



anti-terrorism laws

ASIO, the Police and You

A plain English guide to anti-terrorism laws in Australia

an expanded 4th edition

2017

with new sections on citizenship,
passports and travelling overseas



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The information in this booklet reflects the law as it stands on 1 February 2017. The laws may have changed since then. You should check with your lawyer for changes to the law. You may also check our website for updates, translations and more information: www.muslimlegallawnetworknsw.com

Author: Australian Muslim Civil Rights Advocacy Network, Muslim Legal Network (NSW).

Title: Anti-terrorism laws: ASIO, the Police and You: A plain English guide to anti-terrorism laws in Australia / Australian Muslim Civil Rights Advocacy Network, Muslim Legal Network (NSW).

Edition: 4th edition

Publisher: Wollongong, N.S.W.: Australian Muslim Civil Rights Advocacy Network, Muslim Legal Network (NSW).

ISBN: 9780980436143 (paperback)

Subjects: Australian Security Intelligence Organisation. Australian Federal Police. Terrorism--Prevention--Law and legislation. Detention of persons--Law and legislation--Australia. Police power--Law and legislation--Australia. Civil rights--Law and legislation--Australia. Terrorism--Australia--Prevention--Government policy. Terrorism investigation--Government policy--Australia. Other Creators/Contributors: Australian Muslim Civil Rights Advocacy Network, author. Muslim Legal Network (NSW), author.

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Contents

Preface to the 4 th Edition	6
Part 1: Introduction	8
Part 2: ‘Terrorism’ Offences	10
2.1 Crimes related to ‘terrorist acts’	10
2.2 Crimes related to ‘terrorist organisations’.....	16
2.3 Other terrorism-related offences.....	22
Introduction to the Australian Security Intelligence Organisation (ASIO) and the Australian Federal Police (AFP).....	25
Part 3: Australian Security Intelligence Organisation (ASIO)	26
3.1 Who is ASIO?	26
3.2 What powers does ASIO have?.....	26
3.3 What should I do if I am contacted by ASIO for a ‘chat’? .	27
3.4 ASIO search powers	28
3.5 ‘Questioning warrants’ by ASIO.....	30
3.6 ‘Questioning and detention’ warrants by ASIO.....	34
Part 4: Australian Federal Police (AFP)	39
4.1 Who is the AFP?	39
4.2 AFP ‘search’ powers	39
4.3 AFP questioning and arrest powers.....	43
4.4 AFP ‘detention’ powers.....	49
Part 5: Control Orders	55
5.1 What is a Control Order?	55
5.2 How is a Control Order made?	55

5.3	Can I contest the Control Order?	56
5.4	How long does a Control Order last?	56
5.5	What conditions can be imposed by a Control Order?.....	56
5.6	What happens if I do not abide by the Control Order?	57
5.7	Can they impose a Control Order on me if I am under 18 years old?	57
5.8	Can Police search me or my house if I am on a Control Order?	57

**Part 6: Data Retention, Surveillance and
Communication Intercepts 59**

6.1	Metadata Retention Laws.....	59
6.2	Surveillance and Communication Intercepts	60

**Part 7: Citizenship, Travel Documents, Visas and
Welfare Payments 64**

7.1	Australian citizenship	64
7.2	Travel documents	67
7.3	Australian Visas	68
7.4	Welfare payments	69

Part 8: Travelling Overseas..... 71

8.1	'Declared area' offence	71
8.2	Australian Border Force	72
8.3	Other travel-related issues	78

Part 9: Lodging a complaint..... 80

9.1	Complaints about ASIO	80
9.2	Complaints about the AFP	82

Part 10: State anti-terrorism legislation 84

- 10.1 New South Wales 84
- 10.2 Victoria 85
- 10.3 Queensland 85
- 10.4 Western Australia 86
- 10.5 South Australia..... 86
- 10.6 Northern Territory 86
- 10.7 Australian Capital Territory..... 87
- 10.8 Tasmania 87

Part 11: Where to go for help 88

- 11.1 General Information..... 88
- 11.2 Legal Advice 88
- 11.3 Complaints..... 92

Preface to the 4th Edition

The first edition of the *Terrorism Laws: ASIO, the Police and You* was released in 2004 with contributions from a dedicated team of volunteers, the Australian Muslim Civil Rights Advocacy Network (AMCRAN), the University of Technology Sydney Community Law Centre (UTS CLC) and the NSW Council for Civil Liberties. 4000 English copies were printed and distributed. The booklet was commended by parliamentary committees and received many expressions of appreciation. It addressed a desire within the community for knowledge and understanding of the anti-terrorism laws. This was not only because the laws were new and marked a major shift in the rights and responsibilities of Australian citizens and their government, but because the laws were complex and difficult to understand. This was the first time a group of people devoted the resources to explain the laws to the community.

By the time the booklet was officially released, it was out of date. Anti-terrorism laws were introduced between the time the first edition was printed and when it was launched. A second edition was completed and made available online from the AMCRAN and UTS CLC websites with funding assistance from the Law and Justice Foundation of NSW. However, that too, was out of date before it hit the printing presses as a new slew of legislation was introduced.

A third edition, together with translated versions in Arabic, Bahasa Indonesian and Urdu, was produced in 2007. This iteration included minor revisions to some of the finer legal points and new sections on the association offence, secrecy provisions, control orders, preventative detention and stop and search powers.

Now, in 2017, Australia has seen even more significant and extensive changes to anti-terrorism legislation. Since 2014, up to 7 counter-terrorism related bills passed have been passed and encoded into legislation despite concern from the legal community about the impact on civil liberties. The most significant changes include the new offences of advocating terrorism and genocide; the new offence of travelling to declared areas; laws affecting citizenship and passports; the introduction of named person warrants; the introduction of mandatory metadata retention laws; laws allowing control orders to apply to children as young as 14 years; and the increase of the

powers of both the Australian Security Intelligence Organisation (ASIO) and the Australian Federal Police (AFP). We expect there will be further amendments to come.

Consequently, with permission from AMCRAN, the Muslim Legal Network (NSW) has updated the previous booklets and produces this fourth edition. The Muslim Legal Network (NSW) thanks AMCRAN for entrusting it with this task.

AMCRAN and the Muslim Legal Network (NSW) would like to thank all of those who contributed to the booklet and the community for its continued support.

February 2017

Part 1: Introduction

Since 2002, the Australian Government has introduced many pieces of anti-terrorism legislation as part of its campaign to guarantee Australia's security and comply with its international obligations. This booklet answers general questions about Australia's anti-terrorism laws.

There are two main types of 'terrorism' offences in Australia: crimes related to 'terrorist acts' and crimes related to 'terrorist organisations'. **Part 2** of this booklet discusses both types of terrorism offences, as well as other terrorism-related offences such as the sedition offences.

In Australia, there are a number of agencies responsible for investigating and responding to national security. **Parts 3** and **4** of the booklet explain the extended powers and functions of the Australian Security Intelligence Organisation (ASIO) and the Australian Federal Police (AFP).

Though their powers are broad, ASIO and the AFP must be able to justify their actions. There are avenues of redress for people adversely affected by the improper exercise of these powers, some of which are outlined at **Part 9** of the booklet.

The AFP and ASIO often work together with state Police, who have a range of powers that differ across the states. The powers of state Police are briefly outlined at **Part 10** of this booklet.

Part 5 discusses Control Orders which allow the Government to impose conditions or restrictions on a person's liberty to protect the public, prevent a terrorist act or stop someone from engaging in hostile activity in a foreign country. A person does not need to be charged with a criminal offence to be subject to a Control Order.

Whilst privacy is a general right enjoyed by most people, social media accounts, emails and other communication applications may be subject to monitoring without a warrant under the metadata retention provisions or interception by way of a warrant issued to the AFP or ASIO. **Part 6** of the booklet discusses the circumstances under which ASIO or Police can monitor your communications, emails, messages and computer files.

Part 7 discusses the possible non-criminal consequences of engaging in terrorism-related conduct or being charged with a terrorism offence. These include consequences to citizenship, travel documents, visas and welfare payments.

Travelling overseas to certain parts of the world has become more complicated due to new laws about 'declared areas' and expanded powers of the newly-established Australian Border Force (ABF). **Part 8** explains the new offence and the ABF's powers to question and search travellers.

This area of law is complex and is developing rapidly. We strongly advise you to read this booklet carefully in its entirety to understand your rights, and keep an eye out for updates on the websites listed at **Part 11**.

You should not rely on this booklet as substitute for legal advice because it is only intended as general information. If you find yourself in a difficult situation, you should contact your lawyer immediately for legal advice if the situation allows it.

Some organisations that may assist you are included at the end of the booklet.

Part 2: ‘Terrorism’ Offences

There are two main types of ‘terrorism’ offences under Australian law. The first type broadly encompasses actions that may lead to a ‘terrorist act’, whether or not a terrorist act actually occurs. This includes funding, advocating or preparing for a terrorist act. The second type of terrorism offence criminalises actions relating to ‘terrorist organisations’, such as directing, being a member of, or otherwise associating with or supporting terrorist organisations. This Part discusses both types of terrorism offences, as well as other terrorism related offences such as the sedition offences.

2.1 Crimes related to ‘terrorist acts’

2.1.1 What is a ‘terrorist act’?

For an action to be a ‘terrorist act’ under Australian law, it must be done with the intention to coerce or influence the public or any government by intimidation to advance a political, religious or ideological cause. You must also do, *or threaten* to do, one of the following:

- cause serious physical harm or death to a person;
- endanger a person;
- cause serious damage to property;
- endanger another person's life;
- create a serious health or safety risk to the public; or
- seriously interfere with, disrupt, or destroy infrastructure, like the phone system or electricity network.

An act may not be considered a ‘terrorist act’ if the action is advocacy, protest, dissent or industrial action and is not intended to cause serious physical harm to a person, death or endanger the life of a person or create a serious risk to public health or safety.

2.1.2 What are the ‘terrorist act’ offences and what are their penalties?

A person commits a ‘terrorist act’ offence regardless of whether the act actually takes place. All the prosecution must show is that there was a threat or plan to commit a terrorist act of some kind. The prosecution does not

need to identify a particular act of terrorism. For example, it is an offence to plan to explode a bomb, regardless of whether you have yet decided *where* or *when* you intend to explode that bomb.

Further, you may be found guilty of a ‘terrorist act’ offence even if you did not know your actions were connected with a ‘terrorist act’. This occurs in circumstances where you are aware of a substantial risk that your action was connected to a ‘terrorist act’ and it was unjustifiable to take that risk. This is known as being ‘reckless’.

‘Terrorist act’ offences include:

Table 1: ‘Terrorist act’ offences

Offence	Maximum penalty	
	Knowingly	Recklessly
Engaging in a terrorist act	Life imprisonment	
Any act done in preparation for or planning terrorist acts	Life imprisonment	
Financing a terrorist act or a terrorist, whether or not the act occurs, with money, weapons or equipment*	Life imprisonment	
Providing or receiving training connected with preparing for, engaging in, or assisting in terrorist acts	25 years	15 years
Possessing things connected with preparing for, engaging in, or assisting in terrorist acts	15 years	10 years
Collecting or making documents connected with preparing for, engaging in, or assisting in terrorist acts	15 years	10 years
Entering foreign countries with the intention of engaging in hostile activities	Life imprisonment	
Preparing, accumulating weapons, providing or participating in training, or giving or receiving goods with the intention of engaging in hostile activities overseas	Life imprisonment	
Entering or remaining in a declared area**	10 years	
Advocating terrorism*	5 years	
Advocating genocide*	7 years	

- * *These are further explained below*
- ** *For more information, see Part 8.1*

2.1.3 What if the ‘terrorist act’ occurs overseas?

All of the above offences apply regardless of where they are committed.

2.1.4 What is the offence of ‘financing’ terrorism and terrorists?

It is against the law to provide or collect funds, or to make funds available to another person, where there is a substantial risk the funds will be used to facilitate or engage in a terrorist act. The maximum penalty is life imprisonment. You may be found guilty of the offence even if a terrorist act does not occur.

If you make a donation to a charity, you may commit the offence of ‘financing’ terrorism if you knew there was a substantial risk that the donation would be used for terrorism purposes and it was unjustifiable to take the risk (i.e. you were ‘reckless’).

When making a donation to a charity or a community organisation, AMCRAN and the Muslim Legal Network (NSW) suggest you:

- make reasonable inquiries about the organisation to find out about its activities, including reviewing its website and annual reports, to check the organisation is transparent with its programs and funds;
- inquire with the organisation about where the funds will be going and for what purpose, and who will ultimately receive the funds;
- keep written records of your inquiries, including who you spoke to and the date you spoke to them;
- keep receipts or records of your donations;
- ensure the organisation you are donating to is not a 'proscribed terrorist organisation' or on the 'Consolidated List' (see Parts 2.2.1 and 2.2.2);
- consider donating to specific projects or programs and keep written records of that intention; and
- check third-party or government databases, such as the Register of the Australian Charities and Not-for-profits Commission (ACNC), for background details of the organisation and/or financial reports. The website for ACNC is: <http://www.acnc.gov.au>

This is **not** an exhaustive list of things you can do to ensure you are an informed donor.

2.1.5 What is the offence of 'advocating terrorism'?

It is an offence to 'advocate' the doing of a 'terrorist act' or the commission of a 'terrorism offence' if you are 'reckless' as to whether another person will actually go through with it.

To 'advocate' means to 'counsel, promote, encourage or urge'. You are 'reckless' if you know that there is a substantial risk that your behaviour will 'advocate' terrorism and it is unjustifiable to take that risk.

This law applies whether the advocated terrorist act occurs in Australia or overseas.

The offence of 'advocating terrorism' is broad. It potentially covers a range of situations, including:

- encouraging or promoting an armed struggle against a government or occupying force of a country or region - this law applies regardless of the humanitarian record of that government or occupying force;
- 'sharing' or 'liking' a post on social media about the commission of a 'terrorist act' or a 'terrorism offence';
- supporting or encouraging political boycotts that may lead to serious disruption or interference with infrastructure.

Unfortunately, the exact situations to which this law could apply are unclear as its wording is very broad. The provision was introduced in 2014 and there has been no clear court guidance to date.

The defence of 'good faith' is available if you are charged under this provision. This includes if you, in good faith, try to:

- show that any government policies, counsels or actions are mistaken;
- point out errors or defects in a government, the Constitution, legislation or administration of the Commonwealth or any State or Territory with a view to reforming those errors or defects;
- urge another person to lawfully bring change to any law, policy or practice either in Australia or abroad;
- point out anything that produces feelings of ill-will or hostility between different groups with the aim of resolving tensions;
- discuss anything in connection with an industrial dispute or an industrial matter; or
- publish a report or commentary about a matter of public interest.

It is your responsibility to prove to the court that one of the above defences applies to you.

When considering a defence, the court can also take other factors into account. This includes whether the acts were done:

- for the development, performance, exhibition or distribution of an artistic work; or
- during any statement, publication, discussion or debate made or held for genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
- in the dissemination of news or current affairs.

