No. 5/2006
s. 4.

(c) the treatment of a person in connection with the person's detention under a preventative detention order.

(2) If—

(a) a person applies to a court for—

- (i) review of the application for, or the making of, a preventative detention order or a prohibited contact order or the person's treatment in connection with the person's detention under a preventative detention order; or
- (ii) a remedy in relation to the application for, or the making of, a preventative detention order or a prohibited contact order or the person's treatment in connection with the person's detention under a preventative detention order; and

(b) the person applies to the court for an order under this subsection—

the court may order the Chief Commissioner of Police to give the court, and the parties to the proceedings, the information that was put before the Supreme Court when the application for the order was made.

(3) Subsection (2) does not require information to be given to the court, or the parties to the proceedings, if the disclosure of the information is likely to prejudice national security (within the meaning of the National Security Information (Criminal and Civil Proceedings) Act 2004 of the Commonwealth).

s. 13ZV

S. 13ZV
inserted by
No. 5/2006
s. 4.

13ZV 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 section 4 of the **Terrorism (Community Protection) (Amendment) Act 2005** comes into operation 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 section 4 of the **Terrorism (Community Protection) (Amendment) Act 2005** comes into operation.
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**PART 3—POLICE POWERS TO DETAIN AND
DECONTAMINATE**

14 Interpretation

In giving an authorisation or exercising powers under this Part, it is the intention of the Parliament that no unnecessary restrictions on personal liberty or privacy should be imposed.

15 Definitions

In this Part—

danger area means an area in respect of which an authorisation is given by a senior police officer under Part 3;

* * * * *

S. 15 def. of
DISPLAN
repealed by
No. 56/2011
s. 32(1).

emergency has the same meaning as in the
Emergency Management Act 1986;

emergency services agency means any of the following—

- (a) the Country Fire Authority established under the **Country Fire Authority Act 1958**;
- (b) the Metropolitan Fire and Emergency Services Board established under the **Metropolitan Fire Brigades Act 1958**;
- (c) an agency established by or under an Act of the Commonwealth or of another State or a Territory with functions corresponding to those of an agency referred to in paragraph (a) or (b);
- (d) any other prescribed agency;

senior police officer means a member of the force of or above the rank of inspector;

volunteer emergency worker, in relation to an emergency services agency, means a person who, with the approval of the agency, provides services (without remuneration or reward) on behalf of the agency for or in relation to the decontamination of any person.

16 Authorisation

- (1) A senior police officer may, for the purpose of protecting people from chemical, biological or radiological contamination, give an authorisation to a member of the force under this Part in relation to an area if that senior police officer forms a belief on reasonable grounds that—
 - (a) a terrorist act has or may have occurred; and
 - (b) that area, or people in that area, will be, or may have been exposed to such contamination.
- (2) If the senior police officer who has given an authorisation under subsection (1) ceases to have the belief referred to in that subsection, he or she must immediately notify the Chief Commissioner of that fact.

S. 16(1)(b)
amended by
No. 30/2006
s. 7.

17 How may an authorisation be given?

- (1) An authorisation under this Part may be given orally or in writing.
- (2) If the authorisation is given orally, it must be confirmed in writing as soon as reasonably practicable.
- (3) An authorisation must—
 - (a) state that it is given under this Part; and
 - (b) generally describe the terrorist act or suspected terrorist act to which it relates; and

- (c) specify the name or description of any member of the force to which it is given; and
- (d) name or describe the area that may have been exposed, or in which there are people that may have been exposed, to contamination; and
- (e) specify the time at which it is given.

18 What is authorised?

- (1) An authorisation may authorise a member of the force to—
 - (a) direct another member of the force to exercise powers referred to in paragraph (b), (c) or (d) in respect of people in the danger area suspected of exposure to contamination; and
 - (b) direct a person or group of people to enter, not to enter or to leave any particular premises or area; and
 - (c) detain a person (whether alone or with others); and
 - (ca) dispose of, destroy or seize—
 - (i) any source of contamination or possible contamination; or
 - (ii) any thing contaminated; and
 - (d) direct a person to submit to decontamination procedures by an officer of, or person employed by, or volunteer emergency worker of, an emergency services agency; and

S. 18(1)(ca)
inserted by
No. 30/2006
s. 8(1).

S. 18(1)(d)
amended by
No. 30/2006
s. 8(2).

s. 18

S. 18(1)(e)
inserted by
No. 30/2006
s. 8(3).

(e) subject to subsections (4) and (5), enter a place in the danger area suspected of exposure to contamination without the consent of the occupier of that place and exercise a power referred to in paragraph (a), (b), (c), (ca) or (d), or subsection (3), at that place.

(2) If an oral direction is given to a group of people, it is deemed to have been given to each member of the group if the oral direction is made in a manner which is likely to be audible to all the members of the group or as many of them as reasonably practicable.

(3) An authorised member of the force may exercise a power under subsection (1) for the purpose of preventing or limiting the spread of contamination caused by the terrorist act or suspected terrorist act and may give any direction necessary in connection with the exercise of the power.

S. 18(4)
substituted by
No. 30/2006
s. 8(4).

(4) Subject to subsection (5), an authorised member of the force must not enter a place referred to in subsection (1)(e) that is used only for residential purposes without the consent of the occupier of that place.

S. 18(5)
inserted by
No. 30/2006
s. 8(4).

(5) An authorised member of the force may enter a place used only for residential purposes in the danger area suspected of exposure to contamination without the consent of the occupier of that place if the authorised member of the force believes on reasonable grounds that immediate entry to that place is necessary to—

(a) ensure the safety of any person; or

(b) prevent or limit the spread of contamination caused by the terrorist act or suspected terrorist act.

(6) If, under an authorisation under this Part, an authorised member of the force is authorised to exercise a power referred to in subsection (1)(b), (c), (ca), (d) or (e), that member may exercise that power with any assistance from any other person that that member considers reasonably necessary.

S. 18(6)
inserted by
No. 30/2006
s. 8(4).

(7) A person must not refuse or fail to comply with a direction under subsection (1)(b) or (d) unless the person has a reasonable excuse.

S. 18(7)
inserted by
No. 30/2006
s. 8(4).

Penalty: Level 9 fine (60 penalty units maximum).

(8) A person must not hinder, obstruct or delay a member of the force authorised under this Part in the exercise of a power referred to in subsection (1) or (3).

S. 18(8)
inserted by
No. 30/2006
s. 8(4),
amended by
No. 28/2007
s. 3(Sch.
item 65).

Penalty: In the case of a natural person, level 9 fine (60 penalty units maximum);

In the case of a body corporate,
300 penalty units.

18A Requests for communication and medical treatment by persons detained

S. 18A
inserted by
No. 30/2006
s. 9.

A member of the force must facilitate any reasonable request for communication or medical treatment made by a person detained under an authorisation under this Part.

19 When does an authorisation lapse?

(1) An authorisation (including an authorisation extended under section 20(1)) lapses—

(a) on notification to the Chief Commissioner under section 16(2);

s. 20

S. 19(1)(b)
amended by
No. 56/2011
s. 32(2).

- (b) if the agency primarily responsible under the state emergency response plan under the **Emergency Management Act 1986** for responding to the emergency caused by the suspected contamination notifies the Chief Commissioner that the authorisation should lapse, on that notification;
- (c) in any event, 8 hours after the time at which it is given or on expiry of the extended period under section 20(1), as the case requires.

