



New South Wales

# **Terrorism (Police Powers) Amendment (Preventative Detention) Act 2005 No 114**

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New South Wales

# **Terrorism (Police Powers) Amendment (Preventative Detention) Act 2005 No 114**

Act No 114, 2005

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An Act to amend the *Terrorism (Police Powers) Act 2002* to authorise preventative detention in connection with terrorist acts; and for other purposes. [Assented to 7 December 2005]

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**The Legislature of New South Wales enacts:**

**1    Name of Act**

This Act is the *Terrorism (Police Powers) Amendment (Preventative Detention) Act 2005*.

**2    Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3    Amendment of Terrorism (Police Powers) Act 2002 No 115**

The *Terrorism (Police Powers) Act 2002* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Section 3)

### [1] Part 2A

Insert after Part 2:

## Part 2A Preventative detention orders

### Division 1 Preliminary

#### 26A Object

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

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

**Note.** Section 26ZK provides that, while a person is being detained under a preventative detention order, the person may only be questioned for very limited purposes.

#### 26B Definitions: Part 2A

In this Part:

*corresponding law* means:

- (a) Division 105 of the *Criminal Code* of the Commonwealth and the regulations and other instruments made under that Division, as in force from time to time, or
- (b) a law of another State or a Territory that provides for preventative detention of persons in relation to terrorist acts (including any law of another State or a Territory that is declared by the regulations to be a corresponding law).

*interim preventative detention order* or *interim order* means an interim preventative detention order made by the Supreme Court under section 26H pending the hearing and final determination of an application for a preventative detention order.

*lawyer* means an Australian lawyer.

*preventative detention order* means a preventative detention order made by the Supreme Court under section 26I, and (unless expressly otherwise provided) includes an interim preventative detention order.

*prohibited contact order* means an order made by the Supreme Court under section 26N.

**26C Senior police officer with functions under preventative detention orders**

If:

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

**Division 2 Preventative detention orders**

**26D When preventative detention orders may be made**

**(1) Preventing terrorist acts occurring**

A preventative detention order may be made against a person if:

- (a) there are reasonable grounds to suspect that the person:
  - (i) will engage in a terrorist act, or
  - (ii) possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act, or
  - (iii) has done an act in preparation for, or planning, a terrorist act, and
- (b) making the order would substantially assist in preventing a terrorist act occurring, and
- (c) detaining the person for the period for which the person is to be detained under the order is reasonably necessary for the purpose of substantially assisting in preventing a terrorist act occurring.

Any such terrorist act must be imminent and, in any event, be expected to occur at some time in the next 14 days.

**(2) Preserving evidence of terrorist acts that have occurred**

A preventative detention order may also be made against a person if:

- (a) a terrorist act has occurred within the last 28 days, and
- (b) it is necessary to detain the person to preserve evidence in New South Wales or elsewhere of, or relating to, the terrorist act, and

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

**Note.** As a consequence of the operation of section 4A, it does not matter whether the location of the terrorist act is in New South Wales or elsewhere.

**26E No preventative detention order in relation to person under 16 years of age**

- (1) A preventative detention order cannot be applied for, or made, in relation to a person who is under 16 years of age.
- (2) If:
  - (a) a person is being detained under a preventative detention order (or a purported such order), and
  - (b) the police officer who is detaining the person is satisfied on reasonable grounds that the person is under 16 years of age,the police officer must release the person, as soon as practicable, from detention under the order.

**26F Who may apply for preventative detention orders**

- (1) A police officer may apply for a preventative detention order in relation to a person, but only if:
  - (a) the police officer is satisfied of the requirements under section 26D for making the order, and
  - (b) the police officer has obtained approval to make the application from:
    - (i) the Commissioner of Police, or
    - (ii) a Deputy Commissioner of Police, or
    - (iii) an Assistant Commissioner of Police responsible for counter-terrorism operations.
- (2) The function of giving approval to the making of an application for an order cannot be delegated, but may be exercised by a police officer acting in a position referred to in subsection (1) (b).

**26G Applications for preventative detention orders**

- (1) An application for a preventative detention order must:
  - (a) subject to subsection (2), be in writing and sworn, and
  - (b) set out the facts and other grounds on which the police officer considers the order should be made, and

- (c) specify the period for which the person is to be detained under the order and set out the facts and other grounds on which the police officer considers that the person should be detained for that period, and
- (d) set out the information (if any) that the applicant has about the person's age, and
- (e) set out the following:
  - (i) the outcomes and particulars of all previous applications for preventative detention orders made in relation to the person,
  - (ii) 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 law,
  - (iii) the information (if any) that the applicant has about any control order (including any interim control order) made in relation to the person under Division 104 of the *Criminal Code* of the Commonwealth.

The application must also fully disclose all relevant matters of which the applicant is aware, both favourable and adverse to the making of the order.

