

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

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Victoria

No. 5 of 2006

Terrorism (Community Protection) (Amendment) Act 2006[†]

[Assented to 7 March 2006]

The Parliament of Victoria enacts as follows:

1. Purposes

The main purposes of this Act are—

- (a) to amend the **Terrorism (Community Protection) Act 2003**—
 - (i) to provide for the making of preventative detention orders and the detention of persons subject to those orders; and

- (ii) to give members of the police force special powers in connection with terrorist acts; and
 - (iii) to expand the circumstances in which covert search warrants may be issued; and
 - (iv) to provide for a review of the operation of the Act to be undertaken and completed by 30 June 2011;
- (b) to amend the **Corrections Act 1986** to provide for the legal custody of persons subject to preventative detention orders;
- (c) to amend the **Children and Young Persons Act 1989** and the **Children, Youth and Families Act 2005** to provide for the searching of visitors to juvenile justice facilities and generally regulate visits to those facilities.

2. Commencement

- (1) Subject to sub-section (2), this Act (other than sections 17 and 18) comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act (other than sections 17 and 18) does not come into operation before 9 March 2006, it comes into operation on that day.
- (3) Sections 17 and 18 come into operation on the day on which section 478 of the **Children, Youth and Families Act 2005** comes into operation.

3. Principal Act

In this Act, the **Terrorism (Community Protection) Act 2003** is called the Principal Act.

See:
Act No.
7/2003
and
amending
Act Nos
67/2004 and
20/2005.
LawToday:
www.dms.dpc.vic.gov.au

4. New Part 2A inserted in Principal Act

After Part 2 of the Principal Act **insert—**

'PART 2A—PREVENTATIVE DETENTION ORDERS

Division 1—Preliminary

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.

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 sub-section (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
- (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;

"juvenile justice facility" means a service established under section 249 of the **Children and Young Persons Act 1989** or, on and from the commencement of section 478 of the **Children, Youth and Families Act 2005**, under that section;

"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**;

"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.
- (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

- (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
 - (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.

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;
 - (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, sub-section (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
 - (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.

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
 - (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
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- (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.
- (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 sub-section, 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 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 sub-section (1).
 - (8) If the person in relation to whom the interim preventative detention order is made is being detained in a prison or juvenile justice facility, the applicant for that order must cause a copy of any order made under sub-section (7) to be given to the Secretary to the
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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 sub-section (10).

13F. Nature of preventative detention order

- (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 sub-section (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 sub-section (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).

- (h) a summary of the grounds on which the order is made.

- (5) To avoid doubt, sub-section (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 juvenile justice facility unless the Supreme Court is satisfied that it is reasonably necessary for the person to be detained at a place other than a juvenile justice facility having regard to—

- (a) the person's age and vulnerability;
 - (b) the likely impact that detention in a place other than a juvenile justice facility will have on the person;
 - (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 juvenile justice facility; or
 - (iii) the good order and safe operation of a juvenile justice facility;
 - (e) the availability of a place in a juvenile 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.
- (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 271 of the **Children and Young Persons Act 1989** (as applied by

section 13WA(5) of this Act) provides for medical services and operations in the case of a person detained in a juvenile justice facility.

- (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 Part IVA of the **Police Regulation Act 1958** 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.

13G. Duration of preventative detention orders

- (1) Subject to sub-section (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.

- (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.

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)).

- (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 sub-section (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

- (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.
- (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 juvenile justice facility and the Supreme Court makes an order under sub-section (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 sub-section 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.

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

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

Note: See also section 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.

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.

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

- (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 sub-section (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 sub-section (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—
- (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.
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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.
- (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 Part IVA of the **Police Regulation Act 1958** 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.

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
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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 Part IVA of the **Police Regulation Act 1958** 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.

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

- (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.
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- (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 juvenile justice facility and the order is revoked or varied under sub-section (4), the member of the force who is detaining the person under the order must cause a copy of the order made under that sub-section 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 juvenile justice facility and the prohibited contact order is revoked or varied under sub-section (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 sub-section 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.

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 sub-section (1) or (2), that it is appropriate that the order be revoked or varied—

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

- (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 juvenile justice facility and the order is revoked or varied under sub-section (3), the applicant for the revocation or variation must cause a copy of any order made under that sub-section 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
- (b) the Supreme Court is satisfied, on application by a member of the force under sub-section (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.