Note to
s. 19(1)
amended by
No. 56/2011
s. 32(3).

Note

By section 15 of the **Emergency Management Act 1986**, the state emergency response plan contains provisions identifying, in relation to each form of emergency specified, the agency primarily responsible for responding to the emergency.

- (2) The Chief Commissioner must ensure that any person to whom an authorisation was given is notified of the lapse of that authorisation immediately after receiving a notification under subsection (1)(b) or section 16(2).

20 Extended authorisation

- (1) The Chief Commissioner, a Deputy Commissioner or an Assistant Commissioner may extend the period of authorisation beyond the 8 hour period referred to in section 19(1)(c) if he or she decides that extended authorisation is necessary for the purpose of protecting public health.
- (2) The extended period of authorisation must not be for more than 16 hours duration in total (whether that total is a continuous period or a cumulative total of separate periods).
- (3) An extension may only be granted under subsection (1) with the agreement of the agency referred to in section 19(1)(b).

21 Use of reasonable and necessary force

If a person refuses to comply with a direction given under this Part, an authorised member of the force, or another member of the force acting under the direction of an authorised member of the force, may use reasonable and necessary force to ensure compliance with that direction.

Pt 3A
(Headings
and ss 21A–
21X)
inserted by
No. 5/2006
s. 5.

PART 3A—SPECIAL POLICE POWERS

Division 1—Preliminary

S. 21A
inserted by
No. 5/2006
s. 5.

21A Definitions

(1) In this Part—

authorisation means an authorisation given under this Part in accordance with Division 2;

Chief Commissioner means the Chief Commissioner of Police;

serious indictable offence means an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more;

target of an authorisation means the person in relation to whom, or the vehicle or kind of vehicle or the area in relation to which, an authorisation authorises the exercise of special powers;

vehicle includes a vessel and an aircraft.

(2) For the purposes of this Part—

(a) a person in an area that is the target of an authorisation includes a person who is about to enter the area or who has recently left the area; and

(b) a vehicle in an area that is the target of an authorisation includes a vehicle that is about to enter the area or that has recently left the area.

(3) Despite any provision to the contrary made by or under this or any other Act (including section 6A of the **Police Regulation Act 1958**), a power, discretion, function, authority or duty of the Chief

Commissioner under this Part cannot be delegated to any other person.

- (4) Nothing in subsection (3) affects the operation of section 6 of the **Police Regulation Act 1958**.

Division 2—Authorisation to exercise special powers

21B Authorisation of special powers to protect persons attending events from a terrorist act

S. 21B
inserted by
No. 5/2006
s. 5.

- (1) Subject to subsection (2), the Chief Commissioner may apply to the Supreme Court for an order authorising the exercise of special powers conferred by this Part if the Chief Commissioner is satisfied—
- (a) that an event is taking place in Victoria or is likely to take place in Victoria in the near future; and
 - (b) that the event involves, or is likely to involve, the attendance of prominent persons or of a large number of people; and
 - (c) on reasonable grounds that the event might be the subject of a terrorist act; and
 - (d) that the giving of an authorisation targeting—
 - (i) the area in which the event is taking place or is likely to take place; or
 - (ii) any other area in which an activity connected with the event is taking place or is likely to take place—is necessary to assist in protecting any person or persons attending the event from a terrorist act.

- (2) An application under subsection (1) may only be made with the written approval of the Premier.

-
- (3) An application under subsection (1) must—
- (a) be made in writing; and
 - (b) describe the event in respect of which the application is being made; and
 - (c) set out the facts and other grounds on which the Chief Commissioner considers that there are reasonable grounds for suspecting that the event might be the subject of a terrorist act; and
 - (d) explain why the giving of an authorisation targeting—
 - (i) the area in which the event is taking place or is likely to take place; or
 - (ii) any other area in which an activity connected with the event is taking place or is likely to take place—is necessary to assist in protecting any person or persons attending the event from a terrorist act; and
 - (e) specify the special powers under Division 3 that, in the opinion of the Chief Commissioner, are reasonably necessary to ensure the safety of any person or persons attending the event; and
 - (f) describe any area sought to be made the target of an authorisation.
- (4) The information in the application must be sworn by the Chief Commissioner.

Note

The information may be affirmed instead of sworn—see the definition of *sworn* in section 38 of the **Interpretation of Legislation Act 1984**.

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- (5) The Supreme Court may require the Chief Commissioner to provide any additional information that the Court requires in relation to the application.
- (6) The Supreme Court may, by order, give an authorisation for the exercise of special powers conferred by this Part if satisfied on reasonable grounds that the granting of the authorisation is reasonably necessary to ensure the safety of any person or persons attending the event.
- (7) An authorisation must—
- (a) state that it is given under this Part; and
 - (b) describe the general nature of the event to which it applies; and
 - (c) describe any area targeted by the authorisation; and
 - (d) specify which of the special powers under Division 3 may be exercised; and
 - (e) specify the date on which and time at which it begins to have effect; and
 - (f) specify the date on which and time at which it ceases to have effect, not being later than 24 hours after the scheduled completion time of the event.

Note

The period for which an authorisation has effect may be extended, or further extended, under section 21C.

- (8) If, on an application under subsection (1) the Supreme Court considers it desirable to do so, it may make an interim order giving an authorisation pending the hearing and final determination of the application.

s. 21C

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- (9) If the Supreme Court makes an interim order, it must specify a day on which, and time at which, the hearing of the application is to be resumed.
- (10) On finally determining an application following the making of an interim order, the Supreme Court may—
- (a) confirm the order without variation or vary—
 - (i) the description of any area targeted by the authorisation; or
 - (ii) the special powers that may be exercised; or
 - (iii) the time or date when the order ceases to have effect; or
 - (b) revoke the order if not satisfied as mentioned in subsection (6).

S. 21C
inserted by
No. 5/2006
s. 5.

21C Extension of authorisation under section 21B

- (1) If—
- (a) an authorisation is given by the Supreme Court under section 21B; and
 - (b) the authorisation has effect—
- the Chief Commissioner, with the written approval of the Premier, may apply to the Supreme Court for an extension, or a further extension, of the period for which the authorisation has effect.
- (2) The application must—
- (a) be made in writing; and
 - (b) set out the facts and other grounds on which the Chief Commissioner considers that the extension, or further extension, is reasonably necessary to ensure the achievement of the objective of the authorisation.

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- (3) The information in the application must be sworn by the Chief Commissioner.

Note

The information may be affirmed instead of sworn—see the definition of *sworn* in section 38 of the **Interpretation of Legislation Act 1984**.

- (4) The Supreme Court may, by order, extend, or further extend, the period for which the authorisation has effect if it is satisfied that the extension, or further extension, is reasonably necessary to ensure the achievement of the objective of the authorisation.