As a safeguard, AMCRAN and the Muslim Legal Network (NSW) urge those who wish to participate in a public discussion about terrorism, including on social media, to make it clear at the outset that the discussion is not intended to encourage acts of violence.

Furthermore, to ensure that you do not inadvertently breach any of the terrorism-related offences, it is good practice when using social media (such as Facebook, Instagram, Twitter) and other forms of communication (such as Gmail, WhatsApp, Viber, Facebook Messenger, Wickr, etc.) to:

- ensure the content you are posting, sending or storing may not be considered inappropriate or potentially illegal. An example is sharing information in the form of a video, image or message which may call for or advocate an act of violence; and
- if you communicate in group conversations or ‘chats’ which may distribute suspect materials, delete the material and leave the ‘chat’. You can be charged with possessing the potentially illegal material (even if on your phone/tablet).

2.1.6 What is the offence of ‘advocating genocide’?

It is an offence to ‘advocate’ genocide if you are ‘reckless’ as to whether another person will engage in ‘genocide’.

To ‘advocate’ means to ‘counsel, promote, encourage or urge’. You are ‘reckless’ if you know that there is a substantial risk that your behaviour will ‘advocate’ genocide and it is unjustifiable to take that risk.

‘Genocide’ refers to acts done with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. These include such acts as:

- causing physical or mental injury to members of the group;
- deliberately inflicting conditions of life to bring about the physical destruction of the group;
- imposing measures intended to prevent births; or
- forcibly removing the group’s children.

You will be found guilty of ‘advocating genocide’ even if the genocide does not occur.

As with the offence of ‘advocating terrorism’, the exact situations to which this law applies are unclear. This is a new law and the wording is very broad.

If you are charged under this law, the defence of ‘good faith’ applies. This is the same defence that applies if you are charged with ‘advocating terrorism’ (see Part 2.1.5). It is your responsibility to prove to the court that one of the defences applies to you.

2.2 Crimes related to ‘terrorist organisations’

2.2.1 What is a ‘terrorist organisation’?

Australian law defines three types of ‘terrorist organisations’.

The first is any organisation that is directly or indirectly engaged in preparing, planning, assisting or fostering the doing of a terrorist act or advocating the doing of a terrorist act, whether or not any terrorist act actually occurs. Even if an organisation is not on the banned list (see the second type of terrorist organisation below), it could still be an offence to be involved with the organisation. In these situations, the fact that the organisation is a terrorist organisation would have to be proved in court.

The second type is a ‘proscribed’ (i.e. banned) organisation, specifically banned in Australia by the Attorney General under the ***Criminal Code Regulations*** 2002. ‘Proscribed’ organisations are discussed at Part 2.2.2 of this booklet.

The third is an organisation or an individual listed by the Foreign Minister under the ***Charter of United Nations Act*** 1945 (Cth) (the 'Consolidated List'). The Foreign Minister may list an organisation or individual if they are satisfied that the person or organisation commits terrorist acts. Under this listing law, a 'terrorist act' is not defined. There are currently over 3,000 individuals and organisations on the Consolidated List.

2.2.2 When can the Government 'proscribe' an organisation?

The Australian Government can ban an organisation if it is satisfied the organisation 'advocates' terrorism or is directly or indirectly engaged in preparing, planning, assisting or fostering the doing of a 'terrorist act'.

An organisation 'advocates' terrorism if it:

- directly or indirectly counsels or urges, or provides instruction on, the doing of a 'terrorist act'; or
- directly praises the doing of a 'terrorist act' where there is substantial risk the praise may lead a person to engage in a 'terrorist act'.

An organisation can be deemed to 'advocate' terrorism whether or not a 'terrorist act' occurs.

As of 1 February 2017, organisations banned as ‘terrorist organisations’ are as follows:

Table 2: Proscribed terrorist organisations as of 1 February 2017

- Abu Sayyaf Group
- Al-Murabitun
- Al-Qa’ida (AQ)
- Al-Qa’ida in the Arabian Peninsula (AQAP)
- Al-Qa’ida in the Islamic Maghreb (AQIM)
- Al-Qaida in the Indian Subcontinent (AQIS)
- Al-Shabaab
- Ansar al-Islam
- Boko Haram
- Hamas’ Izz al-Din al-Qassam Brigades
- Hizballah’s External Security Organisation (ESO)
- Islamic Movement of Uzbekistan
- Islamic State
- Islamic State in Libya (IS-Libya)
- Islamic State in Sinai Province (IS-Sinai)
- Jabhat al-Nusra
- Jaish-e-Mohammed
- Jamiat ul-Ansar (JuA) (formerly Harakat Ul-Mujahideen – HUM)
- Jemaah Islamiyah (JI)
- Kurdistan Workers’ Party (PKK)
- Lashkar-e-Jhangvi
- Lashkar-e-Tayyiba
- Palestinian Islamic Jihad

2.2.3 What are the offences relating to ‘terrorist organisations’ and what are the penalties?

Just like ‘terrorist act’ offences, different penalties apply depending on whether you *knew* that the organisation you were involved with was a terrorist organisation or if you were *reckless*. You are considered to be ‘reckless’ if you were aware of a substantial risk that it was a terrorist organisation and it was unjustifiable to take that risk.

The offences relating to ‘terrorist organisations’ and their penalties are as follows:

Table 3: Terrorist organisation offences

Offence	Maximum penalty	
	Knowingly	Recklessly
Directing the activities of a terrorist organisation	25 years	15 years
Recruiting for a terrorist organisation (including inducing, inciting or encouraging other people to join or participate)	25 years	15 years
Providing, receiving or participating in training with a terrorist organisation*	25 years	25 years
Directly or indirectly receiving funds from, making funds available to, or collecting funds for a terrorist organisation*	25 years	15 years
Providing support or resources to a terrorist organisation to help them engage in a terrorist act	25 years	15 years
Formal or informal membership of a terrorist organisation*	10 years	
Associating with a member of a terrorist organisation or a person who directs or promotes the activities of a terrorist organisation where the association provides support intended to assist the organisation to expand or exist*	3 years	

* *These are further explained below*

2.2.4 Directly or indirectly receiving funds, making funds available or collecting funds

It is an offence to directly or indirectly receive funds from, make funds available to, or collect funds for or on behalf of a ‘terrorist organisation’, if you knew or were reckless as to whether or not it was a terrorist organisation.

Scenario 1: Donating to charities

Ann donated money to her local charity to assist the homeless in Pakistan as she has done for several years. Ann has no reason to believe her charity has any connection with any of the organisations banned by the Australian Government as terrorist organisations. However, if Ann has reason to believe that the organisation is directly or indirectly engaged in preparing, planning, assisting or fostering the doing of a 'terrorist act', then she may be committing an offence, if that organisation is later proved to be a terrorist organisation by a court.

Ann wants to protect herself as she knows the laws are very broad, so she does the following things:

- she confirms with the charity that the money will be directed to a homelessness project and will not be used for any other purpose;
- she makes reasonable inquiries about the charity to find out about its activities, including reviewing its website and contacting someone from the charity, to check the organisation is transparent with its programs and funds;
- she keeps written records of her inquiries and receipts of her donations; and
- she confirms that the charity is not banned in Australia and is not one of the organisations on the 'Consolidated List' (see Parts 2.2.1 and 2.2.2).

After taking the above steps, Ann is satisfied that there is no substantial risk of the money being used for the purposes of a terrorist act.

What happens if the funds meant for the homelessness project were later passed on by the charity to another organisation and were used in a terrorist act? Could Ann be convicted of an offence?

To make out a charge against Ann, the prosecution needs to prove beyond a reasonable doubt that Ann was reckless as to the circumstances. This means there needs to be evidence that Ann was aware of a substantial risk that the funds could have been used by the charity to fund a terrorist act. To be guilty, it would need to be unjustifiable for Ann, knowing all the circumstances and being aware of a substantial risk, to take that risk.

Exceptions for the ‘receiving funds’ offence

It is an offence to receive funds from a terrorist organisation unless they were received solely for the purpose of:

- providing legal representation for proceedings relating to terrorism charges;
- providing assistance to ensure that the organisation complies with Commonwealth or State laws; or
- providing legal advice or legal representation on whether an organisation is a terrorist organisation.

2.2.5 Membership of a terrorist organisation

It is an offence to be a member of a terrorist organisation, even informally. You are regarded as a member if you have taken steps to become a member. To be charged under this offence, you have to know that the organisation is a terrorist organisation. If you find out that an organisation you belong to is a terrorist organisation, you should take all reasonable steps to cancel your membership as soon as possible.

2.2.6 Training with a terrorist organisation

It is an offence to provide training to, or receive or participate in training from, a terrorist organisation. You may commit this offence even if the training is for a completely innocent purpose. If you train with a banned terrorist organisation, it is your responsibility to prove that you were not reckless as to the identity of the organisation. If you are unable to do so, then you could be found guilty of this offence even if the prosecution cannot prove that you knew or were reckless as to the identity of the organisation.

2.2.7 Associating with a terrorist organisation

‘Associating with terrorist organisations’ means to meet or communicate with a person who is a member of a ‘terrorist organisation’ or with someone who promotes or directs the activities of a ‘terrorist organisation’.

It is an offence to associate with a ‘terrorist organisation’ if the association occurs two or more times and provides support which is intended to assist the organisation to expand or continue to exist.

This offence only applies to organisations that are already banned by the Government (see Part 2.2.2). However, you may commit the offence even if you did not know that the organisation was on the banned list, as long as you knew that the organisation was ‘engaged in preparing, planning, assisting or fostering the doing of a terrorist act’.

There are exceptions to this offence. For example, it is acceptable for a close family member to associate with a person connected with a terrorist organisation about a purely family or domestic matter. There is also an exception if the association takes place in the course of practising a religion at a place of public religious worship, or if the association is to provide humanitarian aid or legal advice or representation about certain terrorist, security and criminal related matters.

2.3 Other terrorism-related offences

2.3.1 Dealing with the assets of organisations on the UN Charter Act (the ‘Consolidated List’)

The *Charter of United Nations Act* 1945 (Cth) makes it illegal:

1. for a person to deal with, use or facilitate the dealing or use of the money or assets of a person or organisation listed under the ***Charter of United Nations Act*** 1945 (Cth) (‘Consolidated List’ – see Part 2.2.1 above); and
2. for a person or a company to directly or indirectly make an asset available to a person or organisation that is on the Consolidated List.

‘Assets’ include money, cheques, credit cards, property, shares, securities, bonds, debt instruments and letters of credit.

In relation to (1), possible acts include possessing, concealing or disposing of such assets. It can, however, be a defence if the dealing was for the purpose of preserving the asset or if you made an honest but *reasonable* mistake in dealing, using or facilitating the use or dealing of those assets.

In relation to (2), this includes making donations to the organisation or collecting money on behalf of the organisation, which is then supplied to the organisation. Like (1), it is also a defence here if you made an honest but **reasonable** mistake in making the asset(s) available.

The Australian Transactions and Reports Analysis Centre (AUSTRAC) monitors bank accounts and the movement of money in Australia. The Minister may freeze assets if they belong to or are derived from a listed terrorist organisation.

If you are the owner or holder of such an asset, you can apply to the Minister for permission to deal, use or make available the asset in a specified way.

2.3.2 Engaging in hostile activities overseas

It is against the law for Australian citizens and residents to engage in hostile activities overseas or to enter a foreign country with the intention of engaging in hostile activities. 'Engage in a hostile activity' includes:

- overthrowing the government of a foreign country;
- committing a terrorist act in a foreign country;
- intimidating the public, or a section of the public, in a foreign country;
- killing or injuring a politician or public official of a foreign country; or
- destroying or damaging any property of a foreign government.

The offence of 'engaging in hostile activity' does not apply if you are a soldier in an armed force of a foreign government, or a member of an armed force approved by the Australian Attorney General.

If you commit this offence, then the court can send you to prison for any period – even for the rest of your life.

2.3.3 What are the 'sedition' offences?

Sedition refers to language or speech that incites rebellion against a government or its public order. The maximum penalty for committing a sedition offence is 7 years imprisonment. You may commit a sedition offence if you:

- urge another person to overthrow by force or violence the Australian Constitution, any Australian Government or the lawful authority of the federal Government;
- urge another person to interfere by force or violence with federal parliamentary elections;
- urge a racial, religious, national or political group to use force or violence against another group in circumstances where it would threaten the peace, order and good government of the Commonwealth; or
- urge another person to engage in conduct intended to assist an organisation or country at war with the Commonwealth, or engaged in armed hostilities against the Australian Defence Force. It is a defence if the assistance was to provide humanitarian aid.

The sedition offences cover conduct that is both **intentional** and **reckless** to the result and circumstances.

It is a defence to these offences if you acted in good faith. It is the same 'good faith' defence that is available to persons charged under the 'advocating terrorism' provisions – see Part 2.1.5 above. It is your responsibility to prove you have met the defence.

Introduction to the Australian Security Intelligence Organisation (ASIO) and the Australian Federal Police (AFP)

It is very important to understand the differences between the Australian Security Intelligence Organisation (ASIO) and the Australian Federal Police (AFP) as they have different powers.

For example, ASIO officers may only search, question or detain you if they have a warrant to do so. Before obtaining a warrant from a Federal Magistrate or Judge, ASIO must obtain the Attorney-General's consent and reasonably believe that it would substantially help with the collection of intelligence about a security matter.

AFP or state Police officers also need to obtain a warrant to do certain things, but they may detain you immediately without a warrant if they reasonably suspect that you have something that could cause death or serious harm to a person, or substantial damage to a place or a thing. However, **you should never talk to Police unless your lawyer is present except to confirm your name and address.** This is because anything you say to them may be used in evidence against you. This applies whether you are formally interviewed by the AFP or if you speak with them 'off the record'. Even if you have already given information to ASIO, you should still not talk to the AFP without your lawyer.

The AFP, ASIO and state Police often work together. For example, the AFP may take you into detention for questioning by ASIO, or they may be asked by ASIO to help gain entry into premises to help minimise the risk to ASIO officers conducting a search. Either the AFP or state Police (sometimes together) may conduct an arrest and questioning.

Part 3 of this booklet discusses the powers of ASIO and Part 4 discusses the powers of the AFP. State Police have a range of powers that differ across the states. The powers of state Police are briefly outlined in Part 10 of this booklet.

Part 3: Australian Security Intelligence Organisation (ASIO)

3.1 Who is ASIO?

The Australian Security Intelligence Organisation (ASIO) is an agency that gathers intelligence or information relating to security. ASIO gathers intelligence by looking at publicly available sources such as television, radio and social media; questioning people; using spies and informants; and, intercepting communications such as mail and telephones under warrants. ASIO's powers are set out in the ***Australian Security Intelligence Organisation Act*** 1979 (Cth).

ASIO is not responsible for law enforcement activities such as arresting or charging people. This is the responsibility of state and federal Police.