- (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 juvenile justice facility and the prohibited contact order is revoked or varied under sub-section (7), the applicant for the revocation or variation must cause a copy of any order made under that sub-section 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**

- (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
 - (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) Sub-section (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.
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- (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
 - (c) receive and consider any representations that are made under sub-section (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 Regulation Act 1958**;
 - (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

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.

- (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 sub-section (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 sub-section (4) if the person makes a request under that sub-section—

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) Sub-section (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 sub-section (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) Sub-section (4) does not apply if the member of the force has a reasonable excuse.

13S. Power to enter premises

- (1) Subject to sub-section (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

- (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 sub-section (1) must be dealt with in accordance with the regulations.

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 sub-section (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

- (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) Sub-section (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
 - (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 sub-section (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 sub-section (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

- (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 sub-section (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 sub-section (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.
- (4) If requested to do so under sub-section (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 sub-section (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.
- (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—
- (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;
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- (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;
- (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.

13WA. Arrangement for detainee to be held in juvenile justice facility

- (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 juvenile 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 juvenile justice facility.
- (2) A request under sub-section (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 sub-section (1), the Secretary to the Department of Human Services may, by instrument, authorise the transfer to a juvenile justice facility of a person being detained under a preventative detention order from any place where he or she is being detained.
- (4) If a person is being detained in a juvenile 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 sub-section (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 and Young Persons Act 1989** applies in respect of the detention of a person in a juvenile justice facility under a preventative detention order or an order for his or her detention made under a corresponding preventative detention law other than—
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- (a) section 7(1) and, to the extent that it relates to section 271(3) or (4), section 7(1A);
 - (b) section 252(1) other than paragraphs (b) to (d);
 - (c) section 252(2) other than paragraphs (a) and (b);
 - (d) section 252(3);
 - (e) section 253(1) and (1A);
 - (f) section 256A;
 - (g) section 256B 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;
 - (h) sections 256D to 256J;
 - (i) section 270;
 - (j) section 271.
- (6) If a provision of the **Children and Young Persons Act 1989** applies (with or without modification) in respect of the detention of a person in a juvenile 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 and Young Persons Act 1989**, in its application in respect of the detention of a person in a juvenile 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 juvenile 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.
- (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**

- (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 sub-section (2).

Note 1: A contravention of this sub-section may be an offence under section 13ZN.

Note 2: A contravention of this sub-section does not affect the lawfulness of the person's detention under the order (see section 13Z(5)).

- (2) The matters covered by this sub-section 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
 - (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 13ZV.
- (g) the person's entitlement under section 13ZF to contact a lawyer; and
 - (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 sub-section (2)(c), the member of the force who is detaining a person under a preventative detention order must inform the person under that sub-section about the persons that he or she may contact under section 13ZD or 13ZH.

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.

Note 2: A contravention of this section does not affect the lawfulness of the person's detention under the order (see section 13Z(5)).

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 sub-section (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 sub-section (3) of this section.

13ZA. Copy of preventative detention order

- (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 sub-section may be an offence under section 13ZN.

- (2) To avoid doubt, sub-section (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 sub-section 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 sub-section (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.

Note 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.

Note 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 sub-section may be an offence under section 13ZN.

- (7) Without limiting sub-section (6), the copy of an order or the summary may be faxed or emailed to the lawyer.

- (8) To avoid doubt, sub-section (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 sub-section (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
- (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 sub-section may be an offence under section 13ZN.

- (10) Sub-section (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 sub-section.
- (11) The lawfulness of a person's detention under a preventative detention order is not affected by a failure to comply with sub-section (1), (4), (6) or (9).
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Division 5—Treatment of Person Detained

13ZB. Humane treatment of person being detained

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

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

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

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

13ZBA. Detention of persons under 18

- (1) Subject to sub-section (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 sub-section may be an offence under section 13ZN.

- (2) Sub-section (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 sub-section (2) only if there are exceptional circumstances justifying the giving of the approval.