21D Authorisation of special powers to prevent, or reduce the impact of, a terrorist act

S. 21D
inserted by
No. 5/2006
s. 5.

- (1) An interim authorisation for the exercise of the special powers conferred by this Part may be given by the Chief Commissioner, with the written approval of the Premier, in accordance with this Division if the Chief Commissioner—
- (a) is satisfied on reasonable grounds that a terrorist act is occurring or that there is a threat of a terrorist act occurring in the next 14 days; and
 - (b) is satisfied that the exercise of those powers will substantially assist in—
 - (i) preventing the terrorist act; or
 - (ii) reducing the impact of the terrorist act, or of the threat of a terrorist act, on the health or safety of the public or on property.
- (2) As soon as practicable after the giving of an interim authorisation, the Chief Commissioner must, if he or she considers that an authorisation should have effect for a period in excess of

24 hours, make an application to the Supreme Court for an authorisation under this section.

- (3) Without an interim authorisation having been given, the Chief Commissioner may make an application to the Supreme Court for an authorisation under this section.
- (4) An application under subsection (2) or (3) must—
- (a) be made in writing; and
 - (b) set out the facts and other grounds on which the Chief Commissioner considers that a terrorist act is occurring or that there is a threat of a terrorist act occurring in the next 14 days; and
 - (c) explain how the exercise of the special powers conferred by this Part will substantially assist in—
 - (i) preventing the terrorist act; or
 - (ii) reducing the impact of the terrorist act, or of the threat of a terrorist act, on the health or safety of the public or on property.
- (5) The information in an application under subsection (2) or (3) must be sworn by the Chief Commissioner.

Note

The information may be affirmed instead of sworn—see the definition of *sworn* in section 38 of the **Interpretation of Legislation Act 1984**.

- (6) The Supreme Court may require the Chief Commissioner to provide any additional information that the Court requires in relation to the application.

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- (7) On an application under subsection (2) or (3) the Supreme Court may, by order—
- (a) if satisfied, on reasonable grounds, as mentioned in paragraphs (a) and (b) of subsection (1), give an authorisation for the exercise of the special powers conferred by this Part and revoke any interim authorisation given by the Chief Commissioner that has effect; or
 - (b) revoke any interim authorisation that has effect if not so satisfied.
- (8) The terms of an authorisation given by the Supreme Court may be the same as, or different to, the terms of any interim authorisation given by the Chief Commissioner.
- (9) If, on an application under subsection (3) the Supreme Court considers it desirable to do so, it may make an interim order giving an authorisation pending the hearing and final determination of the application.
- (10) If the Supreme Court makes an interim order, it must specify a day on which, and time at which, the hearing of the application is to be resumed.
- (11) On finally determining an application following the making of an interim order, the Supreme Court may—
- (a) confirm the order with or without variation; or
 - (b) revoke the order if not satisfied as mentioned in subsection (7)(a).

21E Authorisation of special powers relating to the investigation of, or recovery from, a terrorist act

- (1) An interim authorisation for the exercise of the special powers conferred by this Part may be given by the Chief Commissioner, with the

S. 21E
inserted by
No. 5/2006
s. 5.

written approval of the Premier, in accordance with this Division if the Chief Commissioner—

- (a) is satisfied that there are reasonable grounds for believing that a terrorist act has occurred or is occurring; and
 - (b) is satisfied that the exercise of those powers will substantially assist in—
 - (i) apprehending the persons responsible for the terrorist act; or
 - (ii) the investigation of the terrorist act, including the preservation of evidence of, or relating to, the terrorist act; or
 - (iii) the necessary recovery process for the community in the aftermath of the terrorist act.
- (2) As soon as practicable after the giving of an interim authorisation, the Chief Commissioner must, if he or she considers that an authorisation should have effect for a period in excess of 24 hours, make an application to the Supreme Court for an authorisation under this section.
- (3) Without an interim authorisation having been given, the Chief Commissioner, with the written approval of the Premier, may make an application to the Supreme Court for an authorisation under this section.
- (4) An application under subsection (2) or (3) must—
- (a) be made in writing; and
 - (b) set out the facts and other grounds on which the Chief Commissioner considers that a terrorist act has occurred, or is occurring; and

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- (c) explain how the exercise of the special powers conferred by this Part will substantially assist in—
- (i) apprehending the persons responsible for the terrorist act; or
 - (ii) the investigation of the terrorist act, including the preservation of evidence of, or relating to, the terrorist act; or
 - (iii) the necessary recovery process for the community in the aftermath of the terrorist act.
- (5) The information in an application under subsection (2) or (3) must be sworn by the Chief Commissioner.

Note

The information may be affirmed instead of sworn—see the definition of *sworn* in section 38 of the **Interpretation of Legislation Act 1984**.

- (6) The Supreme Court may require the Chief Commissioner to provide any additional information that the Court requires in relation to the application.
- (7) On an application under subsection (2) or (3) the Supreme Court may, by order—
- (a) if satisfied, on reasonable grounds, as mentioned in paragraphs (a) and (b) of subsection (1), give an authorisation for the exercise of the special powers conferred by this Part and revoke any interim authorisation given by the Chief Commissioner that has effect; or
 - (b) revoke any interim authorisation that has effect if not so satisfied.

s. 21F

- (8) The terms of an authorisation given by the Supreme Court may be the same as, or different to, the terms of any interim authorisation given by the Chief Commissioner.
- (9) If, on an application under subsection (3) the Supreme Court considers it desirable to do so, it may make an interim order giving an authorisation pending the hearing and final determination of the application.
- (10) If the Supreme Court makes an interim order, it must specify a day on which, and time at which, the hearing of the application is to be resumed.
- (11) On finally determining an application following the making of an interim order, the Supreme Court may—
 - (a) confirm the order with or without variation;
or
 - (b) revoke the order if not satisfied as mentioned in subsection (7)(a).

S. 21F
inserted by
No. 5/2006
s. 5.

21F Authorisation of special powers to protect essential services from a terrorist act

- (1) The Governor in Council may, on the recommendation of the relevant Minister made with the approval of the Premier and in accordance with the advice of the Chief Commissioner, by Order published in the Government Gazette give an authorisation for the exercise of special powers conferred by this Part.
- (2) The relevant Minister may only recommend the making of an Order under subsection (1) if satisfied that—
 - (a) a part of the essential service (and for the purposes of this section a part of the essential service may include a part referred to in

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- section 28(2)) is located in a particular area;
and
- (b) that part is a key part of the essential service;
and
 - (c) the making of the Order is reasonably
necessary—
 - (i) to protect that part from a terrorist act;
or
 - (ii) to mitigate the effects of a terrorist act
on the essential service or on persons in
the vicinity of the area; or
 - (iii) for the recovery of the essential service
from a terrorist act.
- (3) An Order under subsection (1) must—
- (a) state that the effect of the Order is to give an
authorisation under this Part; and
 - (b) describe the area targeted by the
authorisation and name or describe any
person or vehicle targeted by it; and
 - (c) specify which of the special powers under
Division 3 may be exercised; and
 - (d) specify the period or periods during which
the authorisation has effect.
- (4) In this section—
- relevant Minister*, in relation to an essential
service, means the Minister for the time
being responsible for the essential service.

21G Persons, vehicles or areas targeted by authorisation

- (1) Except as otherwise provided by this Part, an
authorisation may authorise the exercise of the
special powers conferred by this Part in relation to
any or all of the following—

S. 21G
inserted by
No. 5/2006
s. 5.

s. 21H

- (a) a particular person named or described in the authorisation;
 - (b) a particular vehicle, or a vehicle of a particular kind, described in the authorisation;
 - (c) a particular area described in the authorisation.
- (2) Without limiting subsection (1)(a), a person may be described by the use of a photograph or drawing.