- (2) An application for a preventative detention order that is required urgently may be made by telephone, fax, email or other electronic communication. In that case:
  - (a) the Supreme Court may make an interim preventative detention order if satisfied it is not practicable for the applicant to appear before the Court to make the application, and
  - (b) the terms of the interim order and related directions and other matters may be transmitted to the applicant by telephone, fax, email or other electronic communication, and
  - (c) a written record relating to the application and interim order is to be made as soon as practicable by or at the direction of the Court.
- (3) The Supreme Court may refuse to make a preventative detention order unless the police officer applying for the order gives the Court any further information that the Court requests concerning the facts and other grounds on which the police officer considers the order should be made.

**26H Supreme Court may make interim preventative detention order**

- (1) The Supreme Court may, pending the hearing and final determination of an application for a preventative detention order, make an interim preventative detention order.
- (2) The Supreme Court is to make an interim order if:
  - (a) the application and any further information supplied by the applicant satisfy the requirements under section 26D for making the order, and
  - (b) the Court cannot proceed immediately to the hearing and determination of the application.
- (3) The interim order may be made in the absence of, and without notice to, the person in relation to whom the order is to be made (or his or her representative).
- (4) If the Supreme Court makes an interim order it must:
  - (a) fix the date on which, and the time at which, the hearing of the application is to be resumed, and
  - (b) give directions for notice to be given to the person subject to detention under the interim order (or his or her representative) of the date and time fixed for the resumed hearing.
- (5) The Supreme Court may further adjourn the resumed hearing and continue the interim order in force until the adjourned hearing.

**Note.** Section 26L prevents an interim order remaining in force for more than 48 hours after the person was first taken into custody under the interim order.

**26I Supreme Court may make preventative detention order after hearing**

- (1) After hearing an application for a preventative detention order, the Supreme Court is to:
  - (a) grant the application and make a preventative detention order, or
  - (b) refuse the application.
- (2) The Supreme Court may make a preventative detention order only if satisfied of the requirements under section 26D for making the order.

- (3) The following persons may adduce evidence (including by calling witnesses or producing material), or make submissions, to the Supreme Court in connection with the hearing of an application for a preventative detention order (other than an interim order):
  - (a) the applicant for the order or any other police officer,
  - (b) the person in relation to whom the order is to be made,
  - (c) one or more representatives of the applicant or person.
- (4) Subsection (3) does not otherwise limit the power of the Supreme Court to control proceedings in relation to the application for the order.
- (5) The Supreme Court may determine the application in the absence of the person in relation to whom the order is to be made (or his or her representative) if satisfied that the person was properly notified of the proceedings.

**26J Terms of preventative detention orders**

- (1) A preventative detention order must set out:
  - (a) the name of the person authorised to be detained under the order, and
  - (b) the period for which the person is authorised to be detained (not exceeding the period provided by this Part), and
  - (c) the date on which, and the time at which, the order is made, and
  - (d) the date and time after which the person may not be taken into custody under the order (not exceeding 48 hours after the order is made), and
  - (e) a summary of the grounds on which the order is made.
- (2) To avoid doubt, subsection (1) (e) does not require information to be included in a 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).

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**26K Maximum period of detention and multiple preventative detention orders**

- (1) In this section:  
*related order*, in relation to a person, means an interim preventative detention order, another preventative detention order or an order under a corresponding law that is made against the person.
- (2) The maximum period for which a person may be detained under a preventative detention order (other than an interim order) is 14 days. That maximum period is reduced by any period of actual detention under a related order against the person in relation to the same terrorist act.  
**Note.** Under section 26L an interim order expires 48 hours after the person is first taken into custody under the order if the application for the order has not been heard and finally determined by that time.
- (3) Despite subsection (2), the maximum period for which a person may be detained under a preventative detention order made on the basis of preserving evidence of, or relating to, a terrorist act that has occurred is not to be reduced by any period for which the person is detained under a preventative detention order or related order made on the basis of preventing a terrorist act.
- (4) Subject to subsection (5), more than one preventative detention order may be made in relation to the same terrorist act (whether or not against the same person).
- (5) Not more than one interim preventative detention order may be made against the same person in relation to the same terrorist act. This subsection does not prevent:
  - (a) an extension of an interim order under section 26H (5), or
  - (b) the making of another interim order following a further application for an order.
- (6) A preventative detention order can be made against a person to take effect on the expiration of detention under a related order against the person.  
**Note.** This Division does not authorise the extension of the period of an order. However, if the initial order does not authorise detention for the maximum period of detention in respect of the same terrorist act that is authorised by this section, further orders may be applied for and made (so long as that maximum period is not exceeded in respect of the total period of those orders).

- (7) For the purposes of this section:
- (a) a terrorist act ceases to be the same terrorist act if there is a change in the date on which the terrorist act is expected to occur, and
  - (b) a terrorist act that is expected to occur at a particular time does not cease to be the same terrorist act merely because of:
    - (i) a change in the persons expected to carry out the act at that time, or
    - (ii) a change in how or where the act is expected to be carried out at that time.