- (4) An approval under sub-section (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

- (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 juvenile 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 (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 Regulation Act 1958** or the Commonwealth Ombudsman under the Complaints (Australian Federal Police) Act 1981 of the Commonwealth.
- (3) A prison officer within the meaning of the **Corrections Act 1986** or the officer in charge of a juvenile justice facility who receives—
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- (a) from a person being detained in a prison or juvenile justice facility under an order referred to in sub-section (2) a letter required by that sub-section 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
 - (b) a letter sent to a person being detained in a prison or juvenile justice facility under an order referred to in sub-section (2)—
must as soon as practicable give that letter to such a member of the force or police officer.
- (4) This section applies to legal documents exchanged between a lawyer and a person being detained in a prison or juvenile justice facility under an order referred to in sub-section (2) as if that document were a letter.
 - (5) A person being detained in a prison or juvenile justice facility under an order referred to in sub-section (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 juvenile justice facility (as the case requires).

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 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.

(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
 - (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 sub-section (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 sub-section (2), is entitled, while being detained under the order, to have further contact with one or more of his or her family 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 sub-section (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 sub-section (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 sub-section (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 Regulation Act 1958**.

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** 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 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
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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 sub-section (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 sub-section (1); and
 - (b) either—
 - (i) the person is not entitled to contact that lawyer because of section 13ZI (prohibited contact order); or
 - (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 sub-section (1).

Note: A contravention of this sub-section 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 sub-section (1).

- (5) In recommending lawyers as part of giving a person assistance under sub-section (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 sub-section (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 sub-section (5).

13ZG. Monitoring contact under section 13ZD or 13ZF

- (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 sub-section (2), the interpreter referred to in that sub-section 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
 - (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 sub-section may be an offence under section 13ZN.

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
- (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 sub-section (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 sub-section (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.
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- (4) The form of contact that the person being detained is entitled to have with another person under sub-section (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 sub-section (2) is—
 - (a) 2 hours; or
 - (b) such longer period as is specified in the preventative detention order.

Note: See section 13F(7).
- (6) Despite sub-section (5), the member of the force who is detaining the person may permit the person to have contact with a person under sub-section (2) for a period that is longer than the period provided for in sub-section (5).
- (7) The contact that the person being detained has with another person under sub-section (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 sub-section (8), the interpreter referred to in that sub-section 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 sub-section (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 sub-section may be an offence under section 13ZN.

13ZI. Entitlement to contact subject to prohibited contact order

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

13ZJ. Disclosure offences

- (1) A person (the *subject*) commits an offence if—
- (a) the subject is being detained under a preventative detention order; and
 - (b) the subject intentionally discloses to another person—
 - (i) the fact that a preventative detention order has been made in relation to the subject; or
 - (ii) the fact that the subject is being detained; or
 - (iii) the 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 sub-section (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** 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
- (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).

- (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
 - (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
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- (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 sub-section (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 and Young Persons Act 1989**.
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.

- (5) To avoid doubt, a person does not contravene sub-section (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 sub-section (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 sub-section (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 sub-section (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 sub-section (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) sub-section (1), (2), (3), (6) or (8); or
 - (ii) this sub-section; 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
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- (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

- (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) Sub-section (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 sub-section (3) is not practicable because of the seriousness and urgency of the circumstances in which the questioning occurs.
- (5) A recording made under sub-section (3) must be kept for the period of 12 months after the recording is made.

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

13ZL. Taking identification material

- (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 sub-section 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 sub-section 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.

Note 1: For *appropriate person*, see sub-section (10).

Note 2: A contravention of this sub-section 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) sub-sections (8) and (9) are satisfied; or
 - (b) sub-section (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 sub-section (5).

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

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 sub-section may be an offence under section 13ZN.

- (3) To avoid doubt, if the person is being detained in a prison or juvenile 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 juvenile 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

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
- (xi) section 13ZM(2).

Penalty: Level 7 imprisonment (2 years maximum).

Division 6—Miscellaneous

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.

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 sub-section (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.

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

- (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 sub-section (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;
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- (d) 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 under the **Ombudsman Act 1973** or the Director, Police Integrity under Part IVA of the **Police Regulation Act 1958**;
 - (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.

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**.

13ZT. Law relating to legal professional privilege not affected

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

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
 - (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 sub-section—

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) Sub-section (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).

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 2006** 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 2006** comes into operation.'