S. 21H
inserted by
No. 5/2006
s. 5.

21H How authorisation may be given

- (1) This section applies to an interim authorisation given by the Chief Commissioner in accordance with this Division.
- (2) An authorisation may be given orally or by instrument in writing.
- (3) If the authorisation is given orally, it must be confirmed by instrument in writing as soon as it is reasonably practicable to do so and, in any event, before an application is made to the Supreme Court in respect of the matter.
- (4) An authorisation must—
 - (a) state that it is given under this Part; and
 - (b) describe the general nature of the terrorist act or threatened terrorist act to which it applies; and
 - (c) name or describe the person, vehicle or area targeted by the authorisation; and
 - (d) specify the date on which and time at which it begins to have effect; and
 - (e) specify the date on which and time at which it ceases to have effect.

21I Duration of authorisation

S. 21I
inserted by
No. 5/2006
s. 5.

- (1) An authorisation given has effect, unless sooner revoked, during the period beginning when it is given (or at such later time or date as is specified in the authorisation) and ending at the time and on the date specified in the authorisation.
- (2) The period an authorisation has effect must not exceed—
 - (a) in the case of an interim authorisation given by the Chief Commissioner under section 21D or 21E—24 hours; or
 - (b) in the case of an authorisation given by the Supreme Court under section 21D or 21E—14 days.
- (3) An authorisation given by Order in Council under section 21F has effect during the period or periods specified in it until the end date specified in it, not being a date later than the first anniversary of the date on which it is given.
- (4) The Chief Commissioner may at any time revoke an interim authorisation given by him or her.
- (5) The cessation of an authorisation (by revocation or otherwise) does not affect anything lawfully done in reliance on the authorisation before it ceased to have effect.
- (6) The cessation of an authorisation does not prevent a further authorisation being given.

21J Interim authorisations not open to challenge

S. 21J
inserted by
No. 5/2006
s. 5.

- (1) An interim authorisation or purported interim authorisation given by the Chief Commissioner (and any decision or purported decision of the Premier or the Chief Commissioner with respect

S. 21J(1)
amended by
No. 69/2009
s. 54(Sch. Pt 2
item 52).

to such an interim authorisation or purported interim authorisation) is not liable to be challenged, appealed against, reviewed, quashed or called in question in any court or tribunal on any account or before any person acting judicially within the meaning of the **Evidence (Miscellaneous Provisions) Act 1958**.

- (2) Without limiting subsection (1), no proceedings—
- (a) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration or an injunction; or
 - (b) seeking any order under the **Administrative Law Act 1978** (whether on the ground of absence of jurisdiction or any other ground)—

may be brought against the Premier or the Chief Commissioner in respect of an interim authorisation or purported interim authorisation given by the Chief Commissioner or any decision or purported decision of the Premier or the Chief Commissioner with respect to such an interim authorisation or purported interim authorisation.

S. 21K
inserted by
No. 5/2006
s. 5.

21K Exercise of special powers by members of the force

- (1) The special powers conferred by this Part may be exercised by any member of the force or, subject to subsection (3), by any other person assisting the member in that exercise and acting under the direction and control of the member.
- (2) A member of the force may exercise those powers whether or not he or she has been provided with a copy of the authorisation.
- (3) A person assisting a member is not authorised to conduct a strip search of a person.

21L Power to give directions to public entities

S. 21L
inserted by
No. 5/2006
s. 5.

- (1) The Chief Commissioner may, for the purposes of facilitating the exercise of the special powers conferred by this Part, give a public entity (within the meaning of the **Public Administration Act 2004**) directions with respect to the exercise of the powers or functions of the agency.
- (2) The public entity is authorised and required to comply with the direction.

21M Annual report

S. 21M
inserted by
No. 5/2006
s. 5.

- (1) The Premier must, as soon as practicable after each 30 June, cause to be prepared a report about the operation of this Part during the year ended on that 30 June.
- (2) Without limiting subsection (1), a report relating to a year must include the following matters in relation to each authorisation given under this Part during the year—
 - (a) the terms of the authorisation and the period during which it had effect;
 - (b) a summary of the grounds that were relied on for giving the authorisation;
 - (c) a general description of the powers exercised pursuant to the authorisation and the manner in which they were exercised;
 - (d) the result of the exercise of those powers.
- (3) The Premier must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

s. 21N

Division 3—Powers

S. 21N
inserted by
No. 5/2006
s. 5.

21N Purposes for which special powers may be exercised

The special powers under this Division may be exercised for the purposes of an authorisation given under this Part.

Note

Only the special powers specified in an authorisation under section 21B or 21F may be exercised for the purposes of that authorisation.

S. 21O
inserted by
No. 5/2006
s. 5.

21O Power to obtain disclosure of identity

- (1) A member of the force may request a person whose identity is unknown to the member to disclose his or her identity if—
 - (a) the member suspects on reasonable grounds that the person is the target of an authorisation (or the person is found in the company of the target of the authorisation); or
 - (b) the person is in or on a vehicle that the member suspects on reasonable grounds is the target of an authorisation; or
 - (c) the person is in an area that is the target of an authorisation.
- (2) A person who is so requested to disclose his or her identity must not, without reasonable excuse, fail or refuse to comply with the request.
Penalty: 50 penalty units or 12 months imprisonment, or both.
- (3) A person must not, without reasonable excuse, in response to any such request—
 - (a) give a name that is false in a material particular; or

- (b) give an address other than the person's full and correct address.

Penalty: 50 penalty units or 12 months imprisonment, or both.

- (4) A member of the force may request a person who is requested under this section to disclose his or her identity to provide proof of his or her identity.
- (5) A member of the force may detain a person for so long as is reasonably necessary for the purposes of this section.

21P Power to search persons

S. 21P
inserted by
No. 5/2006
s. 5.

- (1) A member of the force may, without a warrant, stop and search a person, and anything in the possession of or under the control of the person, if—
- (a) the member suspects on reasonable grounds that the person is the target of an authorisation (or the person is found in the company of the target of the authorisation); or
 - (b) the person is in or on a vehicle that the member suspects on reasonable grounds is the target of an authorisation; or
 - (c) the person is in an area that is the target of an authorisation.
- (2) In conducting a search of anything in the possession of, or under the control of, a person, a member of the force may—
- (a) request the person—
 - (i) to produce and empty of its contents any bag, basket or other receptacle; or
 - (ii) to turn out his or her pockets; or

s. 21Q

- (b) search through any bag, basket or other receptacle; or
 - (c) search through and move the contents of any bag, basket or other receptacle; or
 - (d) search through and move the contents of the person's pockets turned out in accordance with paragraph (a)(ii).
- (3) Schedule 1 applies to the search of a person conducted under this section.

Note

Schedule 1 provides for the carrying out of ordinary searches, frisk searches and strip searches. A strip search may not be carried out unless the person is suspected of being the target of an authorisation.

- (4) A member of the force may detain a person for so long as is reasonably necessary to conduct a search under this section.
- (5) A member of the force may direct a person or group of people not to enter or to leave or not to leave an area that is the target of an authorisation.