3.2 What powers does ASIO have?

ASIO has 'special powers' to collect intelligence under warrants. These include warrants to enter and search premises (see Part 3.4), to use listening and tracking devices, to access computers remotely, and to examine postal records (see Part 6.2). ASIO is not allowed to search a person or premise without a warrant.

ASIO also has the power to question people (see Part 3.5) and detain people for questioning under warrants in terrorism-related matters (see Part 3.6).

ASIO must obtain the consent of the Minister, or a person the Minister has delegated that power to, before applying for a warrant from a Federal Magistrate or Judge. The Minister must reasonably believe that the warrant will substantially assist with the collection of intelligence about a terrorism matter before consenting to make the request.

3.3 What should I do if I am contacted by ASIO for a ‘chat’?

You may be contacted by ASIO for an ‘informal chat’. If there is no warrant to question or detain you, then you **do not** have to go anywhere with ASIO officers and/or answer any of their questions.

It is important to know that any information you give to ASIO in an ‘informal chat’ may later be used against you and/or any other person, and may be provided to Police. **You should never voluntarily speak with ASIO until you have spoken to a lawyer and received legal advice.**

If you are contacted by an ASIO officer for an ‘informal chat’, you should:

- ask the officer to identify themselves and what they want;
- ask for some kind of confirmation that the officer is in fact from ASIO;
- seek legal advice before agreeing to meet with ASIO, particularly if you are unsure whether any information you have could have a detrimental effect on you or another person;
- if you decide to meet with ASIO, then ask for a lawyer to attend the meeting with you;
- if you decide to meet with ASIO without a lawyer, you should make arrangements for a friend to sit in with you during the meeting and take detailed notes of what is discussed at the meeting, as well as record the meeting if ASIO consents;
- make a record of the names of the ASIO officers you meet with, and the date and place at which you meet;
- ensure the meeting is held in a place that provides reasonable privacy; and
- keep a detailed record of questions asked and answers provided, as well as any documents shown.

3.4 ASIO search powers

3.4.1 Can ASIO search my house?

ASIO may only search your house if they have a warrant and they can only do the things set out in the warrant. If the warrant specifies that they can only enter your premises at a certain time, you do not have to allow them access at any other time. Make sure you check the warrant to see precisely what the ASIO officer is permitted to search. You should ask for a copy of the warrant and check that it has been signed by the Minister.

A warrant may enable ASIO to search for any record or 'thing' that they consider relevant to a security matter. A 'thing' could be computers, lists of names, a mobile phone, etc. ASIO may search through electronic equipment, safe boxes, drawers, parcels, envelopes or other containers. ASIO may inspect, examine, copy and remove any record or thing.

3.4.2 If the owner is not at home, do I still have to let ASIO in?

If you are the occupier of the place or car being searched, or if you represent the occupier, you are entitled to see a copy of the warrant. If the officer has a warrant to search those premises then they can enter whether or not you are the owner of the premises.

3.4.3 Can ASIO take things away, including my passport, when searching my house?

Yes. ASIO may remove and keep for a reasonable time any record or thing relevant to a security matter they find during a search under a valid warrant. Your passport may only be taken during a search if it is somehow relevant to a security matter for the purpose of inspecting, examining or copying it. Your passport can also be retained if ASIO considers it prejudicial to security to return it to you.

3.4.4 Can ASIO search through my computer files?

If they have a warrant, ASIO may gain access to your computer or other electronic equipment for the purpose of obtaining data believed to be relevant to a security matter. ASIO may inspect and examine any data, including printing, removing and copying it. ASIO cannot alter, delete or add to data if it will affect the use of the device or cause any damage or loss to the device, unless it is necessary to obtain the data. ASIO can only keep your device for a maximum period of 6 months.

3.4.5 Can ASIO search my body?

When the law talks about searching a person, there are three different types of searches:

- **frisk search:** where the officer quickly runs his or her hands over your outer clothing. You may be asked to remove any clothing or hand over any item you are carrying for examination. However, removing clothing and handing over of items is *voluntary* and you have the right to refuse.
- **ordinary search:** you may be asked to remove items like your overcoat, coat, jacket, gloves, shoes or hat to be examined. This may include pockets or bags or other things in your possession. You must cooperate when asked to remove these items.
- **strip search:** you may be asked to remove all of your clothes so an officer can determine whether you have a dangerous item or something that you could use to escape. The officer may examine your clothes and your **external** body, but **not** your body cavities. A *strip search* **must** be done in private and by an officer of the same gender. With the exception of a medical doctor and family member, people of the opposite gender are not allowed to view the *strip search*. The officer must not remove more clothes, or look at you for longer than is necessary.

ASIO **does not** have the power to conduct a strip search under a warrant to search your premises and you should not give your consent to a strip search. ASIO may only conduct a strip search if you have been detained.

However, the warrant may authorise ASIO to conduct a frisk search or an ordinary search if you are at, or near, the premises where a search warrant is being executed. If they find anything, they may also have the power to inspect or examine the thing, make copies, or remove the thing from you altogether.

3.4.6 Can I stop an ASIO officer from the opposite gender from touching me?

The law says that ordinary and frisk searches must, if practicable, be conducted by a person of the same gender. This means that the ordinary search and the frisk search must be carried out by a person of the same gender unless there is a good reason not to (such as in an emergency or practical difficulty). A strip search must **only** be conducted by someone of the same gender.

3.4.7 Do I have to cooperate with ASIO?

When dealing with ASIO you should remain calm at all times. You do not have to follow any ASIO directions if they do not have a warrant. However, if ASIO does have a warrant, it is an offence to refuse to cooperate. ASIO warrants allow them to use force that is necessary and reasonable to do the things specified in the warrant.

3.4.8 Can I watch ASIO search through my things?

Yes. Generally search warrants do not allow ASIO to detain you in any way, unless this is specified in the warrant. You are free to move about and ASIO cannot stop you from being in the same room they are searching, as long as you do not try to disrupt the search. You are also free to leave if you wish.

3.5 ‘Questioning warrants’ by ASIO

As with searching, ASIO needs a warrant to detain or question you. The warrant may be a questioning warrant requiring you to present yourself at a specific time and place for questioning; or it may be a questioning and detention warrant authorising ASIO to have the AFP take you into custody immediately for questioning.

3.5.1 What is a ‘questioning’ warrant by ASIO?

A ‘questioning’ warrant requires a person to present themselves at a specific time and place for questioning in the presence of a ‘prescribed authority’. A ‘prescribed authority’ is a former or serving Judge or the President (or Deputy) of the Administrative Appeals Tribunal. You have the right to contact a lawyer before appearing for questioning.

A ‘questioning’ warrant is issued in circumstances where there are reasonable grounds to believe that it will substantially assist in the collection of intelligence that is important in relation to a terrorism offence. The warrant must specify certain actions ASIO is authorised to do, such as requiring you to provide information or produce records. A ‘questioning’ warrant may also authorise ASIO to make copies of records you produce.

You **must** truthfully answer all questions permitted by a ‘questioning’ warrant. It is an offence to not appear for questioning or to give false and misleading answers under a ‘questioning’ warrant, punishable by up to 5 years imprisonment. You should not, however, answer questions if the ‘prescribed authority’ is not present during the questioning process.

3.5.2 What happens if I am being questioned by ASIO under a warrant?

If you have been taken into custody under a warrant, you should be immediately brought before a ‘prescribed authority’ for questioning. This person is there to make sure that your questioning is conducted properly according to the law.

Remember, if you are being questioned under an ASIO warrant, any questioning must occur before the ‘prescribed authority’. If you are alone in a room with an ASIO officer you do not have to answer any questions.

During the questioning process, ASIO may ask you to provide information, or produce records or other things. They are allowed to make copies of any documents you provide. Your questioning will be video-recorded. The ‘prescribed authority’ will inform you that the questioning is being recorded and will state the time and date of the questioning.

3.5.3 What does ASIO have to tell me if I am being questioned?

When you are first brought before the ‘prescribed authority’, he or she must explain:

- his or her role and the reason for his or her presence and the presence of anybody else questioning you;
- how long you can be questioned or detained;
- what the warrant authorises ASIO to do;
- that it is against the law to fail to answer ASIO’s questions or to fail to provide them with information it requests;
- how long the warrant is in force;
- your right to make an oral or written complaint to the Inspector-General of Intelligence and Security (IGIS) in relation to ASIO (for further information on IGIS see Part 9);
- your right to make an oral or written complaint to the Commonwealth Ombudsman in relation to the AFP (for information on the Commonwealth Ombudsman see Part 9);
- your right to apply to the Federal Court to review your warrant or to seek a remedy relating to their treatment of you under the warrant (this must be repeated to you once in every 24 hours); and
- whether there are any limits on contact with others, and if so, who you may contact and when.

If you are unsure about anything, do not hesitate to ask the ‘prescribed authority’ to explain it to you as he or she must make sure that you understand the explanations.

3.5.4 Do I have a right to an interpreter?

If you require an interpreter, you may request one. The ‘prescribed authority’ must arrange for an interpreter unless he or she reasonably believes that you are able to communicate with reasonable fluency in English.

If you are allowed to have an interpreter, do not say anything until the interpreter arrives as the questioning cannot start until your interpreter is present.

3.5.5 Do I have a right to have my lawyer present when ASIO questions me under a warrant?

The warrant will specify that you are allowed to contact a lawyer of your choice. However, this may be denied if the 'prescribed authority' decides that contacting a particular lawyer may alert another person that a terrorism offence is being investigated, or that some document you are required to produce may be destroyed, damaged or altered. If a lawyer is allowed to be present, he or she must be provided with a copy of the warrant.

If a lawyer is allowed to be with you during questioning, he or she is not allowed to interrupt questioning except to ask for clarification of ambiguous questions. Your lawyer may be removed if the 'prescribed authority' thinks he or she is unduly disrupting the questioning. If this happens, you may contact another lawyer.

During breaks in questioning, you must be given reasonable opportunity for your lawyer to advise you, but your conversations may be monitored. While anything you tell your lawyer is privileged and cannot be used as evidence against you in and of itself, the information could still be relied on by ASIO to gather other evidence.

3.5.6 Do I have a 'right to silence' if I am being questioned by ASIO?

If there is no warrant, you do not have to answer any question by ASIO nor speak to them. If, however, you are subject to a 'questioning' warrant by ASIO, then you **must** truthfully answer all questions permitted by the warrant. It is an offence not to do so. There is no 'right to silence' in this situation. That is why it is very important to understand whether ASIO is asking you to 'voluntarily' speak with them and provide information (even if they are, for example, searching your house under a search warrant), or interrogating you under a questioning warrant. **You should always try to speak to a lawyer first.**

Any information you give to ASIO under a warrant cannot be used against you in court. If, however, you are charged with an offence under the **ASIO Act** (such as giving a false statement) then the information may be used against you. The information may also be used to further ASIO's investigation and lead them to other information that may be used against you at a later time.

3.5.7 How long can I be questioned under a 'questioning' warrant by ASIO?

You may be questioned by ASIO under a 'questioning' warrant for a maximum of 24 hours in 8 hour blocks. If the 'prescribed authority' does not give permission for further questioning or you have been questioned for 24 hours, you must be released immediately.

You cannot be questioned continuously for more than 8 hours without being offered a break of at least 30 minutes. ASIO may continue to question you if you consent but it is best to ask for a break.

If you are being questioned with an interpreter, the maximum period of time they can question you is 48 hours. If they are not allowed by the prescribed authority to ask you further questions or if you have been questioned for 48 hours, they must release you immediately.

3.6 'Questioning and detention' warrants by ASIO

3.6.1 What is a 'questioning and detention' warrant by ASIO?

In certain circumstances, a person may be 'detained' for questioning by ASIO under a 'detention and questioning' warrant. This is the same as a questioning warrant with the addition that you can be detained. This occurs where there are reasonable grounds to believe that you may not appear before a 'prescribed authority', may destroy or damage a record, or may alert a person involved in a terrorism offence of the investigation.

As with 'questioning' warrants, ASIO must first obtain the consent of the Minister before applying for a 'detention and questioning' warrant. A person detained by ASIO is not charged with a crime.

3.6.2 How long can I be detained under a ‘questioning and detention’ warrant?

Under a ‘questioning and detention’ warrant you may be detained for a maximum of 7 days.

3.6.3 What do I have to do if I am specified in a ‘questioning and detention’ warrant?

In addition to the requirement to truthfully answer questions, you must:

- surrender all Australian and foreign travel documents (for the period specified under the warrant);
- not leave Australia without the permission of ASIO;
- not tell others that you are being questioned or detained by ASIO if the warrant is still in force (which is no more than 28 days); and
- not tell others about any operational information relating to the warrant for 2 years after it expires unless permitted to do so.

It is an offence to not comply with these conditions, punishable by maximum 5 years imprisonment.

3.6.4 Can ASIO search me while I am being detained?

A ‘questioning’ warrant does not permit anyone to search you. However, under a ‘questioning and detention’ warrant, ASIO may conduct an ordinary search (see Part 3.4.5 for the definition of ordinary search and strip search). Being detained means that you have been taken into the custody of ASIO. In such situations, you will be subjected to an ordinary search as a matter of routine.

A strip search may also be conducted, but only if ASIO suspects you have an item that could present a danger or which could be used to help you escape. Anything taken must be returned to you when you are released. ASIO may ask a doctor to be present and may use reasonable force if necessary.

If a strip search is necessary, it must be conducted by an officer of the same gender, in a private area, out of the view or presence of any person of the opposite gender and people whose presence is unnecessary. If ASIO take away your clothing, you must be provided with some adequate clothing.

3.6.5 Can I communicate with my family members while being detained by ASIO?

Under a 'questioning and detention' warrant, you are restricted from contacting others. You do not have the right to contact a family member unless you are a minor (see Part 3.7 below) or such contact is specifically allowed by the warrant. However, you may contact the Inspector-General of Intelligence and Security (IGIS) or the Commonwealth Ombudsman if you want to make a complaint (for more information on complaints, see Part 9).

3.6.6 Can I tell other people what happened?

A 'questioning and detention' warrant will have an 'expiry date', which cannot be more than 28 days after it is issued. Before the warrant has 'expired', it is an offence to tell anyone, including the media, *anything* that reveals why the warrant was issued, what is in it, or any facts relating to how the warrant is executed. This offence carries a maximum penalty of 5 years imprisonment.

After the warrant expires, you may tell others a warrant was issued against you but you **cannot** reveal 'operational information' within 2 years from the expiration date. This includes telling the media, your family or anyone else (unless it was the lawyer or family member who was with you during questioning) any information that ASIO has, the source of the information, or any method or plan used by ASIO. The offences can apply to other people as well, such as any family member, friend or lawyer who was with you during the questioning or the execution of the warrant.

'Operational information' includes:

- information, or a source of information, ASIO has or had; and
- an operational capability, method or plan of ASIO.

If you tell someone about your detention or questioning under an ASIO warrant, then you are breaking the law. That other person will also be breaking the law if they were to tell anyone.