5. New Part 3A inserted in Principal Act

After Part 3 of the Principal Act insert—

'PART 3A—SPECIAL POLICE POWERS

Division 1—Preliminary

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 sub-section (3) affects the operation of section 6 of the **Police Regulation Act 1958**.
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Division 2—Authorisation to Exercise Special Powers

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

- (1) Subject to sub-section (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 sub-section (1) may only be made with the written approval of the Premier.
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- (3) An application under sub-section (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**.

- (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 sub-section (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.

- (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 sub-section (6).

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.

- (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

- (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 sub-section (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.
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- (5) The information in an application under sub-section (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 sub-section (2) or (3) the Supreme Court may, by order—
- (a) if satisfied, on reasonable grounds, as mentioned in paragraphs (a) and (b) of sub-section (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 sub-section (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.
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- (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 sub-section (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 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.
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- (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 sub-section (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
 - (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 sub-section (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 sub-section (2) or (3) the Supreme Court may, by order—
- (a) if satisfied, on reasonable grounds, as mentioned in paragraphs (a) and (b) of sub-section (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 sub-section (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.
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- (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 sub-section (7)(a).

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 sub-section (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 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 sub-section (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—
- (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 sub-section (1)(a), a person may be described by the use of a photograph or drawing.

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

- (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

- (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 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 Act 1958.

- (2) Without limiting sub-section (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.

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 sub-section (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

- (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

- (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 sub-section (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.
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Division 3—Powers

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.

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

- (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
 - (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.

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.
- (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

- (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**.

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.

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

- (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
 - (b) not required under sub-section (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.

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.

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.

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—
 - (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.'

6. New Schedule 1 inserted in Principal Act

After Part 7 of the Principal Act **insert**—

'SCHEDULE 1

Section 21P(3)

**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.
- (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) Sub-clause (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.
 - (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.
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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.!

7. New section 4A inserted in Principal Act

After section 4 of the Principal Act **insert—**

"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."

8. Covert search warrants

(1) For section 6(1)(a) of the Principal Act **substitute—**

"(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"

- (2) In section 6(1)(b) of the Principal Act—
- (a) after "preventing" **insert** "(including by gaining knowledge of an act being done in preparation for, or planning, a terrorist act or connected with the engagement of a person in, or assistance in, a terrorist act)";
 - (b) for "that terrorist act" **substitute** "a terrorist act".
- (3) After section 6(1) of the Principal Act **insert**—
- "(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."

9. Review

In section 38(1) and (2) of the Principal Act, for "2006" **substitute** "2011".

10. New section 39A inserted in Principal Act

After section 39 of the Principal Act **insert**—

"39A. Supreme Court—limitation of jurisdiction

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

11. Expiry

In section 41 of the Principal Act, for "2006" **substitute** "2016".

12. Consequential amendment of Principal Act

After section 1(b) of the Principal Act **insert**—

"(ba) to provide for the application for, and the making of, preventative detention orders; and".

13. Statute law revision

Part 8 of the Principal Act is **repealed**.

14. Amendment of Corrections Act 1986

- (1) After section 6(c) of the **Corrections Act 1986** **insert—**

"(ca) a preventative detention order within the meaning of the **Terrorism (Community Protection) Act 2003** or an order for a person's detention made under a corresponding preventative detention law within the meaning of that Act; or".

- (2) After section 6A(1) of the **Corrections Act 1986** **insert—**

"(1A) Sub-section (1) applies each time when—

- (a) a person who has ceased to be in the legal custody of the Secretary by force of section 6B(ca) is again taken into custody and detained under the order referred to in that section; and
- (b) either of the events referred to in sub-section (1)(b) occurs."

- (3) After section 6B(c) of the **Corrections Act 1986** **insert—**

"(ca) if the person is being detained under an order referred to in section 6(ca), during any period when he or she is taken not to be detained under the order by force of section 13V of the **Terrorism (Community Protection) Act 2003** or section 105.26 of the Criminal Code of the Commonwealth; or".

See:
 Act No.
 117/1986.
 Reprint No. 5
 as at
 1 January
 2004
 and
 amending
 Act Nos
 11/1993,
 53/2003,
 14/2004,
 74/2004,
 97/2004,
 108/2004,
 1/2005, 2/2005,
 18/2005 and
 69/2005.
 LawToday:
 www.dms.
 dpc.vic.
 gov.au

(4) At the end of section 6B of the **Corrections Act 1986** insert—

"(2) Despite sub-section (1)(a), a person being detained under an order referred to in section 6(ca) who is in the legal custody of the Secretary does not cease to be in the legal custody of the Secretary on the expiration of the order if—

- (a) another such order comes into force in relation to the person immediately after that expiration; or
- (b) another such order continues in force in relation to the person."