S. 21Q
inserted by
No. 5/2006
s. 5.

21Q Power to search vehicles

- (1) A member of the force may, without a warrant, stop and search a vehicle, and anything in or on the vehicle, if—
- (a) the member suspects on reasonable grounds that the vehicle is the target of an authorisation; or
 - (b) the member suspects on reasonable grounds that a person in or on the vehicle is the target of an authorisation; or
 - (c) the vehicle is in an area that is the target of an authorisation.

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- (2) A member of the force may detain a vehicle for so long as is reasonably necessary to conduct a search under this section.
 - (3) A member of the force may direct the person driving or in charge of a vehicle searched under this section to remove the vehicle from, or keep the vehicle in, an area that is the target of an authorisation.

21R Power to move vehicles

S. 21R
inserted by
No. 5/2006
s. 5.

- (1) A member of the force may move or cause to be moved a vehicle which is parked or left standing in an area that is the target of an authorisation if, in the opinion of the member, the vehicle is—
 - (a) a danger to other vehicles or persons in that area; or
 - (b) causing or likely to cause traffic congestion in that area; or
 - (c) hindering the exercise of special powers under this Division in that area.
- (2) A member of the force acting in accordance with this section may—
 - (a) enter a vehicle using, if necessary, reasonable force, for the purpose of conveniently or expeditiously moving it; and
 - (b) move the vehicle, or cause it to be moved, to the nearest convenient place.
- (3) The Chief Commissioner may recover from the owner of a vehicle moved under this section any reasonable costs incurred in moving it.
- (4) In this section, *owner* has the same meaning as it has in Part 7 of the **Road Safety Act 1986**.

s. 21S

s. 21S
inserted by
No. 5/2006
s. 5.

21S Power to enter and search premises

- (1) A member of the force may, without a warrant, enter and search any premises if—
 - (a) the member suspects on reasonable grounds that a person who is the target of an authorisation may be on the premises; or
 - (b) the member suspects on reasonable grounds that a vehicle that is the target of an authorisation may be on the premises; or
 - (c) the premises are in an area that is the target of an authorisation.
- (2) The member of the force must do as little damage as possible.
- (3) A member of the force may direct a person or group of people to leave, or not to leave, any premises entered and searched under this Division.

s. 21T
inserted by
No. 5/2006
s. 5.

21T Cordon around target area

- (1) A member of the force may, for the purposes of stopping and searching under this Division persons, vehicles or premises in a target area, place a cordon around the target area or any part of it.
- (2) A cordon may include any form of physical barrier, including a roadblock on any road in or in the vicinity of the target area.
- (3) A member of the force may direct a person or group of people not to enter or to leave or not to leave an area around which a cordon is placed.

21U Power to seize and detain things

S. 21U
inserted by
No. 5/2006
s. 5.

- (1) A member of the force may, in connection with a search under this Division, seize and detain—
 - (a) all or part of a thing (including a vehicle) that the member suspects on reasonable grounds may be used, or may have been used, to commit a terrorist act; or
 - (b) all or part of a thing (including a vehicle) that the member suspects on reasonable grounds may provide evidence of the commission of a serious indictable offence (whether or not related to a terrorist act).
- (2) A power conferred by this section to seize and detain a thing includes—
 - (a) a power to remove a thing from the place where it is found; and
 - (b) a power to guard the thing in or at the place where it is found.
- (3) A member of the force who has seized and detained a thing under this section must take reasonable steps to return the thing to the person from whom it was seized if—
 - (a) that person may lawfully possess the thing; and
 - (b) the thing is no longer required for investigative or evidentiary purposes in relation to an offence.
- (4) A thing seized or detained under this section that is—
 - (a) no longer required for investigative or evidentiary purposes in relation to an offence; and

s. 21V

- (b) not required under subsection (3) to be returned to the person from whom it was seized—

is forfeited to the Crown and may be disposed of in any manner that the Chief Commissioner thinks fit.

S. 21V
inserted by
No. 5/2006
s. 5.

21V Use of force generally by members of the force

It is lawful for a member of the force exercising a power under this Division in relation to a person or a thing, and anyone assisting the member, to use such force as is reasonably necessary to exercise the power.

S. 21W
inserted by
No. 5/2006
s. 5.

21W Offence to obstruct or hinder search or other powers

A person must not, without reasonable excuse—

- (a) obstruct or hinder a member of the force in the exercise of a power under this Division to stop and search a person or vehicle, to enter and search premises or to seize and detain a thing; or
- (b) fail to comply with a direction given by a member of the force in the exercise of a power under this Division to give that direction.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

S. 21X
inserted by
No. 5/2006
s. 5.

21X Supplying member of the force's details and other information

- (1) A member of the force must, before or at the time of exercising a power under this Division, or as soon as is reasonably practicable after exercising the power, provide the person subject to the exercise of the power with the following if requested to do so—

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- (a) evidence that he or she is a member of the force (unless the member is in uniform);
 - (b) the name of the member and his or her place of duty;
 - (c) the reason for the exercise of the power.
- (2) The Chief Commissioner is to arrange for a written statement to be provided, on request made within 12 months after the search, to a person who was searched, or whose vehicle or premises were searched, under this Part stating that the search was conducted in pursuance of this Part.
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s. 22

Pt 4 (Heading)
amended by
No. 67/2004
s. 17(1)(b).

**PART 4—MANDATORY REPORTING ABOUT PRESCRIBED
CHEMICALS AND OTHER SUBSTANCES**

S. 22
(Heading)
amended by
No. 67/2004
s. 17(1)(c).

**22 Reporting about prescribed chemical or other
substance**

S. 22
amended by
No. 67/2004
s. 17(1)(d)(i)(2)
(LA s. 39B(1)).

S. 22(1)
amended by
No. 30/2006
s. 10(1).

- (1) An occupier of any premises, on becoming aware of any theft, attempted theft or unexplained loss from those premises of a quantity of a prescribed chemical or other prescribed substance—
- (a) must inform a member of the force of that fact without delay; and
 - (b) if so requested by a member of the force, must supply a written report to that member setting out details of the theft, attempted theft or loss;
 - (c) in the case of a chemical or substance that is prescribed to be high consequence dangerous goods—
 - (i) must also inform the Victorian WorkCover Authority of that fact without delay; and
 - (ii) if so requested by the Victorian WorkCover Authority, must also supply a written report to the Authority setting out details of the theft, attempted theft or loss.

S. 22(b)
amended by
No. 67/2004
s. 17(1)(d)(i)(ii).

S. 22(c)
inserted by
No. 67/2004
s. 17(1)(e).

Penalty: In the case of a natural person, level 10
fine (10 penalty units maximum);
In the case of a body corporate,
120 penalty units.

Terrorism (Community Protection) Act 2003

No. 7 of 2003

Part 4—Mandatory Reporting about Prescribed Chemicals and other
Substances

s. 22

(2) In this section *unexplained loss*, in relation to a prescribed chemical or other prescribed substance, means any loss the cause of which cannot be explained by product density changes, spillage, calibration variances or the effects of humidity or other like things.

S. 22(2)
inserted by
No. 67/2004
s. 17(2),
substituted by
No. 30/2006
s. 10(2).

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S. 22(3)
inserted by
No. 67/2004
s. 17(2),
repealed by
No. 30/2006
s. 10(2).