**26L Duration of preventative detention order**

- (1) An interim preventative detention order ceases to have effect if the Supreme Court has not heard and determined the application in respect of which the interim order was made within 48 hours after the person was first taken into custody under the interim order.
- (2) A preventative detention order (other than an interim order) ceases to have effect on the expiration of the period for which the person may be detained under the order in accordance with this Part.
- (3) A preventative detention order ceases to have effect if the person has not been taken into custody under the order within the time that the order authorises the person to be taken into custody.
- (4) Despite anything to the contrary in this section, a preventative detention order ceases to have effect if it is revoked under section 26M.

**26M Revocation of preventative detention orders**

- (1) A preventative detention order may be revoked by the Supreme Court on application made by the person in relation to whom the order was made or on application by a police officer.
- (2) An application for the revocation of a preventative detention order must be made by a police officer detaining the person if the police officer is satisfied that the grounds on which the order was made have ceased to exist.

- (3) An application made by a person in relation to whom a preventative detention order (other than an interim order) was made is to set out information on which the person relies in making the application, being information that was not provided to the Supreme Court when the order was made.
- (4) If the Supreme Court rejects an application for revocation, it may give such directions as it considers appropriate with respect to any further application for revocation of the order. Any such further application is to set out new information on which the person relies in making the further application.

**26N Prohibited contact orders**

- (1) A police officer who applies to the Supreme Court 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) If a preventative detention order is in force in relation to the subject, a police officer 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.
- (3) The application must be in writing and sworn, and set out:
  - (a) the terms of the order sought, and
  - (b) the facts and other grounds on which the police officer considers that the order should be made.
- (4) If the Supreme Court is satisfied that making a prohibited contact order is reasonably necessary to achieve the purposes of the preventative detention order, 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.
- (5) An application for a prohibited contact order that is required urgently may be made by telephone, fax, email or other electronic communication. In that case:
  - (a) the Supreme Court may make the order if satisfied it is not practicable for the applicant to appear before the Court to make the application, and
  - (b) the terms of the order may be transmitted to the applicant by telephone, fax, email or other electronic communication, and

- (c) a written record relating to the application and order is to be made as soon as practicable by or at the direction of the Court.
- (6) A prohibited contact order may be revoked by the Supreme Court, on application made by the person in relation to whom the relevant preventative detention order relates or on application by a police officer.
- (7) An application for the revocation of a prohibited contact order must be made by a police officer detaining the person under the relevant preventative detention order if the police officer is satisfied that the grounds on which the prohibited contact order was made have ceased to exist.
- (8) The Supreme Court may refuse to make a prohibited contact order unless the police officer applying for the order gives the Court any further information that the Court requires concerning the facts and other grounds on which the police officer considers the order should be made.

**26O Rules of evidence**

- (1) This section applies to proceedings before the Supreme Court in connection with an application for the making or revocation of a preventative detention order or prohibited contact order.
- (2) For the purposes of any such proceedings, the Supreme Court may take into account any evidence or information that the Court considers credible or trustworthy in the circumstances and, in that regard, is not bound by principles or rules governing the admission of evidence.

**26P Closure of Court and restriction on publication of proceedings**

- (1) This section applies to proceedings before the Supreme Court in connection with an application for the making or revocation of a preventative detention order or prohibited contact order.
- (2) Any such proceedings must be heard in the absence of the public.
- (3) The Supreme Court may, in connection with any such proceedings, make such orders relating to the suppression of publication of the whole or any part of the proceedings or of the evidence given in the proceedings as, in its opinion, are necessary to secure the object of this Part.
- (4) A person must not disclose information knowing that the disclosure contravenes an order under subsection (3).  
Maximum penalty: Imprisonment for 5 years.

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### **Division 3      Carrying out preventative detention orders**

#### **26Q    Power to detain person under preventative detention order**

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

#### **26R    Nominated senior police officer to oversee order**

- (1) If a preventative detention order is made in relation to a person, the Commissioner or a Deputy Commissioner of Police, or an Assistant Commissioner of Police responsible for counter-terrorism operations, must nominate a police officer of or above the rank of superintendent (*the nominated senior police officer*) to oversee the exercise of functions under or in relation to the order.
- (2) The nominated senior police officer must be someone who was not involved in the making of the application for the preventative detention order.
- (3) The nominated senior police officer must:
  - (a) oversee the exercise of functions under the preventative detention order, and
  - (b) without limiting paragraph (a), ensure compliance with the obligation under Division 2 of the police officer detaining the person under the preventative detention order to apply for the revocation of the order, or for the revocation of a related prohibited contact order, if the grounds on which the order was made have ceased to exist, and
  - (c) consider any representations that are made under subsection (4) in relation to the above matters or to the treatment under the detention order of the detained person.
- (4) Any such representations may be made to the nominated senior police officer by any of the following persons:

- (a) the person being detained under the preventative detention order,
- (b) a lawyer acting for that person in relation to the order,
- (c) a person with whom that person has contact under section 26ZH.