(5) After section 6D(1) of the **Corrections Act 1986** insert—

"(1A) Sub-section (1) applies each time when—

- (a) a person who has ceased to be in the legal custody of the Chief Commissioner of Police by force of section 6E(ca) is again taken into custody and detained under the order referred to in that section; and
- (b) either of the events referred to in sub-section (1)(b) occurs."

(6) After section 6E(c) of the **Corrections Act 1986** insert—

"(ca) if the person is being detained under an order referred to in section 6(ca), during any period when he or she is taken not to be detained under the order by force of section 13V of the **Terrorism (Community Protection) Act 2003** or section 105.26 of the Criminal Code of the Commonwealth; or"

(7) At the end of section 6E of the **Corrections Act 1986 insert—**

"(2) Despite sub-section (1)(a), a person being detained under an order referred to in section 6(ca) who is in the legal custody of the Chief Commissioner of Police does not cease to be in the legal custody of the Chief Commissioner of Police on the expiration of the order if—

- (a) another such order comes into force in relation to the person immediately after that expiration; or
- (b) another such order continues in force in relation to the person."

(8) After section 30(3)(db) of the **Corrections Act 1986 insert—**

"(dc) disclosing to a member of the police force or an AFP member (within the meaning of Part 5.3 of the Criminal Code of the Commonwealth) information relating to a prisoner, if the disclosure is made for the purpose of—

- (i) implementing or enforcing an order referred to in section 6(ca) under which the prisoner is being detained; or
- (ii) the security or good order of the prison or the safety or welfare of the prisoner; or"

(9) After section 47E(a) of the **Corrections Act 1986** insert—

"(ab) details of every letter given by a prison officer to a member of the force or a police officer (within the meaning of Part 5.3 of the Criminal Code of the Commonwealth) under section 13ZC of the **Terrorism (Community Protection) Act 2003**; and".

15. Amendment of Children and Young Persons Act 1989

(1) After section 253(1) of the **Children and Young Persons Act 1989** insert—

"(1A) A person who is detained in a remand centre, youth residential centre or youth training centre under an order referred to in section 13WA(5) of the **Terrorism (Community Protection) Act 2003** (preventative detention) ceases to be in the legal custody of the Secretary during any time when he or she is in the legal custody of the Chief Commissioner of Police under section 6D of the **Corrections Act 1986**".

(2) In section 280(1) of the **Children and Young Persons Act 1989**—

(a) in paragraph (lc) after "256A" insert "or 256H";

(b) after paragraph (ld) insert—

"(le) visits to remand centres, youth residential centres or youth training centres and searches of visitors; and".

16. New sections 256D to 256J inserted in Children and Young Persons Act 1989

After section 256C of the **Children and Young Persons Act 1989** insert—

256D. Definitions

In sections 256E to 256J—

"detainee" means a person detained in a juvenile justice facility including a person detained under a preventative detention order (within the meaning of Part 2A of the **Terrorism (Community Protection) Act 2003**) or an order for his or her detention made under a corresponding preventative detention law (within the meaning of that Part);

"juvenile justice facility" means a remand centre, youth residential centre or youth training centre;

"officer" means any person employed in a juvenile justice facility with duties in relation to ensuring the security or good order of the facility or the safety and security of any detainee in the facility;

"visitor" means a person who visits a juvenile justice facility to have contact with a detainee.

256E. Visitors required to comply with orders

- (1) The officer in charge of the juvenile justice facility may give to a visitor such orders as are necessary for the management and good order and security of the juvenile justice facility.

- (2) A visitor must not disobey an order given under sub-section (1).

Penalty: 5 penalty units.

256F. Visitors to give prescribed information

- (1) The officer in charge of the juvenile justice facility may require any person who wishes to enter, or who has entered, a juvenile justice facility as a visitor to give the officer information as to—

- (a) the purpose of the visit or intended visit;
- (b) the person's identity, address, occupation and age;
- (c) the person's relationship (if any) to any detainee the person wishes to visit.