Scenario

William has not been home for 7 days as he has been detained and questioned under an ASIO warrant. Worried, his wife Ann calls Police. While Police are at their house, a journalist from The Australian Herald newspaper arrives, thinking that it might be an interesting story.

When William arrives home, he does not tell Police, his wife, or the journalist where he has been for the past 7 days if the warrant has not expired (that is, the period up to 28 days), as it would be against the law to do so.

If the warrant had expired, William could tell them he was questioned by ASIO, but not how he was questioned or what information ASIO had, until 2 years have passed from the expiration date.

However, the law allows you to disclose information in the following circumstances:

- to complain to the IGIS or the Ombudsman (see Part 9);
- to ask a lawyer for legal advice in connection with an issued warrant;
- to ask a lawyer for legal representation in legal proceedings related to an issued warrant, or your treatment under a warrant; or
- to anyone expressly permitted by the prescribed authority.

3.7 ASIO powers of detention and questioning of minors

3.7.1 Can I be detained by ASIO if I am under 16 years old?

No. If you are under 16 years of age, ASIO cannot detain or question you. If you are forcibly taken into custody, you should let ASIO and the 'prescribed authority' know as soon as possible that you are under 16. ASIO must not question or detain you and you must be released immediately.

3.7.2 Can I be detained by ASIO if I am between 16 and 17 years old?

If you are 16 or 17 years of age, you may be detained for questioning under a warrant by ASIO. The warrant must allow you to contact your parents, guardian or a person representing your interests, and have them be present during the questioning process.

3.7.3 How long can ASIO detain me if I am between 16 and 17 years old?

Under a 'questioning and detention' warrant, you can be detained for a maximum of 7 days, which is the same period of time that applies to adults.

You cannot be questioned for more than 2 hours at a time without a break.

3.7.4 Can I be searched if I am between 16 and 17 years old?

Yes, ASIO may conduct both an *ordinary* and a *strip search*. A *strip search* must be conducted with your parent or guardian in the room, or someone else who can represent your interests. The same rules that apply for general *strip search* apply here.

Part 4: Australian Federal Police (AFP)

4.1 Who is the AFP?

The Australian Federal Police (AFP) investigate federal crimes, including terrorism offences, and enforce federal criminal law. The AFP, like state Police, are responsible for arresting and charging people. AFP officers have general Police powers of search, arrest and detention.

4.2 AFP 'search' powers

4.2.1 Can Police search my house?

Yes. Ordinarily, Police require a warrant to search your house. However, with terrorism-related investigations, Police can search your house without a warrant if they reasonably suspect it is necessary to prevent an item at the house being used for a terrorism offence and there is a serious and imminent threat to a person's life, health or safety.

If during the search Police find something they suspect on reasonable grounds to be relevant to a criminal offence, they can secure your house in order to obtain a warrant.

If you are not at home during the time of the search, Police must notify you within 24 hours that the search occurred.

4.2.2 What is 'reasonable suspicion or belief'?

State and federal Police can stop, arrest and search you or your premises if they hold a belief or suspicion that you are or have been involved in a criminal offence. It is a two stage test: first, the officer must have a belief or suspicion; and second, that belief or suspicion must be 'reasonable'. What is 'reasonable' depends on the circumstances and what the Police officer knew at the time of arrest. You can challenge the exercise of an arrest or search in court.

It is always advisable not to resist Police at the time they are arresting you or trying to search you or your house. You should ask why you are being stopped, and whether you have to agree to a search or to answer their questions. You should also try to speak with a lawyer.

4.2.3 Can Police search my car without a warrant?

Yes. Police can search your car for a terrorism-related item without a warrant. The same laws that apply to Police searching a house without a warrant also apply to cars.

4.2.4 If I am not the owner of the house or car, do I still have to let Police enter?

Yes. As stated above, as long as Police reasonably suspect that it is necessary to prevent an item at the house being used for a terrorism offence and there is a serious and imminent threat to a person's life, health or safety, they are allowed to enter a house or search a car.

If you are not the owner of the house or car, you should tell Police. It is recommended you do not do anything that might prevent Police from carrying out the search. While searching, Police have the ability to use force that is reasonable and necessary to conduct the search. It is a criminal offence to prevent a Police officer from performing his or her duties.

4.2.5 Can Police take my things away, including my passport, during a search?

Yes. Police can take away anything they believe is connected to a terrorism offence in order to protect a person's life, health or safety if they believe (in the absence of a warrant) that the circumstances are serious and urgent. This can include a passport.

4.2.6 Can Police search and confiscate my phone?

Yes. As stated above, Police can take away anything they believe is connected to a terrorism offence to protect a person's life, health or safety if they believe (in the absence of a warrant) that the circumstances are serious and urgent. This includes mobile telephones. Whilst you are not obliged to give Police passcodes to access your phone, Police can confiscate phones and later download the content of those phones.

4.2.7 Do I have to cooperate with Police searches?

It is recommended that you do not prevent a Police officer from carrying out a search. They have the right to use reasonable and necessary force against you to carry out their duties. Further, you can be charged for preventing a Police officer from carrying out his or her duties. If there is any illegality with the search, this can be dealt with in a court of law at a later date.

4.2.8 Can I watch Police search through my things?

Yes. You have the right to be present while Police search your things. Police will also usually record a video of the search.

4.2.9 Can Police search my body?

Police have powers to search and detain you without a warrant if they reasonably suspect that you might have just committed, might be committing or might be about to commit, a 'terrorist act'.

Police can conduct a *frisk* or *ordinary* search on you for a terrorism-related item or for anything that is suspected on reasonable grounds to be under your immediate control. They do not need a warrant for this purpose.

During a *frisk* or *ordinary* search, a Police officer must not use more force, or subject you to greater indignity, than is reasonable and necessary in order to conduct the search. A *frisk search* is where a Police officer quickly runs their

hand over your outer clothing. An *ordinary* search requires you to remove items like an overcoat, jacket, hat or gloves to be examined.

The AFP can also *strip search* you if you have been arrested for a terrorism offence. A *strip search* involves you removing all your clothes and an officer examining the clothes and external body. Strip searches have the following conditions:

- they must not involve the search of any cavities;
- they must not involve the removal of more garments than is necessary; and
- they must not involve more visual inspection than is necessary to establish your involvement in the offence.

A child under 18 years or someone who is otherwise incapable (e.g. someone with an intellectual disability) can only be *strip searched* if they have been arrested or charged, or the search has been ordered by a Magistrate. Further, the search must be conducted in the presence of a parent or guardian of the person being searched or someone else who is capable of representing the interests of the person and who is acceptable to that person (as far as practicable).

4.2.9.1 Can I stop an officer of the opposite gender from touching me?

This depends on the situation. If an officer touches you to perform a function of their job, such as an arrest, then you can ask for an officer of the same gender to do this. If it is reasonable in the circumstances, Police should oblige. If it is not reasonable, it may not be possible.

In relation to searches, a *strip search* must not be conducted by a person of the opposite gender or in view or the presence of a person of the opposite gender. However, a medical practitioner of the opposite gender may be present during a strip search if a medical practitioner of the same gender is not available within reasonable time.

4.2.9.2 Do I have to remove my head and/or face covering if I am being searched by Police?

If a *strip search* is being conducted, then you will be required to remove your face and head covering. *Strip searches* **must** be conducted in a private place and by an officer of the same gender.

In an *ordinary search* where an officer may ask you to remove your hat, it is unclear whether you will be required to remove your head covering. If you are required to do so, then the search will be conducted by an officer of the same gender if practicable.

Even in situations where you are not subject to a search, a Police officer may still request that you remove your face covering to provide photo identification or to identify yourself. The viewing of the face must, as far as is reasonably practicable, be conducted in a way that provides reasonable privacy and as quickly as is reasonably practicable.

4.3 AFP questioning and arrest powers

4.3.1 Can Police ask me for my name on the street?

The AFP can ask you for your name and address if they reasonably believe you can help with their inquiries into a serious crime. It is an offence to refuse or give a false name and address if the officer tells you why they need your details. You could be fined up to \$900.

You should ask the officers for their name and place of duty if they ask you for your details. If they are in uniform, they should have an identification name or number on the front of their uniform. You should write it down and keep it. If the officers are not in uniform, you may ask for proof that they are really Police officers. Police officers must comply with this request. It is important that you take the time to write down the names or identification numbers of the officers so that if there is a need to follow-up with Police or to make a complaint, the process can go smoothly.

4.3.2 Can Police ask me for my name if they do not have reasonable suspicion?

If you are in an area controlled by the federal Government (such as an airport or shipping wharf) which is a 'prescribed security zone', then the officer is not required to have reasonable suspicion before asking you to identify yourself. Both the AFP and state Police can ask *anyone found* in the area to provide their name, address, reason for being in the area and proof of identity. It is an offence not to answer these questions. You could be fined up to \$3,600 for not answering. The Police officer must tell you it is an offence if you do not answer the questions, so you will know if this applies to you.

The Minister can declare a place to be a 'prescribed security zone' if they believe a terrorist act has occurred or is about to occur. The declaration remains in place for a maximum of 28 days (unless revoked/cancelled beforehand) and will be broadcast by a television or radio station, published in the *Gazette* and published on the internet.

4.3.3 Do I have to answer Police questions if they approach me on the street?

If you are approached by Police on the street, you **do not** have to answer their questions unless you are under arrest. If the officer reasonably believes that you can help them with their inquiries in relation to a serious offence (such as terrorism), then they can ask for your name and address. It is an offence to not provide this information if the officer explains why they need the details.

If a Police officer approaches you on the street and asks you to go with them to answer some questions, you should ask the officer if you are under arrest. If they say 'no', then you do not have to go with them. If they say 'yes', then you should go with them. However, you should **not** say anything else to Police unless you talk to your lawyer first.

4.3.4 What should I do if the Police contact me or approach me on the street?

In any encounter with Police, it is important to:

- remain calm;
- ask the officers to identify who they are and explain what they want;
- provide your name and address if asked. However, you are not obliged to make a statement or give an interview to Police, particularly if you have not first spoken to a lawyer. You are also not obliged to sign anything. This applies whether or not you are under an arrest;
- ask if you can speak to a lawyer before responding to any requests;
- if you have any trouble understanding anything they say, always ask for an interpreter. In the meantime, do not say anything, except to confirm your name and address;
- if they say they have a warrant, ask for a copy;
- if they have a warrant, check that the warrant has not expired;
- read the warrant - take note of exactly what the warrant authorises the officers to do. You do not have to do anything more than what is stated on the warrant;
- check if there are any restrictions or conditions on what the officers can do;
- keep a record of the names and identity numbers of the Police officers visiting you, the date and the time;
- keep a detailed record of any contact, touching, harassment or intimidation by any officer that you experience; and
- try to take a video on your phone of the search or the conversations you have with Police, especially in instances when Police are not recording.

4.3.5 Can Police arrest me if I am on the street?

The AFP may obtain a warrant to arrest you if they have a reasonable belief that you have committed a crime or that you are committing a crime.

If there is a warrant, it must name or describe the person to be arrested and briefly state the reasons for the arrest. If you are arrested under a warrant, you must be brought before a Magistrate as soon as possible. A warrant to arrest you only expires when you are arrested.

The AFP may also arrest you without a warrant if they reasonably believe that you have committed or are committing an offence. As soon as Police cease to have reasonable grounds to believe that you committed the offence, they must release you.

4.3.6 Can Police enter private premises to arrest me?

Whether Police have a warrant or not, they can enter premises if they reasonably believe the person to be arrested is on the premises. The officer should not try to enter a house (or anywhere where people sleep at night) to search for or arrest you between 9 pm and 6 am. However, if Police reasonably believe that it is not practical to arrest you at the house or elsewhere during the day or that evidence might be hidden, lost or destroyed unless they act immediately, then Police may enter premises at any time of the day or night to search for or arrest you.

4.3.7 What happens if I am arrested?

If a Police officer arrests you, they should tell you that you are under arrest and the reason for your arrest. If they do not tell you why you are being arrested, you should ask 'Why am I under arrest?'

The Police officer must also caution you by saying something like 'You do not have to say anything, but anything you say may be used in evidence'. It is important to not say anything to Police until you have spoken to a lawyer.

When arresting you, the AFP must not use more force than is 'necessary and reasonable' to perform their duties. They must not do anything that is likely to cause death or grievous bodily harm, unless the officer believes on reasonable grounds that such force is necessary to protect life or to prevent serious injury to another person. You should **not** resist arrest but ask for legal assistance as soon as practicable. You should also note the time of arrest if you can. Always remain calm and co-operate as much as possible with Police requests. Do not give Police a reason to use force against you.

If you are being arrested at your home or work, Police may take away any item that is in plain view if they reasonably believe it is evidence of a crime, even if the item does not belong to you.

Police may also conduct a *frisk* or *ordinary search* on you when you are being arrested if they reasonably suspect you may have a dangerous item or an item that might help you escape. If they find such an item on you, they may take it from you.

4.3.8 Can Police search me at the Police Station?

If you are taken to a Police station after being arrested, Police may perform an *ordinary search* on you if they have not already done so.

At the Police station, Police may also perform a *strip search* if they reasonably suspect you have evidence or an item that is dangerous or that might help you escape and a *strip search* is necessary to recover such an item. A *strip search* must be authorised by a senior Police officer. Any evidence or dangerous item found during the search may be seized.

4.3.9 Can Police question me after I am arrested? Do I have to answer their questions?

Once you have been arrested, Police can detain you for questioning for a limited period of time without charging you with an offence. Police will almost always try to conduct an interview with you after arrest. The only information you are required to give to Police, if asked, is your name and address. Anything else you say to Police may be used against you in court, which is why you have a 'right to silence'.

The 'right to silence' is the right to not give any information or answer any question by Police. This right applies whether you are in custody or at any other time Police question you, including on the street. Your choice to be silent cannot be used against you in court.

Regardless of what Police tell you, you should refuse to answer any of their questions. There is no such thing as an 'off the record' conversation with Police, especially after arrest. Exercise your right to silence and ask to speak to a lawyer.

4.3.10 What happens if Police want me to participate in an interview?

You are **not** required to participate in an interview with Police. This is part of your 'right to silence'. You should **not**, under any circumstance, participate in a Police interview without first getting legal advice.

It is **not** a good idea for you to sit in an interview and say 'no comment' or answer some questions and not others. You should tell Police outright 'I do not want to be interviewed'. There is no need to go into the interview room to say that. Even if Police take you into the interview room after you tell them you do not want to be interviewed, you should not answer any questions at all.

If upon getting legal advice you choose to participate in an interview, you must ensure that you remain calm at all times and not react to questions. The interview must be recorded, if practicable, using audio and/or visual means. Police may also take a note of your reactions, like laughing and shrugging of shoulders, during questioning.

If you are under 18 years old, Police must question you in the presence of an 'interview friend'. An 'interview friend' means a parent/guardian or a lawyer, and if they are not available, then a relative or a friend. The 'interview friend' may be excluded if they unreasonably interfere with the interview.