**26S Endorsement of order with date and time person taken into custody**

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

**26T Power to require disclosure of identity**

- (1) A police officer may request a person whose identity is unknown to the officer to disclose his or her identity if the officer believes on reasonable grounds that the person may be able to assist the officer in executing a preventative detention order.
- (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.  
Maximum penalty: 20 penalty units.
- (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.

Maximum penalty: 20 penalty units.

**Note.** Section 201 of the *Law Enforcement (Powers and Responsibilities) Act 2002* requires the police officer to identify themselves and give a warning before requiring a person to disclose their identity under this section.

**26U Power to enter premises**

- (1) If:
  - (a) a preventative detention order is in force in relation to a person, and

- (b) a police officer believes on reasonable grounds that the person is on any premises,  
the police officer may enter the premises, using such force as is necessary and reasonable in the circumstances and with such assistance from other police officers as is necessary, at any time of the day or night for the purpose of searching the premises for the person or taking the person into custody.
- (2) A police officer must not enter a dwelling house under this section at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the police officer believes on reasonable grounds that:
- (a) it would not be practicable to take the person into custody, either at the dwelling house or elsewhere, at another time, or
- (b) it is necessary to do so in order to prevent a terrorist act or the concealment, loss or destruction of evidence of, or relating to, a terrorist act.
- (3) In subsection (2):  
***dwelling house*** includes a conveyance, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

**26V Power to conduct frisk and ordinary personal searches**

- (1) In this section:  
***seizable item*** means anything that:
- (a) would present a danger to a person, or
- (b) could be used to assist a person to escape from lawful custody, or
- (c) could be used to contact another person or to operate a device remotely, or
- (d) is evidence of, or relates to, a terrorist act.
- (2) A police officer may, at or soon after the time when a person is taken into custody under a preventative detention order, search the person and anything in the possession of the person in order to ascertain whether the person is carrying any seizable items.
- (3) A police officer is not authorised to search for evidence of, or relating to, a terrorist act, unless the police officer has reasonable cause to suspect the person is carrying such evidence.
- (4) The police officer may seize any seizable item found as a result of a search conducted under this section.

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

**26W Release of person from preventative detention**

- (1) The police officer who is detaining a person under a preventative detention order may release the person from detention under the order.  
**Note.** A person may be released, for example, so that the person may be arrested and charged with an offence and otherwise dealt with in connection with the charge.
- (2) The police officer who releases the person from detention under the 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 police officer.
- (3) To avoid doubt, a person may be taken to have been released from detention under a preventative detention order even if:
- (a) the person is informed that he or she is being released from detention under the order, and
  - (b) the person is taken into custody on some other basis immediately after the person is informed that he or she is being released from detention under the order.
- (4) 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, those dealing with the people the person may contact) do not apply to the person.
- (5) To avoid doubt:
- (a) the release of the person under subsection (1) from detention under the preventative detention order does not extend the period for which the preventative detention order remains in force, and
  - (b) a person released under subsection (1) from detention under a preventative detention order may again be taken into custody and detained under the order at any time while the order remains in force in relation to the person.
- Note.** Paragraph (a)—this means that the time for which the person may be detained under the order continues to run while the person is released.

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**26X Arrangement for detainee to be held in prison**

- (1) A police officer who is detaining a person (the *subject*) under a preventative detention order may arrange, with the Commissioner of Corrective Services, for the subject to be detained under the order at a correctional centre.
- (2) If an arrangement is made under subsection (1):
  - (a) the police officer making the arrangement is to provide the person in charge of the correctional centre with written notice of the arrangement, a copy of the preventative detention order and any prohibited contact order that is in force in relation to the subject's detention, and
  - (b) the preventative detention order is taken to authorise the person in charge of the correctional centre to detain the subject at the correctional centre while the order is in force in relation to the subject, and
  - (c) section 26ZC (Humane treatment of person being detained) applies in relation to the subject's detention under the order at the correctional centre as if:
    - (i) the person in charge of that correctional centre, or
    - (ii) any other person involved in the subject's detention at that correctional centre,were a person exercising authority under the order or implementing or enforcing the order, and
  - (d) the police officer who made the arrangement (or another police officer designated by the Commissioner or a Deputy Commissioner of Police or by an Assistant Commissioner of Police responsible for counter-terrorism operations) is taken, while the subject is detained at the correctional centre, to be the police officer detaining the subject for the purposes of this Part, and
  - (e) a police officer may, for the purposes of exercising functions under the order, enter at any time the correctional centre and visit the subject in the correctional centre.
- (3) The regulations may exclude the subject from the application of any of the provisions of or made under the *Crimes (Administration of Sentences) Act 1999* or the *Children (Detention Centres) Act 1987*.
- (4) An arrangement under subsection (1) does not prevent the subject being returned to the custody of a police officer.