- (2) A person who wishes to enter or has entered a juvenile justice facility as a visitor must not knowingly give to the officer in charge of the facility or any other officer information that is false or misleading.

Penalty: 5 penalty units.

- (3) If, when asked, a person does not give the required information to the officer in charge of the juvenile justice facility or gives information to that officer or any other officer that is false or misleading, the officer in charge of the facility may—

- (a) if the person has not entered the facility, by order prohibit the person from entering the facility; or
- (b) if the person has entered the facility, order the person to leave the facility immediately.

- (4) A person must not disobey an order under sub-section (3).

Penalty: 5 penalty units.

- (5) A person ordered to leave a juvenile justice facility under this section may only re-enter the facility with the permission of the officer in charge of the facility.

256G. Officer in charge may refuse or terminate visits for security reasons

- (1) If the officer in charge of a juvenile justice facility believes on reasonable grounds that the security of the facility or the safety of a visitor is threatened, the officer may—
- (a) by order prohibit a person from entering the facility as a visitor; or
 - (b) order the visitor to leave the facility immediately.
- (2) Without limiting any other power of the Secretary under this Act, if the Secretary believes on reasonable grounds that the good order or security of juvenile justice facilities or the safety of detainees or visitors to juvenile justice facilities is threatened, the Secretary may by order prohibit a person from entering all or any juvenile justice facilities in Victoria as a visitor.
- (3) An order under sub-section (2) in relation to a matter prevails over any order under sub-section (1) in relation to that matter.
- (4) A person must not disobey an order under this section.

Penalty: 5 penalty units.

256H. Search of visitors

(1) In this section—

"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 visitor conducted by quickly running the hands over the visitor's outer clothing or by passing an electronic metal detection device over or in close proximity to the visitor's outer clothing; and
- (b) an examination of anything worn or carried by the visitor that is conveniently and voluntarily removed by the visitor, 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 visitor or of things in the possession or under the control of a visitor that may include—

- (a) requiring the visitor 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 visitor or of things in the possession or under the control of a visitor that may include—
- (a) requiring the visitor to remove all of his or her clothes; and
 - (b) an examination of the visitor's body (but not of the visitor's body cavities) and of those clothes.
- (2) The officer in charge of a juvenile justice facility may cause any person who wishes to enter the facility as a visitor to be asked to submit to a frisk search or an ordinary search to detect the presence of any article or thing which the officer carrying out the search believes on reasonable grounds jeopardises or is likely to jeopardise the security of the facility or the safety of persons in the facility (including any article or thing of a kind covered by section 270(1)(b)).
- (3) The officer in charge of a juvenile justice facility may cause any person who is in the facility as a visitor to be asked to submit to a search of a kind referred to in sub-section (2) if he or she suspects on reasonable grounds that the visitor may have in his or her possession or under his or her control any article or thing of a kind referred to in that sub-section.
- (4) In carrying out a frisk search, the officer carrying it out may, if he or she has asked the visitor to remove a coat or jacket, treat the visitor's outer clothing as being the visitor's outer clothing after the coat or jacket has been removed.

- (5) A visitor must not be asked to submit to a strip search or a search of his or her body cavities.
- (6) If, when asked, a person does not submit to a search authorised to be carried out under this section, an officer may prohibit the person from entering the juvenile justice facility or, if the person is in the juvenile justice facility, order the person to leave the facility immediately.
- (7) A person must not disobey an order under sub-section (6).
Penalty: 5 penalty units.
- (8) An officer is not liable for injury or damage caused in carrying out searches in accordance with this section.
- (9) The officer in charge of the juvenile justice facility may at any time make an order terminating a search under this section.

256I. Search requirements

- (1) Before carrying out a search of a person under section 256H, the officer who is to carry out the search must—
 - (a) inform the person of his or her authority to carry out the search; and
 - (b) inform the person that he or she may refuse the search; and
 - (c) inform the person of the consequences of refusal.

- (2) If a person consents to a search, the officer who is to carry out the search must—
 - (a) ask the person if he or she has in his or her possession an article or thing of a kind referred to in section 256H(2); and
 - (b) ask the person to produce any article or thing referred to in paragraph (a).
- (3) An officer carrying out a search of a person under section 256H must do so—
 - (a) expeditiously; and
 - (b) with regard to the decency and self-respect of the person searched; and
 - (c) in compliance with any other prescribed requirement.