**PART 5—PROTECTION OF COUNTER-TERRORISM
INFORMATION**

23 Protection of counter-terrorism information in legal proceedings

S. 23(1)
amended by
No. 69/2009
s. 54(Sch. Pt 2
item 52).

(1) If in any legal proceeding within the meaning of the **Evidence (Miscellaneous Provisions) Act 1958** an issue arises relating to the disclosure of counter-terrorism information and (but for this section) a person would be entitled to require another person to disclose that information, the court (within the meaning of that Act) may excuse that person from the requirement to disclose if satisfied that—

- (a) disclosure would prejudice the prevention, investigation or prosecution of a terrorist act or suspected terrorist act; and
- (b) the public interest in preserving secrecy or confidentiality outweighs the public interest in disclosure.

Note to
s. 23(1)
amended by
No. 69/2009
s. 54(Sch. Pt 2
item 52).

Note

Under the **Evidence (Miscellaneous Provisions) Act 1958**, *legal proceeding* includes a civil or criminal proceeding before a court, an inquest held by a coroner and a Royal Commission. Also under that Act, *court* includes a person acting judicially.

- (2) Without limiting the matters the court may consider for the purposes of subsection (1), the court must consider the following—
- (a) the importance of the information in the legal proceeding; and
 - (b) if the legal proceeding is a criminal proceeding, whether the party seeking disclosure of the information is the accused or the prosecutor; and

S. 23(2)(b)
amended by
No. 68/2009
s. 97(Sch.
item 119).

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- (c) if the legal proceeding is a criminal appeal proceeding, including an application for leave to appeal, whether the party seeking disclosure of the information was the accused or the prosecutor in the judgment or order from which the appeal is brought; and
- (d) the nature of the offence, cause of action or defence to which the information relates, and the nature of the subject matter of the proceeding; and
- (e) the likely effect of disclosure of the information, and the means available to limit its publication; and
- (f) whether the substance of the information has already been disclosed; and
- (g) if the proceeding is a criminal proceeding and the party seeking disclosure of the information is the accused, whether the order is to be made subject to the condition that the prosecution be stayed.
- (3) In deciding whether to excuse a person from a requirement to disclose information, the court may inform itself in any way it thinks fit.
- (4) In this section, *disclosure* includes disclosure, whether by order, subpoena or otherwise, by the—
- (a) inspection, production or discovery of documents; and
 - (b) giving of evidence; and
 - (c) answering of interrogatories; and
 - (d) provision of particulars.

S. 23(2)(c)
amended by
No. 68/2009
s. 97(Sch.
item 119).

S. 23(2)(g)
amended by
No. 68/2009
s. 97(Sch.
item 119).

24 Court may inspect documents

If a question arises under section 23 in relation to a document, the court may order the production of the document and may inspect it for the purpose of determining the question.

**PART 6—ESSENTIAL SERVICES INFRASTRUCTURE RISK
MANAGEMENT**

25 Object of this Part

The object of this Part is to provide for the involvement of the operators of essential services in planning for the protection of those essential services from the effects of terrorist acts.

26 What is an essential service?

- (1) For the purposes of this Part, *essential service* means any of the following services—
- (a) transport;
 - (b) fuel (including gas);
 - (c) light;
 - (d) power;
 - (e) water;
 - (f) sewerage;
 - (g) a service (whether or not of a type similar to the foregoing) declared to be an essential service by the Governor in Council under subsection (2).
- (2) The Governor in Council, by Order published in the Government Gazette, may declare any service to be an essential service for the purposes of this Part.

27 Who is the relevant Minister?

For the purposes of this Part, *relevant Minister* in relation to an essential service, means the Minister for the time being designated by the Premier as the relevant Minister for that essential service.

s. 27A

S. 27A
inserted by
No. 69/2007
s. 75.

27A Delegation

- (1) A relevant Minister, by instrument, may delegate to a relevant public service officer his or her functions or powers under this Part other than—
 - (a) this power of delegation; or
 - (b) a function or power conferred on the relevant Minister under section 28(1), 31(f), 36 or 37.
- (2) In subsection (1)—

relevant public service officer means—

- (a) a non-executive employee (within the meaning of the **Public Administration Act 2004**) who is employed as a non-executive employee Grade 6 or Senior Technical Specialist; or
- (b) an executive (within the meaning of the **Public Administration Act 2004**).

28 Application of this Part to an essential service

S. 28(1)
amended by
Nos 20/2005
s. 51, 30/2006
s. 11(1).

- (1) The Governor in Council on the recommendation of the relevant Minister for the essential service, by Order, may declare that this Part is to apply to an essential service or to any part of an essential service.
- (2) For the purposes of this section, a part of an essential service may include—
 - (a) any infrastructure, premises, assets or goods used for the purpose of generation, production, extraction, storage, transmission, distribution, administration or operation of the essential service;

- (b) any communication system used for or relating to the essential service, including any system used to generate, send, receive, store or otherwise process electronic communications for the purpose of the essential service.
- (3) An Order under subsection (1) may specify that a person or a person in a specified class of person is the operator of the essential service for the purposes of this Part.
- (4) An essential service or part of an essential service is only a declared essential service for the purposes of this Part if the relevant Minister has provided the operator of the essential service with a copy of the Order under subsection (1) relating to that essential service. **S. 28(4) inserted by No. 30/2006 s. 11(2).**
- (5) The relevant Minister must cause a copy of any Order under subsection (1) to be given to the Chief Commissioner of Police. **S. 28(5) inserted by No. 30/2006 s. 11(2).**
- (6) A failure to comply with subsection (5) in relation to an Order does not affect the validity, operation or effect of the Order. **S. 28(6) inserted by No. 30/2006 s. 11(2).**

29 Duty to prepare risk management plan

- (1) The operator of a declared essential service must prepare a risk management plan for that essential service in accordance with this Part.
- (2) The plan must be prepared within the time determined by the relevant Minister and notified to the operator and must comply with any prescribed standard. **S. 29(2) amended by No. 30/2006 s. 12(1).**
- (3) The plan may form part of any other risk management plan prepared by the operator for the essential service.

30 What are the objectives of a risk management plan?

The objectives of a risk management plan are—

- (a) the prevention of terrorist acts in relation to the declared essential service; and
- (b) the mitigation of the effects of a terrorist act; and
- (c) the recovery of the declared essential service from a terrorist act; and
- (d) the continuity of the declared essential service in the event of a terrorist act.

31 What must a risk management plan contain?

A risk management plan for a declared essential service must contain—

- (a) an assessment of the risks to the declared essential service of terrorist acts; and
 - (b) a plan of the measures to be undertaken to prevent or reduce the risk including ensuring the physical security of key infrastructure; and
 - (c) a plan for the measures to be taken in the event of a terrorist act including—
 - (i) the procedures for response to the terrorist act; and
 - (ii) the procedures for recovery of the declared essential service from the terrorist act; and
 - (iii) the procedures to provide for the continued safe operation of the declared essential service; and
 - (d) details of the positions of the persons responsible for the operation of the risk management plan in the event of a terrorist act; and
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- (e) procedures for determining whether or not there should be public notification of a terrorist act and if so, the procedures for that notification; and
- (f) procedures for immediate communication with the relevant Minister and with emergency services in the event of a terrorist act; and
- (g) details of the measures to be taken to protect the declared essential service in the event of a terrorist act on another essential service on which the declared essential service is dependent; and
- (h) details of the co-ordination of the risk management plan with any relevant municipal emergency management plan prepared under the **Emergency Management Act 1986**; and
- (i) details of the training to be provided to staff in relation to the procedures to be followed to prevent or respond to terrorist acts.