4.3.11 Can I contact a lawyer?

You have the right to contact a lawyer to ask them to be present when you are questioned. The AFP may only refuse this if they reasonably believe that:

- your accomplices might hide from Police if they hear that you are in custody;
- evidence might be hidden, made up or destroyed;
- witnesses might be intimidated; or
- the lives of people are in imminent danger and so questioning must start immediately.

If your lawyer is too slow in arriving, then Police must offer you another lawyer. Your lawyer must not unreasonably interfere with the questioning.

4.3.12 Can I contact my family or an interpreter?

You have the right to contact a friend or relative to let them know where you are. The AFP may only refuse this if they reasonably believe that one of the factors listed above in 4.3.11 apply.

You also have the right to an interpreter, unless Police think that your English is good enough for the purposes of their questioning.

4.3.13 What if I am not an Australian citizen?

If you are not an Australian citizen, you have the right to contact your embassy or consulate. Police cannot start questioning you until they have allowed you reasonable time to contact, or attempt to contact, the consulate.

4.4 AFP 'detention' powers

4.4.1 How long can Police detain me without charge?

The AFP can hold you for a maximum of 4 hours without charge. If you are a juvenile (under 18 years), or an Aboriginal person or a Torres Strait Islander, they may only hold you for a maximum of 2 hours.

Police may apply to a Magistrate to extend your detention. It cannot be extended to more than 8 hours for serious non-terrorism offences, or more than 20 hours for terrorism offences. Therefore, the total period you can be detained without charge for terrorism offences is 24 hours.

It is important to note that 'dead time' **does not** count towards the period of detention. 'Dead time' includes the time it takes:

- to drive you to your place of detention;
- for you to contact your lawyer, friend, relative or parent;
- for your lawyer or family to arrive;
- for you to rest during the questioning; and
- to carry out a forensic procedure.

Despite the ‘dead time’ that may be disregarded, you may not be detained for longer than 7 days. If, however, the AFP can establish that:

- a further offence was committed at the end of your first period of detention; or
- that an offence was committed in different circumstances in which the first detention arose

then you may be detained for longer than 7 days in a terrorism investigation. You cannot, however, be questioned about the first offence you were detained for.

4.4.2 When will Police release me?

After the time limit for holding you has expired, Police must either:

- let you go unconditionally;
- let you go on bail; or
- bring you before a Magistrate or other authorised person to apply for bail.

If Police let you go, but arrest you again within 2 days for the same crime, then the maximum time they may hold you the second time is 4 hours *minus* the amount of time they detained you the first time.

4.4.3 Preventative Detention Orders

4.4.3.1 What are Preventative Detention Orders?

Police can detain you under a Preventative Detention Order where they have a reasonable belief that there is a threat of an imminent ‘terrorist act’, or after a recent ‘terrorist act’ and it is likely that evidence will be destroyed.

In order to obtain a Preventative Detention Order, the AFP will start by applying to a senior officer for an ‘Initial Preventative Detention Order’. This will allow the AFP to detain you for up to 24 hours.

If the AFP want to detain you for longer, they must apply to an ‘issuing authority’ (a serving or former Judge) for a ‘Continued Preventative

Detention Order'. This allows the AFP to continue to detain you for up to 48 hours from the time they first took you into custody under the 'Initial Preventative Detention Order'.

If you are subject to a Preventative Detention Order ('the Order'), you can make representations to the senior AFP officer to try and get the Order revoked. You also have the right to challenge the Order in the Federal Court.

You should refuse to answer any Police questions, or participate in any interview, at least until you have spoken to a lawyer.

It is important to note that state Police have similar powers of 'preventative detention' (see Part 10).

4.4.3.2 In what circumstances can a Preventative Detention Order be made?

Before making the Order, the senior officer and/or the 'issuing authority' must be satisfied that:

- there are reasonable grounds to suspect you will engage in a 'terrorist act', or you possess a thing connected with a 'terrorist act', or you have done an act in preparation for or planning of a 'terrorist act'; and
- the Order will substantially assist in preventing an imminent 'terrorist act' expected to occur in the next 14 days; or
- the Order will substantially assist in preserving evidence in the aftermath of a 'terrorist act' that has occurred 28 days before the Order; and

detaining you is reasonably necessary for the above purposes.

4.4.3.3 Do I have to answer questions if I am being preventatively detained?

Under the Order, you cannot be questioned by Police or ASIO. Police can only ask for confirmation of your identity and to ensure your wellbeing. You should **not** answer any other question whilst being preventatively detained.

4.4.3.4 How long can I be detained under a Preventative Detention Order?

Under a Commonwealth Order, you may be detained for a maximum of 48 hours. Under a state or territory Order, you may be detained up to 14 days.

4.4.3.5 What powers do Police have under a Preventative Detention Order?

Under the Order, Police have powers to:

- enter property using reasonable force to carry out a search or to take a person into custody;
- conduct a *frisk* (where Police quickly run their hands over your outer clothing) or *ordinary* (where you may be required to remove items like an overcoat or hat for examination) search; and
- ask any person for their name and address if Police believe he or she can help them carry out the Order. The Police officer must explain the reason for their request. It is an offence to refuse to give your name or to give a false name without a reasonable excuse.

4.4.3.6 What are my rights if I am preventatively detained?

If you are taken into Police custody under the Order, Police must:

- provide you with a copy of the Order and explain the detention period;
- explain any restrictions about contacting people;
- explain your right to contact a lawyer, to make a complaint and to seek a federal court remedy in relation to the Order or in relation to your treatment;
- provide the name and telephone number of the senior Police officer overseeing the Order; and
- explain that Police can make an application to detain you for a further period.

If you need an interpreter, you should tell the Police officer explaining the Order to you. If the officer reasonably believes you are unable to communicate with reasonable fluency in English, he or she must arrange an interpreter for you.

Whilst being detained, you must be treated humanely and with respect. You must not be subject to cruel, inhumane or degrading treatment. If you have concerns about your treatment, you have a right to speak to the senior officer overseeing the Order and/or to contact the Commonwealth Ombudsman to make a complaint about the treatment by Police (see Part 9.2).

4.4.3.7 Who can I contact while I am detained under a Preventative Detention Order?

Whilst being detained, you can contact a lawyer and the Ombudsman to make a complaint. If the lawyer is not available, Police must give you reasonable assistance to contact another lawyer.

You can also contact one family member or housemate, one employer, and one employee, as applicable, and anyone else Police allows. The contact, however, is only to let the other person know you are safe but not contactable for the time being. You **cannot** tell anyone you are subject to a Preventative Detention Order or that you are being detained or for how long you are being detained. It is an offence to do so punishable by up to 5 years imprisonment.

If you are being detained under state or territory law, the relevant state laws apply. In some Australian states, it is a crime to tell your relative or work colleague that you are being detained; in other states, you are allowed to tell a family member that you are being detained. You should ask your lawyer or the officers detaining you whether you are allowed to tell your relative that you are being detained, or whether you are only allowed to say that you are safe and cannot be contacted.

It is important to note that all contact with your lawyer or family member is monitored. However, any contact between you and your lawyer is not admissible as evidence in court.

Police can also apply to the ‘issuing authority’ to prohibit contact between you and any other person, including close family members. Police can do so:

- to avoid risking an action being taken in order to prevent a terrorist act or serious harm to a person;
- to preserve evidence in relation to a terrorist act;
- to prevent interference with the gathering of information about a terrorist act or planning for such an act; or
- to avoid risking an arrest, the taking into custody under a Preventative Detention Order, or the serving with a Control Order of another person.

4.4.3.8 Can I be preventatively detained if I am under 18 years old?

If you are between 16 and 18 years old, you can be detained under a Preventative Detention Order. However, you must be detained separately from adults. You can also have a parent or guardian visit you while being detained. However, they must **not** tell anyone that you are being detained. It is an offence to do so punishable by up to 5 years imprisonment.

Under the current Commonwealth law, you cannot be preventatively detained if you are under 16 years old.

Part 5: Control Orders

The Government can use Control Orders to impose a range of restrictions on a person in order to protect the public, prevent a terrorist act or stop someone from engaging in hostile activity in a foreign country. Control orders may be imposed on persons even if they have not been convicted of a terrorism offence. It is important to seek urgent legal advice if you have been served with a Control Order.

5.1 What is a Control Order?

A Control Order is issued by a court. It imposes a variety of obligations, prohibitions and restrictions on a person and effectively controls their movements. You do not need to be charged with a criminal offence to be subject to a Control Order.

5.2 How is a Control Order made?

The AFP must obtain the consent of the Attorney-General before applying to the Court for a Control Order, unless the circumstances are urgent.

The court will make an 'Interim Control Order' if it is satisfied on the balance of probabilities (i.e. more likely than not) that:

- the making of a Control Order will substantially help in preventing a 'terrorist act'; or
- you have trained with or provided training to a banned 'terrorist organisation'; or
- you have engaged in a hostile activity in a foreign country; or
- you have been convicted of a terrorism-related offence in Australia or in a foreign country; or
- the making of a Control Order will prevent the provision of support for a 'terrorist act'; or
- the making of a Control Order will prevent the provision of support for the engagement in a hostile activity in a foreign country.

5.3 Can I contest the Control Order?

The 'Interim Control Order' is made without your knowledge. You do not have an opportunity to contest the Order at the interim stage.

The 'Interim Control Order' only comes into effect once it is personally served upon you. It will specify when you are required to attend court to have the Order confirmed, declared void or revoked/cancelled. This will be at least 3 days after the Interim Control Order is made.

You will be given details to allow you to respond to the substance of facts. However, the AFP will not be required to disclose information likely to prejudice 'national security'.

If you are served with an Interim Control Order, you should **seek urgent legal advice**.

5.4 How long does a Control Order last?

Once an Interim Control Order is 'confirmed' by the court, it can last up to 12 months. The AFP may, however, seek a new Order when the old one expires. You may at any time apply to the court to have the Order varied or revoked/cancelled.

5.5 What conditions can be imposed by a Control Order?

Under a Control Order, you may be subject to a range of conditions, including:

- requirement to wear a tracking device;
- requirement to remain in certain premises between certain times;
- requirement to report to someone at a certain time and place;
- restriction from being at certain places or from leaving Australia;
- restriction from communicating or associating with certain people;
- restriction from owning or using certain articles;
- restriction from carrying out certain activities; and
- restriction from using certain technology, including the internet.

The court must be satisfied that each of the conditions is reasonably necessary and appropriate to protect the public from a 'terrorist act', or to prevent the provision of support for a 'terrorist act' or engagement in a hostile activity in a foreign country.

5.6 What happens if I do not abide by the Control Order?

It is an offence to breach the conditions of a Control Order, punishable by up to 5 years imprisonment.

5.7 Can they impose a Control Order on me if I am under 18 years old?

If you are between 14 and 17 years old, the court may impose a Control Order on you. However, a Control Order applies for a maximum of 3 months.

If the court makes an Interim Control Order, the AFP must take reasonable steps to serve a copy of the order on your parent or guardian at least 48 hours before you are required to attend court to have the order confirmed, varied or revoked/cancelled.

When making a final Control Order, the court must consider what is in your best interests. If you do not have a lawyer to represent you at court, the court must appoint one for you. The court does not, however, have to appoint a lawyer if you have not attended Court or if you have refused a lawyer previously appointed for you.

5.8 Can Police search me or my house if I am on a Control Order?

Yes. Police can search any premises that you have a connection with if you are the owner of the property and you consent, or if they have a 'monitoring warrant.' If you are not sure if the Police have a 'monitoring warrant', ask them to see a copy of the warrant.

Police can also conduct a *frisk search* or *ordinary search* on you, but only if you consent or if they have a 'monitoring warrant'. The searches can only be carried out for the following purposes:

- to protect the public from a terrorist act;
- to prevent the provision of support for, or the facilitation of, a terrorist act;
- to prevent the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
- to determine whether the control order has been, or is being, complied with.

Part 6: Data Retention, Surveillance and Communication Intercepts

Whilst privacy is a general right enjoyed by most people, your social media accounts, emails and other communication applications may be subject to monitoring without a warrant under the metadata retention provisions or interception by way of a warrant issued to the AFP or ASIO.

This Part discusses the new metadata retention laws and what they mean for the ordinary citizen. It also discusses Police and ASIO powers to monitor and intercept communications and keep people under surveillance to investigate criminal offences.

6.1 Metadata Retention Laws

6.1.1 What is metadata?

Metadata is information relating to a communication. It is information about who communicated with whom, when and where. It does not include the content (the 'what') of the communication.

Metadata includes information about telephone calls, including the telephone numbers of the people talking to each other and how long they talked for, but not what they said. This makes metadata different to telephone intercepts (see Part 6.2.2), which allow investigators to hear calls and read text messages.

Metadata also includes information such as emails sent and when they were sent. It does not include the subject line of an email or its content. It also does not include web browser histories.

6.1.2 What do the metadata laws mean for the ordinary citizen?

Metadata retention laws apply to every Australian, not just those suspected of, or convicted for, terrorism or other serious offences.

The 2015 mandatory data retention laws require telecommunication service providers to store your metadata for a period of no less than 2 years whether or not you are suspected of a criminal offence. This allows law enforcement agencies retrospective access to your metadata.

ASIO and law enforcement agencies do not require a warrant to access your stored metadata. They can access your metadata on their own authorisation.

6.2 Surveillance and Communication Intercepts

ASIO and Police have wide powers to intercept your communications and monitor their content if you are suspected of committing a criminal offence, but only if they have a warrant granted by a Judge or a Magistrate. Warrants allow them to use listening and tracking devices, intercept live and stored communications, access computers remotely and examine mail.

6.2.1 Can the AFP and ASIO use a surveillance device?

Both the AFP and ASIO can apply for a Surveillance Device Warrant on a person, premises or specific objects. This warrant allows the AFP and ASIO to use listening devices, optical surveillance devices and other data surveillance devices to record your communications.

Under the warrant, both ASIO and the AFP may enter your premises and adjoining properties to install, test, maintain, or remove a surveillance device. They may also record your conversations, with or without your permission.

A Surveillance Device Warrant issued to the AFP remains in place for 90 days and may be extended for an additional 90 days. A Surveillance Device Warrant issued to ASIO must not exceed a period of 6 months. However, a new warrant may be issued once the old warrant has expired.

Under certain circumstances, Police and ASIO may use a listening or tracking device without a warrant. They may also use optical surveillance devices such as binoculars and video cameras without a warrant if it does not involve entering onto premises.

6.2.2 Can the AFP and ASIO tap my telephone or other telecommunications?

Police can intercept ‘live communications’ such as telephone calls, facsimiles, or Internet chat sessions if they have a Telecommunications Service Warrant.

Before the AFP or state Police can get a Telephone Service Warrant, they must convince a Judge (or someone similar) that you are involved in committing a serious criminal offence. This warrant also permits a Police officer to enter your premises to install equipment for monitoring telecommunications, even without your permission.