256J. Seizure

- (1) In carrying out a search of a person under section 256H an officer may seize any article or thing of a kind referred to in section 256H(2) that is found in the person's possession or produced in response to a request under section 256I(2)(b).
- (2) An officer who seizes any thing under subsection (1) must immediately inform the officer in charge of the juvenile justice facility.
- (3) The officer in charge of the juvenile justice facility must deal in accordance with the regulations with any article or thing seized under this section.'

17. Amendment of Children, Youth and Families Act 2005

(1) In Part 5.8 of the **Children, Youth and Families Act 2005**—

(a) before section 483 **insert** the following heading—

"Division 1—Legal Custody";

(b) after section 483(1) **insert**—

"(1A) A person who is detained in a remand centre, youth residential centre or youth justice centre under an order referred to in section 13WA(5) of the **Terrorism (Community Protection) Act 2003** (preventative detention) ceases to be in the legal custody of the Secretary during any time when he or she is in the legal custody of the Chief Commissioner of Police under section 6D of the **Corrections Act 1986**.";

(c) after section 485 **insert** the following heading—

"Division 2—Management of Detainees";

(d) before section 489 **insert** the following heading—

"Division 4—General".

- (2) In section 600(1) of the **Children, Youth and Families Act 2005**—
- (a) in paragraph (o) after "486" insert "or 488E";
 - (b) after paragraph (p) **insert**—
 - "(pa) visits to remand centres, youth residential centres or youth justice centres and searches of visitors; and".

18. New Division 3 inserted in Part 5.8 of Children, Youth and Families Act 2005

After section 488 of the **Children, Youth and Families Act 2005** insert—

'Division 3—Visitors

488A. Definitions

In this Division—

"detainee" means a person detained in a juvenile justice facility including a person detained under a preventative detention order (within the meaning of Part 2A of the **Terrorism (Community Protection) Act 2003**) or an order for his or her detention made under a corresponding preventative detention law (within the meaning of that Part);

"juvenile justice facility" means a remand centre, youth residential centre or youth justice centre;

"officer" means any person employed in a juvenile justice facility with duties in relation to ensuring the security or good order of the facility or the safety and security of any detainee in the facility;

"visitor" means a person who visits a juvenile justice facility to have contact with a detainee.

488B. Visitors required to comply with orders

- (1) The officer in charge of the juvenile justice facility may give to a visitor such orders as are necessary for the management and good order and security of the juvenile justice facility.
- (2) A visitor must not disobey an order given under sub-section (1).

Penalty: 5 penalty units.

488C. Visitors to give prescribed information

- (1) The officer in charge of the juvenile justice facility may require any person who wishes to enter, or who has entered, a juvenile justice facility as a visitor to give the officer information as to—
 - (a) the purpose of the visit or intended visit;
 - (b) the person's identity, address, occupation and age;
 - (c) the person's relationship (if any) to any detainee the person wishes to visit.
- (2) A person who wishes to enter or has entered a juvenile justice facility as a visitor must not knowingly give to the officer in charge of the facility or any other officer information that is false or misleading.

Penalty: 5 penalty units.

- (3) If, when asked, a person does not give the required information to the officer in charge of the juvenile justice facility or gives information to that officer or any other

officer that is false or misleading, the officer in charge of the facility may—

- (a) if the person has not entered the facility, by order prohibit the person from entering the facility; or
 - (b) if the person has entered the facility, order the person to leave the facility immediately.
- (4) A person must not disobey an order under sub-section (3).

Penalty: 5 penalty units.

- (5) A person ordered to leave a juvenile justice facility under this section may only re-enter the facility with the permission of the officer in charge of the facility.

488D. Officer in charge may refuse or terminate visits for security reasons

- (1) If the officer in charge of a juvenile justice facility believes on reasonable grounds that the security of the facility or the safety of a visitor is threatened, the officer may—
- (a) by order prohibit a person from entering the facility as a visitor; or
 - (b) order the visitor to leave the facility immediately.
- (2) Without limiting any other power of the Secretary under this Act, if the Secretary believes on reasonable grounds that the good order or security of juvenile justice facilities or the safety of detainees or visitors to juvenile justice facilities is threatened, the Secretary may by order prohibit a person from entering all or any juvenile justice facilities in Victoria as a visitor.
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- (3) An order under sub-section (2) in relation to a matter prevails over any order under sub-section (1) in relation to that matter.
- (4) A person must not disobey an order under this section.