- (5) A reference in this section to a correctional centre is to be construed, in relation to a detainee under 18 years of age, as a reference to a juvenile detention centre or juvenile correctional centre (and in the case of a juvenile detention centre the reference to the Commissioner of Corrective Services is to be construed as a reference to the Director-General of the Department of Juvenile Justice).
- (6) During any period that a subject under 18 years of age is not detained under an arrangement in force under this section, a police officer must not detain the subject together with persons who are 18 years or older unless the nominated senior police officer under section 26R considers that there are exceptional circumstances and approves of that detention.

#### **Division 4      Informing person detained about preventative detention orders**

##### **26Y    Effect of interim preventative detention order to be explained to person detained**

- (1) As soon as practicable after a person is first taken into custody under an interim preventative detention order, the police officer who is detaining the person under the order must inform the person of the matters covered by subsection (2).  
Maximum penalty: Imprisonment for 2 years.
- (2) The matters covered by this subsection are:
  - (a) the fact that an interim preventative detention order has been made authorising the person's detention pending the hearing and determination of the application for the person's continued preventative detention, and
  - (b) the date and time fixed by the Supreme Court for the hearing and determination of that application, and
  - (c) the people that the person is entitled to contact under sections 26ZE and 26ZH and the restrictions that apply to any such contact, and
  - (d) any right the person has to complain to the Ombudsman in relation to:
    - (i) the application for, or the making of, the order, or
    - (ii) the treatment of the person by a police officer in connection with the person's detention under the order, and

- (e) the fact that the person may ask the Supreme Court to revoke the order or seek from a court any other remedy relating to:
    - (i) the order, or
    - (ii) the treatment of the person in connection with the person's detention under the order, and
  - (f) the person's entitlement under section 26ZG to contact a lawyer, and
  - (g) the name and work telephone number of the senior police officer who has been nominated under section 26R to oversee the exercise of functions under the order.
- (3) Subsection (2) (c) does not require the police officer to inform the person being detained of:
- (a) the fact that a prohibited contact order has been made in relation to the person's detention, or
  - (b) the name of a person specified in a prohibited contact order that has been made in relation to the person's detention.

**26Z Effect of preventative detention order (other than interim order) to be explained to person detained**

- (1) As soon as practicable after a preventative detention order (other than an interim order) is made in relation to a person, the police officer who is detaining the person must inform the person of the matters covered by subsection (2).  
Maximum penalty: Imprisonment for 2 years.
- (2) The matters covered by this subsection are:
- (a) the fact that the 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 people that the person is entitled to contact under sections 26ZE and 26ZH and the restrictions that apply to any such contact, and
  - (d) any right the person has to complain to the Ombudsman in relation to:
    - (i) the application for the order, or
    - (ii) the treatment of the person by a police officer in connection with the person's detention under the order, and

- (e) the fact that the person may ask the Supreme Court to revoke the order or seek from a court any other remedy relating to:
    - (i) the order, or
    - (ii) the treatment of the person in connection with the person's detention under the order, and
  - (f) the person's entitlement under section 26ZG to contact a lawyer, and
  - (g) the name and work telephone number of the senior police officer who has been nominated under section 26R to oversee the exercise of functions under the order.
- (3) Subsection (2) (c) does not require the police officer to inform the person being detained of:
- (a) the fact that a prohibited contact order has been made in relation to the person's detention, or
  - (b) the name of a person specified in a prohibited contact order that has been made in relation to the person's detention.

**26ZA Compliance with obligation to inform**

- (1) Sections 26Y (1) and 26Z (1) do not apply if the actions of the person being detained under the preventative detention order make it impracticable for the police officer to comply with those sections.
- (2) The police officer detaining the person under the preventative detention order complies with section 26Y (1) or 26Z (1) if the police officer informs the person in substance of the matters covered by section 26Y (2) or 26Z (2) (even if this is not done in language of a precise or technical nature).
- (3) The police officer who is detaining the person under the preventative detention order must arrange for the assistance of an interpreter in complying with section 26Y (1) or 26Z (1) if the police officer 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 26Y (1) or 26Z (1) or subsection (3) of this section.