A Telephone Service Warrant is valid for up to 90 days, but Police may apply for another warrant if it expires. The warrant expires immediately when Police no longer reasonably suspect you of committing a terrorist offence.

If Police believe that a criminal suspect is using your telephone, they can apply for a warrant to tap your telephone. Police can tap *all* calls made to and from your telephone, not just those calls made by or to that criminal suspect. Such a warrant remains in place for 45 days.

ASIO can also obtain similar warrants to intercept ‘stored’ and ‘live’ telecommunications. These warrants are valid for 6 months.

6.2.3 Can the AFP and ASIO access my stored emails and messages?

Both the AFP and ASIO can obtain a warrant to intercept ‘stored communications’. This gives AFP and ASIO access to voicemail, SMS, MMS or email if stored on an Internet server, or in a telecommunications system.

If you have communicated with a terrorism suspect, even inadvertently, ASIO and the AFP can obtain warrants to monitor all your telecommunications, including with family members, friends, work colleagues, lawyers or doctors. However, they can only do so once they have exhausted all other practicable methods of identifying the suspect’s telecommunications service, or where it is not possible to intercept the suspect’s telecommunications. They must also convince the issuing authority that their person of interest will likely contact you on that telecommunication service.

6.2.4 Can ASIO look through my mail?

Yes - if they have a warrant, ASIO may gain access to any postal or delivered parcel. This type of warrant is valid for 6 months, but ASIO may apply for another warrant after it expires.

ASIO may be authorised by the warrant to inspect, open, make copies of the articles or the cover of the articles, and inspect and make copies of the contents. This may apply to items you post, deliver or receive.

6.2.5 Can ASIO search through my computer files?

Yes - if they have a warrant, ASIO may gain access to your computer or other electronic equipment for the purpose of obtaining data believed to be relevant to security. This type of warrant is only valid for 6 months. They may inspect and examine any data, including printing, removing and copying it. They may also add, delete or alter data in order to achieve that purpose.

6.2.6 Can the AFP and ASIO use tracking devices?

Yes. Both the AFP and ASIO may use tracking devices to track a person or an object, including a car, aircraft, vessel, and clothing if they have a warrant.

A Tracking Device Warrant may authorise the AFP or ASIO to enter your premises to attach a tracking device and to maintain that tracking device. The warrant will also authorise any force necessary and reasonable, and will also specify the time of day that they can enter your premises.

This type of warrant remains in place for 6 months if issued to ASIO and 90 days if issued to the AFP.

It is an offence for you to interfere or disrupt a tracking device. The offence carries a maximum penalty of 5 years imprisonment.

6.2.7 Does ASIO need separate warrants for different types of intercepts?

Generally, yes. However, ASIO can apply for an Identified Person Warrant if you are engaged in, reasonably suspected to be engaged in or likely to be

engaged in activities prejudicial to security, or if it assists in obtaining security intelligence. If granted, Identified Person Warrants allow ASIO to do one or more of the following:

- access records;
- access data;
- use one or more surveillance devices;
- access post; or
- access articles that are being delivered by a delivery service provider.

This means ASIO only need to apply for one warrant to cover one or more of the above intercepts for the identified person, instead of applying separately for each type of search.

6.2.8 Does the AFP need separate warrants to intercept different telecommunication services?

No. A Name Person Warrant allows the AFP to intercept more than one telephone number or device under a single warrant. They do not need to apply for a separate warrant for each service or device.

A Named Person Warrant is issued if you are engaged in, reasonably suspected of being engaged in or likely to engage in activities risking security, or if it assists in obtaining security intelligence.

A Named Person Warrant can be used to collect foreign intelligence where communications are with foreign organisations. This occurs when the Director-General of Security considers that intercepting such communications is in Australia's national security, foreign relations or national economic interests.

A Named Person Warrant issued by the Attorney General can be in force for up to 6 months. If it is issued by a Judge or member of the Administrative Appeals Tribunal, it can be in force for up to 90 days.

Part 7: Citizenship, Travel Documents, Visas and Welfare Payments

There are a number of non-criminal consequences of engaging in terrorism-related conduct or being found guilty of a terrorism offence. If you are a dual citizen, the Government can cancel your Australian citizenship altogether (Part 7.1). The Government also has the power to cancel or suspend your passport or foreign travel documents (Part 7.2) and visas (Part 7.3). If your passport or visa is cancelled, the Government may stop your welfare payments (Part 7.4).

7.1 Australian citizenship

7.1.1 Can the Government cancel my Australian citizenship?

If you are an Australian citizen and you are **not** a citizen of any other country, then the Australian Government can **never** cancel your Australian citizenship. However, the Government can cancel or suspend your passport in certain circumstances even if you are an Australian citizen. These are explained below in Part 7.2.

If you are a 'dual citizen', the Government can cancel your Australian citizenship in certain circumstances. A 'dual citizen' is an Australian citizen who is also a citizen of another country.

There are two ways a dual citizen's Australian citizenship can be cancelled: 'revocation' and 'renunciation'. These are explained below and only apply if you are a dual citizen.

On 12 December 2015, new laws were introduced that extend the Government's powers to cancel the Australian citizenship of dual citizens who engage in terrorism. The new laws say that you can **never** be an Australian citizen again if the Government cancelled your citizenship (by revocation) or your citizenship was automatically cancelled (by renunciation).

You should see a lawyer as soon as possible if you think your citizenship has been cancelled.

7.1.2 What is ‘revocation’ of Australian citizenship?

Revocation is when the Government cancels (or ‘revokes’) your Australian citizenship.

Before the new laws were introduced, there were two main ways the Government could revoke a dual citizen’s Australian citizenship. The first was after a court convicted you of lying on your visa or citizenship application. The second was after an Australian or foreign court convicted you of a serious offence. If your citizenship was cancelled for these reasons, you could appeal against the Government’s decision to the Administrative Appeals Tribunal.

The new laws introduce an additional way the Government can revoke a dual citizen’s citizenship. It is now possible for the Government to revoke your citizenship if you have been sentenced to 6 years or more in prison for certain terrorism offences, treason, spying against Australia, fighting in a foreign country or sabotaging Australia’s defence. The laws apply to court cases that started even before December 2015. If your citizenship is cancelled for this reason, you can only appeal the Government’s decision to revoke your citizenship to the Federal Court or the High Court.

7.1.3 What is ‘renunciation’ of Australian citizenship?

Renunciation is when you automatically stop being an Australian citizen because of something you did. Before the new laws were introduced, you automatically lost your Australian citizenship if you went overseas and served in the armed forces of a country at war with Australia.

The new laws added that you automatically stop being an Australian citizen if you:

1. go overseas and serve or fight for a declared terrorist organisation; or
2. do certain things (related to terrorism in Australia or overseas) inconsistent with your ‘allegiance to Australia’ (see Part 7.1.4).

Under the new laws, you can automatically lose your citizenship if you are as young as 14 years.

7.1.4 What is conduct ‘inconsistent with allegiance to Australia’?

If you are a dual citizen, you automatically lose your Australian citizenship if you do any of the following acts ‘inconsistent with allegiance to Australia’:

- engage in international ‘terrorist’ activities using explosive or lethal devices;
- engage in a ‘terrorist act’;
- provide or receive training connected with a ‘terrorist act’;
- finance ‘terrorism’ or a ‘terrorist’;
- engage in foreign incursions and recruitment; or
- direct the activities of, or recruit for, a ‘terrorist organisation’.

To lose your Australian citizenship based on the above conduct, you must have acted with the intention of advancing a political, religious or ideological cause *and* with the intention of:

- coercing, or influencing by intimidation, the Government of the Commonwealth, a State, a Territory or a foreign country or part of it; or
- intimidating the public or a section of the public.

7.1.5 Will I find out if my citizenship was automatically cancelled by ‘renunciation’?

In ‘renunciation’ cases, you automatically lose your citizenship and you may not even be aware of it. The Government does not need to inform you they are considering cancelling your citizenship. Sometimes, you will first find out your citizenship has been cancelled when the Government writes to inform you that you are no longer an Australian citizen. Other times, you may only find out you have lost your citizenship indirectly when, for example, you are refused admission to Australia or told your passport has been cancelled.

Please note that if your passport has been cancelled or suspended, it does not necessarily mean that your citizenship has been cancelled. The Government can cancel or suspend the passports of people who remain Australian citizens (see Part 7.2).

7.1.6 How can I challenge the Government's claim that I have renounced my citizenship?

If the Government says you have renounced your citizenship, you have to take the Government to the Federal Court or the High Court to prove that you did not renounce your citizenship. This review can be difficult for many reasons, but mainly because the Government does not have to tell you the reasons they relied upon for your citizenship renunciation.

7.2 Travel documents

7.2.1 Can the Government stop me from leaving Australia if I am an Australian citizen?

Yes. The Minister for Foreign Affairs can stop you from leaving Australia by suspending your passport for 14 days. The Minister can do this if ASIO or Police suspect you will go overseas to damage the security of Australia or a foreign country. While your passport is suspended it is not valid and the Government can order you to surrender your passport. The Government must return your passport when the suspension ends unless your passport is cancelled. These laws apply to other travel-related documents issued by the Government.

The Minister for Foreign Affairs has the power to cancel your Australian passport, and/or refuse to issue a new Australian passport, or other Australian travel-related document. Most refusal and cancellation decisions are reviewable. If the decision to refuse or cancel was made by a delegate of the Foreign Minister, then you can appeal directly to the Minister for Foreign Affairs. If the Minister made the decision, you can appeal to the Administrative Appeals Tribunal.

7.2.2 Can the Government stop me from leaving Australia if I have foreign travel documents?

Yes. The Australian Government has similar powers in relation to passports or travel-related documentation issued by other governments (foreign passports).

On national security grounds, ASIO can ask the Minister for Foreign Affairs to order you to surrender your foreign passport for 14 days to prevent you from leaving Australia. You cannot appeal this decision, but the Government must return your documents after 14 days or issue a more permanent demand that you surrender your foreign passport.

The Foreign Minister can order you to surrender your foreign passport (and other travel documents) for as long as he or she suspects is necessary to prevent harmful conduct or for the needs of law enforcement. You can appeal this decision to the Administrative Appeals Tribunal.

When a Government official asks you to hand over your foreign passport or travel documents, they must tell you that the Foreign Minister has ordered you to do this and it is a criminal offence not to comply. If you refuse to hand over your foreign passport or travel documents, you can be charged and sentenced to up to 1 year in prison. Government officials cannot come into your house to take your foreign passport or travel documents unless you invite them in or they have a valid warrant or other permission.

7.3 Australian Visas

7.3.1 Can the Government cancel my Australian visa?

Yes. The Government has wide powers to cancel the visa of, or to refuse to grant a visa to, any non-citizen. Among other things, the Government can cancel your visa if you do not have 'good character'. The Government can also cancel your visa if ASIO says you are a national security risk.

Even if you are overseas, the Government has 'emergency' powers to cancel your visa. The Government must cancel your visa if ASIO recommends it to do so because ASIO *suspects* you may be, directly or indirectly, a security risk.

Your visa is only cancelled for 28 days, unless ASIO recommends the cancellation be lifted earlier or be made permanent. If your visa is cancelled this way, then the visas of your spouse and/or children might also be affected. They should see a lawyer.

Depending on the specific reasons for your visa cancellation, you might be able to appeal to the Administrative Appeals Tribunal in its Migration and Refugee Division within given timeframes. Limited appeals may be further made to the Federal Circuit Court and the Federal Court for the review of the Tribunal's decision. You should **see a lawyer or migration agent for urgent advice** - if you do not have a valid visa you could be taken to an Immigration Detention Centre and deported.

7.4 Welfare payments

7.4.1 Can the Government cancel my welfare payments?

Yes. The Government can cancel your welfare payments and/or deny your eligibility for welfare payments based on security grounds. These include payments for:

- family assistance;
- parental leave pay or dad and partner pay; and
- social security payments and concession cards.

The Government can exercise these powers in the following situations:

- if your Australian passport is cancelled or refused to be issued because certain Government departments (for example, the Department of Immigration and Border Protection, the Australian Federal Police, ASIO and ASIS) believe you are likely to engage in conduct that might prejudice the security of Australia or a foreign country; or
- if your visa is cancelled because ASIO says you are directly or indirectly a security risk.

When the Government exercises these powers it issues a Security Notice. It is this Security Notice that makes you ineligible for your welfare benefits. The Government should take reasonable steps to inform you that you will no longer be receiving your welfare benefits. The Security Notice must be

reviewed every 12 months. If it is cancelled, you should start receiving your welfare payments again.

You cannot appeal the decision to cut off your welfare payments. You must instead appeal the reason why the Security Notice was issued in the first place (such as the cancellation of your passport or visa).

Part 8: Travelling Overseas

There are laws that punish you for things you do when overseas. For example, if you travel to certain 'declared' areas without a good excuse, you might face a prison sentence. Visiting friends and relatives is not considered a good excuse. This Part discusses some of these laws.

At an Australian airport, you might be stopped or asked questions by Australian Border Force (ABF) officers. This Part also explains what ABF officers can and cannot do.

8.1 'Declared area' offence

It is an offence to intentionally enter, or remain in, a 'declared' area in a foreign country where you know, or should know (i.e. are reckless), that the area is a 'declared' area. The maximum penalty for this offence is 10 years imprisonment.

Currently, there are two 'declared areas':

1. Mosul district in the Ninewa province in Iraq; and
2. Al-Raqqa province in Syria.

Please check the National Security and Smart Traveller websites for up to date details about 'declared' areas before making plans to travel overseas.

This offence applies to anyone who is an Australian citizen, an Australian resident, holds an Australian visa or is voluntarily under the protection of Australia.

It is a defence if you enter, or remain in, the area solely for a 'legitimate purpose'. A 'legitimate purpose' is limited to:

- providing humanitarian aid;
- performing an official duty for an Australian Government, or for a foreign government where that duty is not in violation of Australian law, or for the United Nations;

- making a news report of events in the area where you are acting in a professional capacity as a journalist, or assisting another person working in such a professional capacity;
- making a bona fide (i.e. genuine) visit to a family member; and
- appearing before a court or tribunal.

It is **your** responsibility to prove to the court that you had a 'legitimate purpose' to travel to the 'declared' area.

It is important to note that visiting friends or travelling for business or religious purposes are **not** included as 'legitimate purposes'. You could be prosecuted if you enter, or remain in, a 'declared' area for these purposes. Furthermore, there is no process for obtaining pre-approval to travel to a 'declared' area if it is for a 'legitimate purpose'.

You should see a lawyer for advice before you visit 'declared' areas, even if you believe you are going for a 'legitimate purpose'.

8.2 Australian Border Force

8.2.1 What is the Australian Border Force (ABF)?

The Australian Border Force (ABF) was established on 1 July 2015. It integrates some of the functions of the Department of Immigration and Border Protection ('the Department') and the Australian Customs and Border Protection Service. The ABF is responsible for all existing operational border, investigations, compliance, detention (facilities and centres) and enforcement actions.