32 Duty to audit and update risk management plan

- (1) The operator of a declared essential service must ensure that the risk management plan is audited on an annual basis to ensure that the plan is still adequate to meet the requirements of section 31.
- (2) The operator of a declared essential service must ensure that the risk management plan is amended as soon as practicable after an audit of the plan to address any deficiencies identified in the audit.

33 Duty to participate in training exercises

- (1) At least once in each year (or any longer period determined by the relevant Minister in a particular case), the operator of a declared essential service must—

S. 33(1)
amended by
No. 69/2007
s. 76.

s. 34

-
- (a) prepare a training exercise to test the operation of the risk management plan for the declared essential service; and
- (b) participate in that training exercise under the supervision of the Chief Commissioner and the relevant Minister.
- (1A) The training exercise must comply with any prescribed standard.
- (2) The training exercise must be—
- (a) prepared in consultation with the relevant Minister; and
- (b) conducted at a time and place, and in the manner, determined by the relevant Minister.
- (3) In determining the time and place for the conduct of the training exercise, and the manner in which the training exercise must be conducted, the relevant Minister must consult with the Chief Commissioner and the operator.
- (4) Any member of the force who supervises the conduct of a training exercise on behalf of the Chief Commissioner must report in writing on the adequacy of the exercise to the Chief Commissioner and the relevant Minister.
- (5) The member of the force referred to in subsection (4) must consult with the relevant Minister as to the form and content of any report prepared for the purposes of that subsection.

S. 33(1)(b) amended by No. 30/2006 s. 13(1).

S. 33(1A) inserted by No. 30/2006 s. 13(2).

S. 33(2) substituted by No. 30/2006 s. 13(3).

S. 33(3) inserted by No. 30/2006 s. 13(3).

S. 33(4) inserted by No. 30/2006 s. 13(3).

S. 33(5) inserted by No. 30/2006 s. 13(3).

34 Certificate as to plan

If required by the relevant Minister, the operator of a declared essential service must certify in writing to the relevant Minister as to whether or not—

- (a) a risk management plan has been prepared for the essential service in accordance with this Part;
- (ab) the risk management plan complies with any prescribed standard;
- (b) the risk management plan for the essential service has been audited in accordance with this Part.

S. 34(ab)
inserted by
No. 30/2006
s. 12(2).

35 Duty to provide copy of plan

If required by the relevant Minister, the operator of a declared essential service must provide the relevant Minister with a copy of the risk management plan for that essential service.

36 Minister may issue directions

- (1) If the relevant Minister believes on reasonable grounds that the operator of a declared essential service has failed to comply with section 29, 32, 33, 34 or 35, the relevant Minister may in writing direct the operator to comply with that section within the time specified by the relevant Minister in the direction.
- (2) The operator of a declared essential service who is directed under subsection (1) to comply with a specified provision of this Act must not, without reasonable excuse, fail to comply with the direction within the time specified in the direction.

S. 36
amended by
No. 30/2006
s. 14 (ILA
s. 39B(1)).

S. 36(2)
inserted by
No. 30/2006
s. 14.

Penalty: In the case of a natural person, level 6 fine (600 penalty units maximum);
In the case of a body corporate, level 2 fine (3000 penalty units maximum).

S. 36(3)
inserted by
No. 30/2006
s. 14.

- (3) The fact that the operator of a declared service is charged with, or found guilty or convicted of, an offence against subsection (2) does not prevent the making or determination of an application under section 37(1) or affect in any way any order made under section 37(2).

37 Application to Supreme Court

- (1) If the operator of a declared essential service fails to comply with a direction of the relevant Minister under section 36 within the time specified in the direction, the relevant Minister may apply to the Supreme Court for an order under subsection (2) in respect of the operator.
- (2) If the Supreme Court is satisfied, on an application under subsection (1), that the operator of a declared essential service has failed to comply with a direction of the relevant Minister under section 36 within the time specified in the direction, it may make an order requiring the operator to comply with the duty to which the direction referred within the time specified in the order.

Note

Section 18 of the **Supreme Court Act 1986** gives the Supreme Court power to close proceedings to the public in the circumstances mentioned in section 19 of that Act.

PART 7—GENERAL

38 Review

- (1) The Minister must cause a review of the operation of this Act to be undertaken and completed by 30 June 2013. **S. 38(1) amended by Nos 5/2006 s. 9, 33/2011 s. 3.**
- (2) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament by 30 June 2013. **S. 38(2) amended by Nos 5/2006 s. 9, 33/2011 s. 3.**

39 Operation of Act

This Act does not limit the operation of any other law including the **Emergency Management Act 1986**, the **Public Health and Wellbeing Act 2008**, the **Surveillance Devices Act 1999** and the **Radiation Act 2005**.

S. 39 amended by Nos 30/2006 s. 15, 46/2008 s. 289.

39A Supreme Court—limitation of jurisdiction

It is the intention of section 21J to alter or vary section 85 of the **Constitution Act 1975**.

S. 39A inserted by No. 5/2006 s. 10.

40 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Regulations made under this Act may be made so as to apply, adopt or incorporate any matter contained in a document formulated or published by any person or body, whether—
- (a) without modification or as modified by the regulations; or

s. 41

S. 40(3)
inserted by
No. 30/2006
s. 16.

- (b) as formulated or published at the time the regulations are made or at any time before then; or
 - (c) as formulated or published from time to time.
- (3) Regulations made under this Act may be made—
- (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) throughout the whole of the State or in a specified part of the State;
 - (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a prescribed person;
 - (c) so as to confer a discretionary authority on a prescribed person;
 - (d) so as to provide, in a specified case or class of case, for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to the extent specified.

S. 41
amended by
No. 5/2006
s. 11.

41 Expiry

This Act expires on 1 December 2016.

Pt 8 (Heading and ss 42–45)
repealed by
No. 5/2006
s. 13.

* * * * *

SCHEDULE 1

Section 21P(3)

Sch. 1
inserted by
No. 5/2006
s. 6.

CONDUCT OF PERSONAL SEARCHES UNDER PART 3A

1 Application of Schedule

This Schedule applies to any search of a person carried out, or authorised to be carried out, by a member of the force under Part 3A, except as otherwise provided by this Act or the regulations.

2 Definitions

In this Schedule—

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

frisk search means—

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

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

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

strip search means a search of a person or of things in the possession or under the control of a person that may include—

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

3 Frisk searches and ordinary searches

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

4 Strip searches

A member of the force who is authorised to search a person may only conduct a strip search of the person—

- (a) if the person is suspected of being the target of an authorisation; and
- (b) if the member believes on reasonable grounds that it is necessary to conduct a strip search of the person for the purposes of the search and that the seriousness and urgency

of the circumstances require the strip search to be carried out.