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**26ZB Copy of preventative detention order and summary of grounds**

- (1) As soon as practicable after a person is first taken into custody under an interim preventative detention order, the police officer who is detaining the person under the order must give the person a copy of the order.
- (2) Despite section 26Q (2), a police officer does not need to have a copy of the order with him or her, or to produce a copy of the order to the person being taken into custody, when the police officer takes the person into custody.
- (3) As soon as practicable after a preventative detention order (other than an interim order) is made in relation to a person, the police officer who is detaining the person under the order, must give the person a copy of the order.
- (4) A person who is being detained under a preventative detention order may request a police officer who is detaining the person under the order to give a copy of the order to a lawyer acting for the person in relation to the order.
- (5) The police officer must make arrangements for a copy of the order to be given to the lawyer as soon as practicable after the request is made.
- (6) Without limiting subsection (5), the copy of the order may be faxed or emailed to the lawyer.
- (7) To avoid doubt, subsection (5) does not entitle the lawyer to be given a copy of, or see, a document other than the order.
- (8) Nothing in this section requires a copy of a prohibited contact order to be given to a person.
- (9) The police officer who gives:
  - (a) the person being detained under an interim preventative detention order, or
  - (b) a lawyer acting for the person,a copy of the interim order under this section must endorse on the copy the date on which, and time at which, the person was first taken into custody under the order and the date and time fixed by the Supreme Court for the hearing and determination of the application for the continued detention of the person.
- (10) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with this section.

## **Division 5 Treatment of person detained**

### **26ZC Humane treatment of person being detained**

- (1) 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.
- (2) A person who contravenes subsection (1) is guilty of an offence.  
Maximum penalty: Imprisonment for 2 years.

### **26ZD Restriction on contact with other people**

Except as provided by this Division, 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.

**Note 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).

**Note 2.** A person's entitlement to contact other people under this Division is subject to a prohibited contact order (see section 26ZJ).

### **26ZE Contacting family members etc**

- (1) The person being detained is entitled to contact:
  - (a) one of his or her family members, and
  - (b) if he or she:
    - (i) lives with another person and that other person is not a family member of the person being detained, or
    - (ii) lives with other people and those other people are not family members of the person being detained,  
that other person or 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

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- (f) if the police officer detaining the person being detained 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 he or she is safe and is being detained.
- (2) To avoid doubt, the person being detained is entitled, under subsection (1), 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.
- (3) In this section:  
***family member*** of a person means:
- (a) the person’s spouse, de facto spouse or same-sex partner, or
  - (b) a parent, step-parent or grandparent of the person, or
  - (c) a child, step-child or grandchild of the person, or
  - (d) a brother, sister, step-brother or step-sister of the person, or
  - (e) a guardian or carer of the person.

**26ZF Contacting Ombudsman and PIC**

The person being detained is entitled to contact the Ombudsman and the Police Integrity Commission.

**26ZG Contacting lawyer**

- (1) The person being detained is entitled to contact a lawyer but solely for the purpose of:
- (a) obtaining advice from the lawyer about the person’s legal rights in relation to:
    - (i) the preventative detention order, or
    - (ii) the treatment of the person in connection with the person’s detention under the order, or
  - (b) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, proceedings in the Supreme Court relating to:
    - (i) the making of a preventative detention order against the person, or

- (ii) the revocation of a preventative detention order made against the person, or
  - (c) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, any other proceedings in a court for a remedy relating to:
    - (i) the preventative detention order, or
    - (ii) the treatment of the person in connection with the person's detention under the order, or
  - (d) arranging for the lawyer to act for the person in relation to, and instructing the lawyer in relation to, a complaint to the Ombudsman or the Police Integrity Commission in relation to:
    - (i) the application for, or the making of, the preventative detention order, or
    - (ii) the treatment of the person by a police officer in connection with the person's detention under the order, or
  - (e) arranging for the lawyer to act for the person in relation to an appearance, or hearing, before a court that is to take place while the person is being detained under the order.
- (2) The form of contact that the person being detained is entitled to have with a lawyer under subsection (1) includes:
  - (a) being visited by the lawyer, and
  - (b) communicating with the lawyer by telephone, fax or email.
- (3) If:
  - (a) the person being detained asks to be allowed to contact a particular lawyer under subsection (1), and
  - (b) either:
    - (i) the person is not entitled to contact that lawyer because of a prohibited contact order, or
    - (ii) the person is not able to contact that lawyer,the police officer who is detaining the person must give the person reasonable assistance to choose another lawyer for the person to contact under subsection (1).
- (4) If the police officer who is detaining a person under a preventative detention order has reasonable grounds to believe that:

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- (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 police officer must give the person reasonable assistance (including, if appropriate, by arranging for the assistance of an interpreter) to choose and contact a lawyer under subsection (1).
- (5) In recommending lawyers to the person being detained as part of giving the person assistance under subsection (3), the police officer 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 any prohibited contact order, the person being detained is entitled under this section to contact a lawyer who does not have a security clearance of the kind referred to in subsection (5).

**26ZH Special contact rules for person under 18 or incapable of managing own affairs**

- (1) This section applies if the person being detained under a preventative detention order:
  - (a) is under 18 years of age, or
  - (b) is incapable of managing his or her affairs.
- (2) The person is entitled, while being detained under the order, to have contact with:
  - (a) a parent or guardian of the person, or
  - (b) another person who:
    - (i) is able to represent the person's interests, and
    - (ii) is, as far as practicable in the circumstances, acceptable to the person and to the police officer who is detaining the person, and
    - (iii) is not a police officer, and
    - (iv) is not an AFP member or AFP employee (within the meaning of the *Australian Federal Police Act 1979* of the Commonwealth), and
    - (v) is not a member (however described) of a police force of any other State or 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 any prohibited contact order, 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 detainee 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 detainee is entitled to have contact with another person each day under subsection (2) is:
  - (a) 2 hours, or
  - (b) such longer period as the Supreme Court determines and specifies in the preventative detention order.
- (6) Despite subsection (5), the police officer who is detaining the person may permit the detainee to have contact with a person under subsection (2) for a period that is longer than the period provided for in subsection (5).