ABF officers wear uniforms and carry a gun. They patrol Australia's airports and seaports, mail and cargo centres and Australia's sea borders. They work closely with other Government departments to detect and deter unauthorised movement of goods and people across Australia's borders.

8.2.2 What is the Border Force Counter-Terrorism Unit?

The ABF has a specialist Counter-Terrorism Unit (CTU) which was established in 2014. The CTU has teams in Australia's 8 main airports to deal with 'national security' concerns. Among other things, the CTU tries to stop

terrorism suspects and money for terrorists from leaving or entering Australia.

8.2.3 What are the powers of the ABF?

Border Force officers have very broad powers, which include powers to:

- stop a traveller and ask them questions about a range of matters;
- examine a traveller's goods;
- detain a traveller; and
- search a traveller.

Border Force officers can also exercise powers related to:

- customs;
- migration;
- crime;
- anti-money laundering; and
- counter-terrorism.

8.2.4 What kind of questions can the ABF ask me?

Border Force officers have powers to question passengers at any time – before or after boarding a plane, or while they are on-board. Those questions must relate to specific federal laws, such as customs, quarantine, national security or the movement of money in or out of Australia.

Under the **Customs Act** 1901, Border Force officers can question you about whether you have 'dutiabale, excisable or prohibited goods' in your possession. 'Dutiabale goods' and 'excisable goods' include all goods you have to pay a tax for. 'Prohibited goods' are those that you are not allowed to carry in or out of Australia, such as dangerous animals, explosives or illegal drugs.

8.2.5 Do I have to answer ABF questions?

It is against the law to not answer questions about whether you are carrying 'dutiabale, excisable or prohibited goods'. However, if answering such questions will make you appear guilty of a crime (i.e. 'incriminate' you), then you are not required to answer the questions.

If Border Force officers find something in your luggage that they reasonably believe is evidence of an offence, they may interview you further. If you are interviewed, then you will be taken to a private interview room. Border Force officers must tell you ('caution you') about your rights, including your 'right to silence'. This is your right to not give any information or answer any questions.

8.2.6 What other questions can the ABF ask me?

Border Force officers have the power to question and search you in relation to any cash and/or bearer negotiable instruments (such as cheques or money orders) you may be carrying. If you fail to answer the questions, you risk a fine or imprisonment for up to 1 year.

It is also a crime to take out or bring into Australia \$10,000 or more without reporting ('declaring') it on your Customs Passenger Card. Failure to declare this on your passenger card carries up to 2 years in prison and/or a fine.

There is no limit on the amount you can bring in or out of Australia, but whatever you bring in or out of Australia must be declared. You are required to declare the currency as soon as you reach the place where customs examine passports (if leaving Australia) or examine baggage (if arriving in Australia). You will be required to complete a signed report (passenger card – see Part 8.3.1) in which you declare that the information in the report is correct.

It is not uncommon for Border Force officers to ask travellers questions that may be intrusive and may not be directly connected to a legislative power. Border Force officers are trained to ask travellers a range of questions aimed at identifying inconsistencies in their story. You may raise concerns about the questions you are asked, and in particular, whether or not the questions are compulsory. Border Force officers may, however, interpret this reluctance to answer questions as a sign of untruthfulness and ask further questions and/or conduct a personal search.

8.2.7 Can the ABF ask me questions if I am not a passenger?

Yes. Border Force officers have the power to ask any person in a 'restricted area' to provide their name, reason for being in the area, and evidence of

their identity. It is an offence to fail to answer these questions unless answering such questions will tend to make you appear guilty of a crime. A 'restricted area' is an area used by arriving and departing passengers as they undergo processing.

Under the **Migration Act**, Border Force officers also have the power to question and detain anyone they 'reasonably suspect' is a non-citizen and ask them questions relating to their visa status.

8.2.8 Can the ABF search through my luggage and personal effects such as my phone or laptop?

Yes. Border Force officers have the power to search and examine goods carried by people entering and leaving Australia. They can search through your luggage and personal effects for any 'prohibited' items. Prohibited items include 'restricted' and 'objectionable' items.

'Restricted' items are those you can only bring into Australia with permission in writing, such as certain medication, plants, firearms and other products. 'Objectionable' material includes any publication which describes, depicts or deals with child pornography, crime or violence, instruction in crime or violence, or advocates the doing of a 'terrorist act'. This includes any objectionable material contained on an electronic device such as a mobile telephone.

When examining goods, Border Force officers can do anything that is reasonably necessary, including:

- opening a package;
- using an x-ray machine or scanning equipment on the goods;
- testing or analysing the goods;
- reading documents (including with an electronic device); and
- using dogs to help with examining goods.

This means Border Force officers have the power to read documents contained on your computer or storage device such as a flash drive, look at information stored on your mobile telephone and turn on your computer to look at data stored on it. Where a computer is password protected, you are not obliged to give the password. However, Border Force officers may keep

the computer until they determine the password or download its contents so they can examine it.

8.2.9 Can the ABF copy and seize my documents?

Yes, but only after examining a document. Border Force officers may copy a document if they are satisfied the document contains information about the import or export of 'prohibited goods' or if the material is significant to 'national security' concerns or the functions of ASIO. This includes information stored on a mobile telephone. You are not required to be present when the officer copies it.

Border Force officers also have the power to seize items from you or from your luggage which they reasonably suspect to be 'prohibited goods' for a period of time after you have left the airport.

8.2.10 Can the ABF search my body?

Yes. Border Force officers can search your body if they suspect on reasonable grounds that you are unlawfully carrying 'prohibited' goods on your body.

There are three different types of searches Border Force officers can conduct:

1. *frisk search* – this is where an officer quickly runs their hands over your outer clothing. Border Force officers may *frisk search* you if they have reasonable grounds to suspect you are unlawfully carrying a prohibited good on your body or to find out if you are carrying \$10,000 or more;
2. *external search* – this is a search of your body and anything you are wearing at the time. It does not include a search of your internal cavity. An *external search* must be with your consent or with an Order from a Judge (or 'authorised officer' in certain circumstances). It must be performed in a private place and by an officer of the same gender; and
3. *internal search* – this occurs where Border Force officers suspect you are hiding a suspicious substance. It must be either with your consent or with an Order from a Judge. An *internal search* may be conducted by non-medical scan or by a medical practitioner.

8.2.11 Can I be detained by the ABF?

Yes. A Border Force officer can detain you for the purpose of conducting one of the searches mentioned at Part 8.2.10.

In addition, if you are in a 'designated place' (i.e. an airport), Border Force officers can detain you in the following circumstances:

- if the officer has reasonable grounds to suspect you have committed, are committing or have an intention to commit a serious criminal offence under federal law or a prescribed State or Territory offence;
- if the officer has reasonable grounds to suspect you intend to leave the designated place and you are either subject to a warrant for your arrest, or bail conditions that, if complied with, prevent you leaving Australia; or
- if the officer is satisfied on reasonable grounds that you are, or are likely to be involved in an activity that is a threat to 'national security' or to the security of a foreign country.

If you are detained for one of the above purposes, Border Force officers may conduct a search on you and your clothing and seize any item they reasonably believe is connected to an offence. The Border Force officer must, as soon as is practicable, advise a Police officer of your detention and make you available to Police to be dealt with according to law.

If you are detained for more than 2 hours (or 45 minutes in the case of detention of a person subject to warrant or bail condition), Border Force officers must notify you of your right to contact family to inform them of your detention. In circumstances where the Border Force officer believes on reasonable grounds that such notification should not be made in order to 'safeguard national security, the security of a foreign country or the processes of law enforcement, or protect the life and safety of any person', the Border Force officer may refuse to notify the family member.

8.2.12 Can I be detained if I am under 18 years old?

Yes. Border Force officers can detain minors who are under 18 years of age. If you are under 18 years old, Border Force officers must notify you of your right to inform your parents or guardian or, if your parents or guardian are

not acceptable to you, another person who is capable of representing your interests, that you are being detained, the place in which you are being held, the place you will be transferred to by Police and the reason for your detention.

If, however, the Border Force officer believes on reasonable grounds that such notification should not be made in order to 'safeguard national security, the security of a foreign country or the processes of law enforcement, or protect the life and safety of any person', the Border Force officer may refuse to notify the parent/guardian or alternative person nominated by you to represent your interests.

8.2.13 Can the ABF share my information with other organisations?

Yes. Border Force officers work closely with other government and intelligence agencies. Government departments regularly share information.

8.3 Other travel-related issues

8.3.1 What are Passenger Cards?

Passenger Cards are used to identify travellers and provide a record of when travellers enter and leave Australia. Before arriving in or leaving Australia, you are required to complete an Incoming or Outgoing Passenger Card.

It is essential that you accurately complete the Passenger Card as penalties apply if you make a false declaration on your Passenger Card.

It is also an offence to not declare 'prohibited' items, which include 'restricted' items or 'objectionable' material and currency of \$AUD 10,000 or more.

8.3.2 What are some tips when travelling overseas?

Listed on the following page are some tips to consider when travelling overseas. They are **not** intended to be an exhaustive list, but rather suggestions of things to consider.

1. Ensure you have valid travel documents before arriving at the airport;
2. Ensure the area you are travelling to is not a 'declared area' or that you have a 'legitimate purpose' (as defined by the law – see Part 8.1) for travelling to the area;
3. Ensure you have details of your travel itinerary, including where you will be staying and for how long, and keep those details at hand;
4. Pack your own bag and ensure that you know what is packed in your bag;
5. Ensure you check-in at least 3 hours before flight departure time to allow enough time for border processing and unexpected delays;
6. Ensure you accurately complete the Passenger Cards before arriving in or leaving Australia;
7. Declare any food, wood material or 'restricted' items you are carrying;
8. Declare Australian or foreign currency that is AUD\$10,000 or more. Be aware that sharing money between people travelling is called "structuring" and is against the law;
9. Know what is stored on your electronic devices, including your laptop, mobile telephones and SIM cards (where this includes, for example, WhatsApp and Facebook threads). It is an offence to bring into or take out of Australia material that is offensive or advocates violence in any form. Be aware that by keeping any text, images or video that falls into this category on your electronic devices, even if someone has sent them to you, you may be committing an offence;
10. Similarly, be aware that the same issues apply to any material carried by you, other than on your electronic devices;
11. Log out of any email, Facebook or other accounts on your laptop or electronic device before travelling;
12. Do not carry goods, including money, for other travellers;
13. Familiarise yourself with items you can carry in and out of Australia. For this information, including what constitutes a prohibited or restricted item, see the Australian Border Force website: <https://www.border.gov.au/Trav/Ente>
14. Keep a record of the names of the Border Force officers you deal with in the event you experience ill-treatment and you wish to make a complaint at a later time.

Part 9: Lodging a complaint

9.1 Complaints about ASIO

9.1.1 If I want to complain about the conduct of an ASIO officer, what can I do?

AMCRAN and the Muslim Legal Network (NSW) strongly advise you **talk to your lawyer**, or contact your local community legal centre, before making a complaint.

A complaint about ASIO may be made orally or in writing to the [Inspector-General of Intelligence and Security \(IGIS\)](#). The role of the IGIS is to monitor intelligence and security agencies, including ASIO, to conduct inquiries, to investigate complaints and to protect the rights of citizens and residents against possible excesses by agencies. For this reason, the IGIS may sometimes be present during questioning by ASIO.

If the IGIS is not present, and you wish to make a complaint while you are in detention, you have the right to be given the facilities to contact the IGIS. When making a complaint, you must be allowed to do so in private and not in front of any of the officers.

It is important to make a complaint **within 12 months** of an incident. The IGIS may decline to make inquiries in relation to your complaint if more than 12 months have passed. The contact details of the IGIS can be found in Part 11 of this booklet. You also have the right to ask the Federal Court to review a warrant or your treatment under a warrant.

9.1.2 What can I complain about in relation to ASIO?

If there has been a warrant issued against you, you must be treated humanely and with respect and dignity. This relates to every aspect of the warrant including the point of contact and the process through which you are taken into detention. You may complain about any injury you have sustained, damage to property, any improper conduct or activities of ASIO and its officers, any action or practice that is inconsistent with, or breaches any

human right, or constitutes discrimination, in particular, on the basis of sex or race.

It is therefore important that you note down the names of the officers who contact you and the date, time and circumstances of that contact. That way you will be in a better position to make a complaint later if there is a need. However, keep in mind that it is unlawful to disclose any operational information of ASIO if you have been subject to a questioning or detention warrant. This means that you would have to keep this information confidential, and only use this information in complaint situations or in discussions with your lawyer.

In relation to detention and questioning under an ASIO warrant, you may make a complaint if your rights are not met. Some of these are set out in a Protocol document 'ASIO Protocol to Guide Warrant Process'. They include the following:

- You must not be questioned in an unfair, oppressive or demeaning manner. Interactions with you should be humane and courteous.
- If you are to be transported, the transportation must be safe and dignified, with adequate ventilation and lighting. It should not expose you to unnecessary physical hardship.
- You must have access to fresh drinking water, toilet and sanitary facilities at all times. These facilities must be clean.
- You are allowed to bathe or shower daily, in private, and you must be provided with other toilet articles for health, cleanliness and the maintenance of self-respect.
- The place of detention and questioning must have adequate fresh air ventilation, floor space, lighting and adequate climate control.
- You must be provided with three meals a day at the usual hours. If you are fasting, they must provide you with food at the appropriate times.
- You must be provided with food appropriate for your religious beliefs - you have the right to request halal food if you are Muslim. They must also accommodate any other dietary or medical needs.

- You are allowed to engage in religious practices such as prayers subject to safety and security requirements.
- You must be provided with a separate bed in a separate room or cell, with clean bedding.
- You must be allowed a minimum of eight hours continuous undisturbed sleep in any 24 hour period of detention
- You must be provided medical or health care when required.

9.2 Complaints about the AFP

9.2.1 If I want to complain about the conduct of an AFP officer, what can I do?

You may complain by letter, telephone, fax, in person or online to:

- any AFP office;
- AFP Internal Investigations Division; or
- the Commonwealth Ombudsman.

It is important to note that if you have been **subject to an ASIO warrant, and you wish to complain about an AFP officer in relation to this warrant, you should make a complaint to the Ombudsman rather than to the AFP.** This is because there are complex rules around what disclosures are permitted in relation to an ASIO warrant.

Again, it is strongly advisable that you talk to your lawyer or local community legal centre **before** making a complaint.

9.2.2 What can I complain about in relation to the AFP?

You have the right to complain about the conduct or actions of individual AFP members. Your complaint may concern:

- action taken by an AFP officer that involves discourtesy, rudeness or abruptness to you;
- action that arises out of a misunderstanding of the law, of the policy or procedures of the AFP;
- serious ill-treatment by an AFP officer; and/or
- assault by an AFP officer.

Unless there has been an ASIO warrant, you should first make your complaint to the AFP, whether the complaint involves allegations of minor or serious misconduct. The complaint will either be dealt with by the AFP's Workplace Resolution Program through a conciliation process or the AFP Internal Investigations Division. This process is monitored by the Ombudsman's office.