Penalty: 5 penalty units.

488E. Search of visitors

- (1) In this section—

"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 visitor conducted by quickly running the hands over the visitor's outer clothing or by passing an electronic metal detection device over or in close proximity to the visitor's outer clothing; and
- (b) an examination of anything worn or carried by the visitor that is conveniently and voluntarily removed by the visitor, 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 visitor or of things in the possession or under the control of a visitor that may include—

(a) requiring the visitor 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 visitor or of things in the possession or under the control of a visitor that may include—

(a) requiring the visitor to remove all of his or her clothes; and

(b) an examination of the visitor's body (but not of the visitor's body cavities) and of those clothes.

(2) The officer in charge of a juvenile justice facility may cause any person who wishes to enter the facility as a visitor to be asked to submit to a frisk search or an ordinary search to detect the presence of any article or thing which the officer carrying out the search believes on reasonable grounds jeopardises or is likely to jeopardise the security of the facility or the safety of persons in the facility (including any article or thing of a kind covered by section 501(1)(b)).

(3) The officer in charge of a juvenile justice facility may cause any person who is in the facility as a visitor to be asked to submit to a search of a kind referred to in sub-section (2) if he or she suspects on reasonable grounds that the visitor may have in his or her possession or under his or her control any article or thing of a kind referred to in that sub-section.

- (4) In carrying out a frisk search, the officer carrying it out may, if he or she has asked the visitor to remove a coat or jacket, treat the visitor's outer clothing as being the visitor's outer clothing after the coat or jacket has been removed.
- (5) A visitor must not be asked to submit to a strip search or a search of his or her body cavities.
- (6) If, when asked, a person does not submit to a search authorised to be carried out under this section, an officer may prohibit the person from entering the juvenile justice facility or, if the person is in the juvenile justice facility, order the person to leave the facility immediately.
- (7) A person must not disobey an order under sub-section (6).
Penalty: 5 penalty units.
- (8) An officer is not liable for injury or damage caused in carrying out searches in accordance with this section.
- (9) The officer in charge of the juvenile justice facility may at any time make an order terminating a search under this section.

488F. Search requirements

- (1) Before carrying out a search of a person under section 488E, the officer who is to carry out the search must—
 - (a) inform the person of his or her authority to carry out the search; and
 - (b) inform the person that he or she may refuse the search; and

- (c) inform the person of the consequences of refusal.
- (2) If a person consents to a search, the officer who is to carry out the search must—
 - (a) ask the person if he or she has in his or her possession an article or thing of a kind referred to in section 488E(2); and
 - (b) ask the person to produce any article or thing referred to in paragraph (a).
- (3) An officer carrying out a search of a person under section 488E must do so—
 - (a) expeditiously; and
 - (b) with regard to the decency and self-respect of the person searched; and
 - (c) in compliance with any other prescribed requirement.

488G. Seizure

- (1) In carrying out a search of a person under section 488E an officer may seize any article or thing of a kind referred to in section 488E(2) that is found in the person's possession or produced in response to a request under section 488F(2)(b).
- (2) An officer who seizes any thing under subsection (1) must immediately inform the officer in charge of the juvenile justice facility.
- (3) The officer in charge of the juvenile justice facility must deal in accordance with the regulations with any article or thing seized under this section.'

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ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 16 November 2005

Legislative Council: 28 February 2006

The long title for the Bill for this Act was "to amend the **Terrorism (Community Protection) Act 2003** to provide for the making of preventative detention orders and the detention of persons subject to those orders, to give members of the police force special powers in connection with terrorist acts and to expand the circumstances in which covert search warrants may be issued, to amend the **Corrections Act 1986** to provide for the legal custody of persons subject to preventative detention orders, to amend the **Children and Young Persons Act 1989** and the **Children, Youth and Families Act 2005** to provide for the searching of visitors to juvenile justice facilities and generally regulate visits to those facilities and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 16 November 2005

Legislative Council: 28 February 2006

Absolute majorities:

Legislative Assembly: 9 February 2006

Legislative Council: 1 March 2006