**26ZI Monitoring contact with family members, lawyers etc under sections 26ZE, 26ZG and 26ZH**

- (1) The contact the person being detained has with another person under section 26ZE, 26ZG or 26ZH may take place only if it is conducted in such a way that the contact, and the content and meaning of the communication that takes place during the contact, can be effectively monitored by a police officer exercising authority under the preventative detention order.
- (2) The contact may take place in a language other than English only if the content and meaning of the communication that takes place during the contact can be effectively monitored with the assistance of an interpreter.
- (3) Without limiting subsection (2), the interpreter referred to in that subsection may be a police officer.

- (4) If the person being detained indicates that he or she wishes the contact to take place in a language other than English, the police officer who is detaining the person must:
- (a) arrange for the services of an appropriate interpreter to be provided if it is reasonably practicable to do so during the period during which the person is being detained, and
  - (b) if it is reasonably practicable to do so—arrange for those services to be provided as soon as practicable.
- (5) Any communication between:
- (a) a person who is being detained under a preventative detention order, and
  - (b) a lawyer,
- for a purpose referred to in section 26ZG is not admissible in evidence against the person in any proceedings in a court.
- (6) A person (the *monitor*) commits an offence if:
- (a) the monitor is:
    - (i) a police officer who monitors, or
    - (ii) an interpreter who assists in monitoring,contact that a person being detained under a preventative detention order has with a lawyer under section 26ZG 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 26ZG, and
  - (d) the monitor discloses that information to another person.
- Maximum penalty: Imprisonment for 5 years.

**26ZJ Entitlement to contact subject to prohibited contact order**

Sections 26ZE, 26ZG and 26ZH have effect subject to any prohibited contact order made in relation to the person's detention.

**26ZK Questioning of person prohibited while person is detained**

A police officer must not question a person while the person is being detained under a preventative detention order except for the purposes of:

- (a) determining whether the person is the person specified in the order, or

- (b) ensuring the safety and well-being of the person being detained, or
- (c) allowing the police officer to comply with a requirement of this Part in relation to the person's detention under the order.

Maximum penalty: Imprisonment for 2 years.

**Note.** 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).

**26ZL Taking fingerprints, recordings, samples of handwriting or photographs**

- (1) In this section:  
*identification material*, in relation to a person, means prints of the person's hands, fingers, feet or toes, recordings of the person's voice, samples of the person's handwriting or photographs (including video recordings) of the person.
- (2) A police officer must not take identification material from a person who is being detained under a preventative detention order except in accordance with this section.  
Maximum penalty: Imprisonment for 2 years.
- (3) A police officer who is of the rank of sergeant or higher may take identification material from the person, or cause identification material from the person to be taken, if:
  - (a) the person consents in writing, or
  - (b) the police officer believes on reasonable grounds that it is necessary to do so for the purpose of confirming the person's identity as the person specified in the order.
- (4) A police officer may use such force as is necessary and reasonable in the circumstances to take identification material from a person under this section.
- (5) Subject to this section, a police officer may only take identification material (other than hand prints, fingerprints, foot prints or toe prints) from a person who:
  - (a) is under 18 years of age, or
  - (b) is incapable of managing his or her affairs,if the Supreme Court orders that the material be taken.
- (6) The taking of identification material from a person who:
  - (a) is under 18 years of age, or

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- (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.
- (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 Supreme Court orders that the material be taken.
- (8) This subsection applies if the person agrees in writing to the taking of the material.
- (9) This subsection applies if either:
- (a) a parent or guardian of the person, or
- (b) if a parent or guardian is not acceptable to the person—another appropriate person, agrees in writing to the taking of the material.
- (10) Despite this section, identification material may be taken from a person who:
- (a) is at least 18 years of age, and
- (b) is capable of managing his or her affairs, if the person consents in writing.
- (11) A reference in this section to an *appropriate person* in relation to a person (the *subject*) who is under 18 years of age, or incapable of managing his or her affairs, is a reference to a person who:
- (a) is capable of representing the subject's interests, and
- (b) as far as is practicable in the circumstances, is acceptable to the subject and the police officer who is detaining the subject, and
- (c) is none of the following:
- (i) a police officer,
- (ii) an AFP member or 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 Territory,

- (iv) an officer or employee of the Australian Security Intelligence Organisation.