In every case, a report detailing the actions taken by Internal Investigations must be forwarded to the Ombudsman's office for independent scrutiny. If the Ombudsman is not satisfied with the AFP's investigation of your complaint, he or she may ask the AFP to reconsider its recommendations, require Internal Investigations to investigate further, or conduct his or her own investigation.

While you are entitled to lodge a complaint to the Ombudsman at any time, he or she will usually only intervene in the matter if you have already raised the complaint with the AFP directly. If you are being detained, you have the right to be provided with facilities to make a complaint to the Ombudsman.

If you have a grievance, you should lodge the complaint as soon as possible, but at most **within 12 months** of the incident. The contact details for the Ombudsman are available in Part 11 of this booklet.

Part 10: State anti-terrorism legislation

In addition to the Australia-wide anti-terrorism laws, there are specific laws in some states that only apply to those states.

All state Police have powers in relation to Preventative Detention Orders and Covert Search Warrants. Covert Search Warrants allow state Police to enter premises without the occupants' knowledge to search for, seize, replace, copy, photograph or record any thing or document. The grounds for obtaining a Covert Search Warrant vary across states but generally require that a terrorist act is being or is likely to be committed, the warrant will substantially assist in responding to or preventing the terrorist act, and that it is necessary for the search to occur without the occupants' knowledge.

Furthermore, most states give Police special powers to stop, search and question people and vehicles in certain circumstances in relation to a terrorist act. These powers may apply to a particular person, or a person in a particular area, or any person in a particular vehicle. It varies between states whether the Police must apply to a court for an authorisation to exercise special Police powers, or whether an authorisation can be made by the Commissioner of Police.

This Part briefly discusses some of the different aspects of special powers across the states. You should contact your local community legal centre for more specific information.

10.1 New South Wales

The [*Terrorism \(Police Powers\) Act 2002 \(NSW\)*](#) gives Police special powers when a special 'authorisation' is made by the Commissioner of Police or a senior Police officer immediately after a terrorist act, or where there are reasonable grounds to believe that there is a threat of a terrorist act occurring in the future. This gives ordinary Police officers special powers to force people to identify themselves, and special powers to search people, vehicles, premises and the right to seize things. It also authorises **strip**

searches, but just like under the federal laws, a **strip search** must take place in a private place and be conducted by a person of the same gender.

In 2016, changes were made to the Act allowing the questioning and detention of terrorism suspects who are over 14 years of age for 4 days. With a warrant, this period can be extended to a maximum period of 2 weeks. Under the laws, Police can detain a suspect without charge in circumstances where a 'terrorist act' has occurred in the last 28 days or if there are reasonable grounds to suspect that a 'terrorist act' will occur in the next 14 days. During questioning, the suspect must be given 8 hours of a continuous break in a 24 hour period, as well as reasonable breaks.

10.2 Victoria

The [*Terrorism \(Community Protection\) Act 2003 \(Vic\)*](#) gives Police special powers in a situation where it is suspected that a terrorist act has or may have occurred and that area may have been exposed to chemical, biological or radiological contamination. A senior Police officer may authorise Police officers to direct people to enter or leave the area, detain a person, and direct a person to submit to decontamination procedures. The maximum period of time that the authorisation will have effect is 8 hours, but they may request an extension for up to 16 hours.

Police officers also have special powers to force people to identify themselves, to search people, vehicles, premises and to seize things without a warrant. These powers may be approved by the Chief Commissioner of Police, with the Premier's approval, for up to 24 hours. The authorisation may be given in relation to events which might be the subject of a terrorist act, to prevent or reduce the impact of a terrorist act, to assist in the investigation of a terrorist act, or to protect essential services from a terrorist act. The Police may apply to the Supreme Court for an authorisation to extend the special powers for up to 14 days.

10.3 Queensland

The [*Police Powers and Responsibilities Act \(Qld\)*](#) gives Police powers to obtain Covert Search Warrants and Surveillance Device Warrants to investigate terrorism-related crimes.

The [Criminal Code 1899 \(Qld\)](#) also includes a ‘sabotage’ or ‘threatened sabotage’ crime. It is an offence to destroy or damage a public facility with the intention of causing major economic loss, or major disruption to government functions and the use of services by the public. It is punishable by a maximum penalty of 25 years imprisonment.

10.4 Western Australia

The [Terrorism \(Extraordinary Powers\) Act 2005 \(WA\)](#) gives Police special powers to obtain a person’s personal details, and search people and vehicles who leave or enter an identified area or if they are a target person. An authorisation may be made by the Police Commissioner for up to 24 hours and then must be approved by a court, if a terrorist act has been, is being or is about to be committed. Further, the authorisation may be granted if its purpose is to find a person or vehicle which may be connected with the terrorist act or to prevent the terrorist act.

10.5 South Australia

The [Terrorism \(Police Powers\) Act 2005 \(SA\)](#) provides for an authorisation for special powers to be made by a senior Police officer, then by a judicial officer within 24 hours, if a terrorist act is imminent and if the authorisation will substantially assist in the prevention of the terrorist act. The authorisation may be for up to 14 days where it relates to preventing a terrorist act, and up to 48 hours for investigating a terrorist act. An authorisation allows Police to search specific persons and people in their company, or people or vehicles entering or leaving an area subject to an authorisation. Police may also search premises in an area and seize and detain things.

10.6 Northern Territory

The [Terrorism \(Emergency Powers\) Act \(NT\)](#) allows the Commissioner of Police, with the approval of the Minister of Police, to make an authorisation for the exercise of special Police powers, if a terrorist act has occurred or is likely to occur in the near future. There must also be reasonable grounds for believing the authorisation will prevent a terrorist act, find, preserve or remove evidence, or apprehend a person who has committed or intends to commit a terrorist act. An authorisation may be in effect for up to 14 days.

Police can demand a person's identity and address, search people, vehicles and premises. In addition, a Police officer may enter and remain on premises for the purposes of surveillance, or to ensure the health or safety of a person, without a warrant.

10.7 Australian Capital Territory

The [*Terrorism \(Extraordinary Temporary Powers\) Act 2006 \(ACT\)*](#) allows the Magistrates or Supreme Court to make an authorisation for the exercise of special Police powers at the request of the Chief Police Officer. The grounds for an authorisation are a reasonable belief that a terrorist act will happen in the next 14 days and the authorisation will substantially assist in preventing the terrorist act. Police may demand personal details (name, date of birth, address), search persons, premises or vehicles, seize things and cordon off a target area.

10.8 Tasmania

The [*Police Powers \(Public Safety\) Act 2005 \(Tas\)*](#) allows the Commissioner of Police, with the Premier's approval, to make an authorisation for the exercise of special Police powers in relation to an event where there are reasonable grounds the event might be subject to a terrorist act. Under this type of authorisation, Police may demand personal details (name, date of birth, address), conduct **ordinary searches** of persons or vehicles, and cordon off a designated area. An authorisation may be sought from the Supreme Court for Police to exercise additional powers which include the power to conduct **strip searches**, to enter and search premises and to give directions to public bodies. Such an authorisation may be given where it is reasonably necessary to protect an area from a terrorist act, or to minimise the effects or assist in the recovery of a terrorist act.

Part 11: Where to go for help

11.1 General Information

If you would like to find out more about this area of the law, keep updated with the latest changes, or get involved in the debate about these laws, you can visit one of these websites:

Muslim Legal Network (NSW)

<http://www.muslimlegalnetworknsw.com/>

Muslim Legal Network (Victoria)

<http://www.muslimlegalnetwork.com/>

NSW Council for Civil Liberties

<http://www.nswccl.org.au>

Victorian Council for Civil Liberties (Liberty Victoria)

<http://libertyvictoria.org.au/index.asp>

Attorney-General's Department (National Security)

<http://www.ag.gov.au/NationalSecurity/Pages/home.aspx>

Legislation

<http://www.austlii.edu.au>

11.2 Legal Advice

New South Wales

Legal Aid NSW

323 Castlereagh Street

Sydney NSW 2000

Tel: (02) 9219 5000

LawAccess: 1300 888 529

<http://www.legalaid.nsw.gov.au>

Legal Aid Hotline for under 18s

Tel: 1800 101 810

Your local community legal centre

Community Legal Centres NSW

Tel: (02) 9212 7333

<http://www.clcnsw.org.au>

Law Society of NSW (for referral to private lawyers)

Tel: (02) 9926 0333

<http://www.lawsociety.com.au>

Victoria**Victoria Legal Aid**

350 Queen Street

Melbourne VIC 3000

Tel: 1300 792 387

<http://www.legalaid.vic.gov.au>

Youthlaw, Young People's Legal Rights Centre Inc.

Tel: (03) 9611 2412

<http://youthlaw.asn.au/>

Your local community legal centre

Federation of Community Legal Centres (Vic) Inc.

Tel: (03) 9652 1500

<http://www.communitylaw.org.au>

Law Institute Victoria (for referral to private lawyers)

Tel: (03) 9607 9311

<http://www.liv.asn.au>

Australian Capital Territory**Legal Aid ACT**

2 Allsop Street

Canberra City ACT 2601

Tel: 1300 654 314

www.legalaidact.org.au

Your local community legal centre

Tel: (02) 6257 4377

<http://www.naclc.org.au>

The Law Society of the Australian Capital Territory

(for referral to private lawyers)

Tel: (02) 6274 0300

<https://www.actlawsociety.asn.au>

Queensland

Legal Aid Queensland

44 Herschel Street

Brisbane QLD 4000

Tel: 1300 65 11 88

<http://www.legalaid.qld.gov.au>

Your local community legal centre

Community Legal Centres Queensland

Tel: (07) 3392 0092

<http://communitylegalqld.org.au/>

Queensland Law Society (for referral to private lawyers)

Tel: (07) 3842 5888

<http://www.qls.com.au>

Western Australia

Legal Aid Western Australia

32 St Georges Terrace

Perth WA 6000

Tel: (08) 9261 6222

Info line: 1300 650 579

<http://www.legalaid.wa.gov.au>

Your local community legal centre

Community Legal Centres Association (WA) Inc

Tel: (08) 9221 9322

www.communitylaw.net

The Law Society of Western Australia

(for referral to private lawyers)

Tel: (08) 9221 3222

<http://www.lawsocietywa.asn.au>

South Australia

Legal Services Commission of South Australia

159 Gawler Place

Adelaide SA 5000

Tel: (08) 8111 5555

Legal Info: 1300 366 424

<http://www.lsc.sa.gov.au>

Your local community legal centre

South Australian Community Legal Centres

Tel: (08) 8342 1800

<http://www.saccls.org.au>

The Law Society of South Australia (for referral to private lawyers)

Tel: (08) 8229 0200

<https://www.lawsocietysa.asn.au>

Northern Territory

Northern Territory Legal Aid Commission

6th Floor, 9-11 Cavenagh Street

Darwin NT 0800

Tel: (08) 8999 3000

Helpline: 1800 019 343

<http://www.nt.gov.au/ntlac>

Your local community legal centre

Northern Territory Association of Community Legal Centres Inc
(NTACLCL)

Tel: (08) 8982 1182

Law Society Northern Territory (for referral to private lawyers)

Tel: (08) 8981 5104

<http://www.lawsocietynt.asn.au/>

Tasmania

Legal Aid Commission of Tasmania

158 Liverpool St

Hobart TAS 7000

Tel: (03) 6236 3800

Talk to a lawyer: 1300 366 611

<http://www.legalaid.tas.gov.au>

Your local community legal centre

Hobart Community Legal Service

Tel: (03) 6223 2500

<http://www.hobartlegal.org.au/>

Law Society of Tasmania (for referral to private lawyers)

Tel: (03) 6234 4133

<http://lst.org.au/>

11.3 Complaints

11.3.1 Complaints about ASIO

Inspector-General of Intelligence and Security

1 National Circuit

Barton ACT 2600

Tel: (02) 6271 5692

Fax: (02) 6271 5696

<http://www.igis.gov.au>

info@igis.gov.au

11.3.2 Complaints about AFP

A complaint must be lodged directly with the AFP. A complaint can be lodged by:

- completing an online form available at <https://www.afp.gov.au/contact-us/feedback-and-complaints>
- attending or telephoning any AFP police station or office; or
- contacting or writing to Professional Standards Operations Monitoring Centre

PO Box 401
Canberra City ACT 2601
Tel: (02) 6131 6789

**AFP National
Headquarters**
Edmund Barton
Building
47 Kings Ave
Barton ACT 2600
Tel: (02) 6131 3000

AFP Western Australia
619 Murray Street
Perth WA 6000
Tel: (08) 9320 3444

AFP New South Wales
110 Goulburn Street
Sydney NSW 2000
Tel: (02) 9286 4000

AFP South Australia
8th Floor 55 Currie Street
Adelaide SA 5000
Tel: (08) 8416 2811

AFP Victoria
383 Latrobe Street
Melbourne VIC 3000
Tel: (03) 9607 7777

AFP Northern Territory
PO Box 1888
Darwin NT 0801
Tel: (08) 8980 1300

Commonwealth Ombudsman

The Commonwealth Ombudsman hears complaints about the AFP and ASIO. Complaints may be made by telephone on 1300 362 072 or online at:

<http://www.ombudsman.gov.au/making-a-complaint>

11.3.3 Complaints about State Police

Contact the Police Commissioner in your State. If you are not happy with how your complaint is being handled, you can complain to your State Ombudsman.

If you wish to report Police misconduct or corruption or corruption, you can also report to the following bodies:

NSW Police Integrity Commission

Level 3, 111 Elizabeth Street
Sydney NSW 2000

Phone: (02) 9321 6700 or 1800 657 079 (free-call)

Email: contactus@pic.nsw.gov.au

VIC Independent Broad-based Anti-Corruption Commission

Complaint forms can be found at:

<https://www.ibac.vic.gov.au/reporting-corruption/complaints-form>

QLD Crime and Corruption Commission

Phone: (07) 3360 6060 or 1800 061 611

Email: mailbox@ccc.qld.gov.au

WA Corruption and Crime Commission

Reports can be submitted online:

<https://www.ccc.wa.gov.au/reporting-misconduct>

Independent Commissioner Against Corruption

SA Reports can be submitted online:

<http://www.icac.sa.gov.au/content/make-online-complaint-or-report>

TAS Integrity Commission

Reports can be submitted online:

http://www.integrity.tas.gov.au/report_misconduct/how_to_report

4th edition produced by

Australian Muslim Civil Rights Advocacy Network (AMCRAN)
and
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With thanks to everyone who assisted with the earlier editions

This booklet answers people's general questions about the anti-terrorism laws that have been introduced in Australia since 2001. These include questions about the terrorism offences, the extended powers and functions of the Australian Security Intelligence Organisation (ASIO) and the Australian Federal Police (AFP), as well as information on control orders, data retention, surveillance and communication intercepts. This revised edition also includes new sections on citizenship, passports and travelling overseas.