5 Preservation of privacy and dignity during search

- (1) A member of the force who searches a person must, as far as is reasonably practicable in the circumstances, comply with this clause.
- (2) The member must inform the person to be searched of the following matters—
 - (a) whether the person will be required to remove clothing during the search;
 - (b) why it is necessary to remove the clothing.
- (3) The member must ask for the person's co-operation.
- (4) The member must conduct the search—
 - (a) in a way that provides reasonable privacy for the person searched; and
 - (b) as quickly as is reasonably practicable.
- (5) The member must conduct the least invasive kind of search practicable in the circumstances.
- (6) The member must not search the genital area of the person searched, or in the case of a female or a transgender person who identifies as a female, the person's breasts unless the member suspects on reasonable grounds that it is necessary to do so for the purposes of the search.
- (7) A search must be conducted by a member of the force of the same sex as the person searched or by a person of the same sex under the direction of the member.

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- (8) A search of a person must not be carried out while the person is being questioned. If questioning has not been completed before a search is carried out, it must be suspended while the search is carried out.
- (9) A person must be allowed to dress as soon as a search is finished.
- (10) If clothing is seized because of the search, the member of the force must ensure the person searched is left with or given reasonably appropriate clothing.

(11) In this clause—

questioning of a person means questioning the person or carrying out an investigation (in which the person participates);

transgender person means a person, whether or not the person is a recognised transgender person—

- (a) who identifies as a member of the opposite sex, by living, or seeking to live, as a member of the opposite sex; or
- (b) who has identified as a member of the opposite sex by living as a member of the opposite sex; or
- (c) who, being of indeterminate sex, identifies as a member of a particular sex by living as a member of that sex—

and includes a reference to the person being thought of as a transgender person, whether or not the person is, or was, in fact a transgender person.

6 Rules for conduct of strip searches

- (1) A member of the force who strip searches a person must, as far as is reasonably practicable in the circumstances, comply with the following—
 - (a) the strip search must be conducted in a private area;
 - (b) the strip search must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched;
 - (c) except as provided by this clause, the strip search must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search.
- (2) A parent, guardian or personal representative of the person being searched may, if it is reasonably practicable in the circumstances, be present during a search if the person being searched has no objection to that person being present.
- (3) A strip search of a child who is at least 10 years of age but under 18 years of age, or of a person who has impaired intellectual functioning, must be conducted in the presence of a parent or guardian of the person being searched or, if that is not acceptable to the child or person, in the presence of another person (other than a member of the force) who is capable of representing the interests of the person and who, as far as is practicable in the circumstances, is acceptable to the person.
- (4) Subclause (3) does not apply if a parent, guardian or other acceptable person is not then present and the seriousness and urgency of the circumstances require the strip search to be conducted without delay.
- (5) A strip search must not involve a search of a person's body cavities or an examination of the body by touch.

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- (6) A strip search must not involve the removal of more clothes than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- (7) A strip search must not involve more visual inspection than the person conducting the search believes on reasonable grounds to be reasonably necessary for the purposes of the search.
- (8) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if the person being searched has no objection to that person being present.
- (9) This clause is in addition to the other requirements of this Act relating to searches.
- (10) In this clause—
impaired intellectual functioning means—
 - (a) total or partial loss of a person's mental functions; or
 - (b) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction; or
 - (c) a disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.

7 No strip searches of children under 10 years

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

ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 27 February 2003

Legislative Council: 27 March 2003

The long title for the Bill for this Act was "to provide for the prevention of and response to terrorist acts, to amend the **Freedom of Information Act 1982** and the **Victorian Civil and Administrative Tribunal Act 1998** and for other purposes."

The **Terrorism (Community Protection) Act 2003** was assented to on 15 April 2003 and came into operation as follows:

Parts 1, 3, 5, 7 and 8 on 16 April 2003: section 2(1); Part 2 on 16 October 2003: Government Gazette 16 October 2003 page 2624; Part 6 on 25 February 2004: Special Gazette (No. 42) 25 February 2004 page 1; Part 4 on 1 July 2004: section 2(3).

Terrorism (Community Protection) Act 2003
No. 7 of 2003

Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Terrorism (Community Protection) Act 2003** by Acts and subordinate instruments.

Dangerous Goods Legislation (Amendment) Act 2004, No. 67/2004

Assent Date: 19.10.04
Commencement Date: S. 17 on 19.10.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Terrorism (Community Protection) Act 2003**

Parliamentary Administration Act 2005, No. 20/2005

Assent Date: 24.5.05
Commencement Date: S. 51 on 1.7.05: s. 2(4)
Current State: This information relates only to the provision/s amending the **Terrorism (Community Protection) Act 2003**

Terrorism (Community Protection) (Amendment) Act 2006, No. 5/2006

Assent Date: 7.3.06
Commencement Date: Ss 4–13 on 9.3.06: s. 2(2)
Current State: This information relates only to the provision/s amending the **Terrorism (Community Protection) Act 2003**

Terrorism (Community Protection) (Further Amendment) Act 2006, No. 30/2006

Assent Date: 6.6.06
Commencement Date: Ss 4–17 on 7.6.06: s. 2
Current State: This information relates only to the provision/s amending the **Terrorism (Community Protection) Act 2003**

Children, Youth and Families (Consequential and Other Amendments) Act 2006, No. 48/2006

Assent Date: 15.8.06
Commencement Date: S. 42(Sch. item 35) on 23.4.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Terrorism (Community Protection) Act 2003**

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 65) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Terrorism (Community Protection) Act 2003**

Terrorism (Community Protection) Act 2003
No. 7 of 2003

Endnotes

Transport Legislation Amendment Act 2007, No. 69/2007

Assent Date: 11.12.07
Commencement Date: Ss 75, 76 on 12.12.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Terrorism (Community Protection) Act 2003**

Police Integrity Act 2008, No. 34/2008

Assent Date: 1.7.08
Commencement Date: S. 143(Sch. 2 item 13) on 5.12.08: Special Gazette (No. 340) 4.12.08 p. 1
Current State: This information relates only to the provision/s amending the **Terrorism (Community Protection) Act 2003**

Public Health and Wellbeing Act 2008, No. 46/2008

Assent Date: 2.9.08
Commencement Date: S. 289 on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Terrorism (Community Protection) Act 2003**

Justice Legislation Amendment Act 2009, No. 25/2009

Assent Date: 17.6.09
Commencement Date: S. 53 on 18.6.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **Terrorism (Community Protection) Act 2003**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 119) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Terrorism (Community Protection) Act 2003**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 1 item 55), (Sch. Pt 2 item 52) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Terrorism (Community Protection) Act 2003**

Terrorism (Community Protection) Amendment Act 2011, No. 33/2011

Assent Date: 5.7.11
Commencement Date: S. 3 on 6.7.11: s. 2
Current State: All of Act in operation

Terrorism (Community Protection) Act 2003
No. 7 of 2003

Endnotes

Emergency Management Legislation Amendment Act 2011, No. 56/2011

Assent Date: 2.11.11

Commencement Date: S. 32 on 3.11.11: s. 2(1)

Current State: This information relates only to the provision/s
amending the **Terrorism (Community Protection)
Act 2003**

3. Explanatory Details

No entries at date of publication.