**26ZM Use of identification material**

- (1) This section applies if identification material is taken under section 26ZL from a person being detained under a preventative detention order.
- (2) The material may be used only for the purpose of determining whether the person is the person specified in the order.
- (3) A person who uses identification material in contravention of subsection (2) is guilty of an offence.  
Maximum penalty: Imprisonment for 2 years.
- (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 Commissioner of Police is to ensure that the material is destroyed as soon as practicable after the end of that period.

**Division 6 Miscellaneous**

**26ZN Annual reports to be given to Attorney General and Minister for Police**

- (1) The Commissioner of Police must report annually to the Attorney General and Minister for Police on the exercise of powers under this Part by police officers. The report is to be provided within 4 months after each 30 June.
- (2) Without limiting subsection (1), a report relating to a year ended on that 30 June must include the following matters:
- (a) the number of applications for preventative detention orders (including interim orders) and the number of any such orders made, and the number of occasions on which such an order (other than an interim order) was not made following a hearing,

- (b) the number of any such applications and orders in relation to adults and the number in relation to juveniles,
  - (c) the duration of each such order made,
  - (d) a statement as to whether each such order was made to prevent a terrorist act or to preserve evidence,
  - (e) a statement as to whether a person was taken into custody under each such order and, if so, the period for which the person was detained,
  - (f) a statement as to whether the person detained under such an order was principally detained in a correctional centre, juvenile correctional centre, juvenile detention centre, police facility or other place,
  - (g) the number of applications for prohibited contact orders and the number of any such orders made, the duration of each such order and the number of any such orders made in relation to adults and in relation to juveniles,
  - (h) the number of applications for revocation of an order and the number of revocations granted,
  - (i) particulars of any complaints in relation to the detention of a person under a preventative detention order made or referred during the year to the Ombudsman or Police Integrity Commission and the outcome of any complaint so made,
  - (j) a statement confirming the destruction of identification material required to be destroyed under section 26ZM (4).
- (3) The reports are to be tabled by the Attorney General in each House of Parliament as soon as practicable after they are received by the Attorney General.

**Note.** Section 36 of the Act requires the Minister to carry out an annual review of the Act (to be tabled in Parliament).

**26ZO Monitoring by Ombudsman**

- (1) For the period of 5 years after the commencement of this Part, the Ombudsman is to keep under scrutiny the exercise of powers conferred on police officers or correctional officers under this Part.
- (2) For that purpose, the Ombudsman may require the Commissioner of Police or any public authority to provide information about the exercise of those powers.
- (3) The Commissioner of Police is to ensure that the Ombudsman:

- (a) is duly notified of the making of a preventative detention order or prohibited contact order, and given a copy of any such order, and
  - (b) if a person is taken into custody under a preventative detention order—is duly notified that the person has been taken into custody, and
  - (c) of an order is revoked—is duly notified of the revocation.
- (4) The Ombudsman must, as soon as practicable after the expiration of:
- (a) 2 years after the commencement of this Part, and
  - (b) 5 years after that commencement,
- prepare reports on the exercise of those powers and furnish a copy of the reports to the Attorney General and the Minister for Police.
- (5) The reports are to be tabled by the Attorney General in each House of Parliament as soon as practicable after they are received by the Attorney General.
- (6) If a House of Parliament is not sitting when the Attorney General seeks to table a report, copies of the report are to be presented to the Clerk of the House concerned by the Attorney General.
- (7) The report:
- (a) is, on presentation and for all purposes, taken to have been laid before the House, and
  - (b) may be printed by authority of the Clerk of the House, and
  - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
  - (d) is to be recorded:
    - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
    - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

**26ZP Ombudsman and PIC functions not affected**

This Part does not affect any function of the Ombudsman or the Police Integrity Commission under any other Act.

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**26ZQ Law relating to legal professional privilege not affected**

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

**26ZR Legal proceedings in relation to preventative detention orders**

This Part does not limit proceedings that may be brought in a court for a remedy in relation to:

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

**26ZS Sunset provision**

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

**[2] Section 30A**

Insert after section 30:

**30A ICAC and PIC assistance on terrorism investigation**

- (1) The Independent Commission Against Corruption and the Police Integrity Commission may enter into arrangements with the Commissioner of Police under which any of their staff or facilities are used by the Commissioner of Police in connection with the investigation of suspected terrorist acts or possible terrorist acts.
- (2) Subsection (1) does not limit any other arrangement that may be entered into with the Commissioner of Police with respect to the investigation of criminal offences.

**[3] Section 34 Proceedings for offences**

Insert “, other than an offence against section 26P or 26ZI (6),” after “this Act or the regulations”.

**[4] Section 36 Review of Act**

Insert after section 36 (1A):

- (1B) For the purposes of the review, the Minister may require the Commissioner of Police to provide information about the exercise of functions under Part 2A by police officers.

[Second reading speech made in—  
Legislative Assembly on 17 November 2005  
Legislative Council on 30 November 2005]

BY AUTHORITY