

Comparison of the Anti-Terrorism Bill (No. 2) 2005 with publicised draft versions of the Anti-Terrorism Bill 2005

The unauthorised release of draft versions of the Anti-Terrorism Bill (No. 2) 2005 gives a rare glimpse of what is usually the secret evolution of a Bill, and also enables one to gauge the effects of the public debate that followed.

[Version 28](#) (v28) of the draft Anti-Terrorism Bill 2005, dated 7 October, was released online by the Chief Minister of the ACT, Jon Stanhope, on 14 October 2005.¹

[Version 63](#) (v63), dated 28 October, was released online by Boe Lawyers (Brisbane), on 1 November 2005.²

After the introduction of the Bill into the House of Representatives on 3 November, there was mention in the news of the number of changes effected by the work of the Coalition backbench committee.³ This document enables an analysis of the exact changes effected both by public pressure and the work of that backbench committee.

Changes noted below as having been made *after* v63 were necessarily made between 28 October and 3 November 2005 (the date the Bill was introduced).

Some items from Schedule 1 of v28 and v63 were enacted by the [Anti-Terrorism Act 2005](#), which received Royal Assent on 3 November 2005.

New text below is sometimes distinguished with *italics*, and deletions with ~~striketrough~~ text. Some minor changes, and other changes consequential on renumbering of other provisions, are not noted.

Section 1

The words '(No. 2)' are added to the short title, consequent on the separate introduction of some draft provisions in the Anti-Terrorism Bill 2005.

Section 2, Commencement

Schedule 1, items 1–21 and item 23 are now to commence the day after Royal Assent; item 22 is to commence by proclamation. In v28 and v63, Schedule 1 commenced 28 days after Royal Assent.

Schedules 3–6 now commence the day after Royal Assent. Schedules 7–8 commence 28 days after Royal Assent.

In v28, Schedules 3–8 commenced 28 days after Royal Assent.

In v63, Schedules 3, 7 and 8 commenced 28 days after Royal Assent. Schedules 4–6 commenced the day after Royal Assent.

¹ 'Anti-Terrorism Bill 2005', http://www.chiefminister.act.gov.au/docs/B05PG201_v281.pdf, accessed on 16 December 2005.

² 'Anti-Terrorism Bill 2005', <http://www.boelawyers.com.au/documents/Anti-TerrorismBill2005051028.pdf>, accessed on 16 December 2005.

³ See for example, Andrew Clennell, Louise Dodson and Joseph Kerr, 'Terrorist laws toned down as MPs dig in', *Sydney Morning Herald*, 4 November 2005, p. 1, and '[Govt introduces anti-terrorism legislation](#)', *7.30 Report*, ABC TV, 3 November 2005.

Schedule 9, items 1–2 and 5 are now to commence by proclamation or after one year; items 6, 8–9, 14–15 and 18–24 commence at the same time as one of the proclaimed provisions. Items 3–4 and 7 commence on Royal Assent.

In v28, Schedule 9 commenced by proclamation or after one year.

In v63, Schedule 9, items 3–4 and 7 commenced on Royal Assent; items 1–2, 5 and 10 commenced by proclamation or after one year; items 6, 8–9, 11–24 commenced at the same time as one of the proclaimed provisions.

Schedule 10, items 26–28 commence the day after Royal Assent. This change was included in v63. In v28, these items commenced 28 days after Royal Assent.

Section 4, Review of anti-terrorism laws

Not present in v28, but included in v63.

Schedule 1

Items 3–5 (repeal of the definitions of the Hamas, Hizballah and Lashkar-e-Tayyiba organisations) first appeared in v63. The application provision in item 22 has been amended to reflect the enactment of the *Anti-Terrorism Act 2005*. Items 2–5 and 22 of v28 were enacted by the *Anti-Terrorism Act 2005*.

Schedules 2 and 3

Unchanged in all versions.

Schedule 4

Schedule 4 contains the most significant changes from the earlier versions of the Bill.

Control orders

A new definition of *confirmed control order* is inserted as item 2. This change was included in v63, but with reference to section 104.8E.

In item 4 (item 3 of v28), the definition of *control order* is changed to ‘an interim control order or a confirmed control order.’ This change was included in v63.

A new definition of *corresponding State preventative detention law* is inserted as item 5. This change was included in v63.

A new definition of *interim control order* is inserted as item 9. This change was included in v63.

In item 10, the issuing authority for an initial preventative detention order is changed to ‘a senior AFP member’. (The definition of *senior AFP member* was already present in v28.) This change was included in v63.

A new definition of *police officer* is inserted as item 16. This change was included in v63.

A new definition of *superior court* is inserted as item 22. This change was included in v63.

In item 24, a new Subdivision A, ‘Object of this Division’, is added. This change was included in v63.

A new section ‘Object of this Division’ is inserted as section 104.1. This change was included in v63.

The title of Subdivision B (Subdivision A in v28) is changed from ‘Making control orders’ to ‘Making an interim control order’. Later sections make consequent changes by referring to *interim* control orders rather than control orders. This change was included in v63.

Section 104.2, ‘Attorney-General’s consent to request an interim control order’ (104.1 in v28), the following other changes are made:

- changed section heading
- a new note after subsection (1)

<ul style="list-style-type: none"> • in subsection (2), ‘control order in respect of relation to a person’ • in paragraph (2)(a), ‘control’ is deleted • in subsection (3), paragraphs (b) and (c) are each split into two subparagraphs, paragraph (d) is replaced, paragraph (e) and two notes are added • in subsection (4), the words ‘(including the draft of the interim control order to be requested)’ are added • in subsection (5), the change is ‘this section operates in relation to a request for a control order a senior AFP member may seek the Attorney General’s consent to request an interim control order’ <p>Most of these changes were included in v63, but the addition of subparagraph (3)(d)(iv) was made <i>after</i> v63.</p>
<p>Section 104.3, ‘Requesting the court to make an interim control order’ (104.2 in v28):</p> <ul style="list-style-type: none"> • the note now refers to the possibility of committing an offence by a misleading or false request, rather than to the fact that requests may be made electronically. This change was included in v63.
<p>Section 104.4, ‘Making an interim control order’ (104.3 in v28)</p> <ul style="list-style-type: none"> • a new paragraph (b) is added: ‘the court has received and considered such further information (if any) as the court requires;’ New subsections (2) and (3) are also added. These changes were included in v63.
<p>Section 104.5, ‘Terms of an interim control order’ (104.4 in v28):</p> <ul style="list-style-type: none"> • in subsection (1), a new paragraph (e) is added, the order of paragraphs (d)–(f) is changed, and a new note is added • in subsection (3), paragraph (k) is slightly altered: ‘<i>impressions of</i> his or her fingerprints’; in paragraph (l), the words ‘if the person consents’ are deleted—the substance of the provision is moved to a new subsection (6) • a note is added after subsection (3), and the previous requirement in subsection (6) of v28 that photographs and fingerprints could only be used to ensure compliance with the control order is moved to section 104.22 • new subheadings ‘Communicating and associating’ and ‘Counselling and education’ are added. <p>These changes were included in v63.</p>
<p>A new subdivision heading is added: ‘Subdivision C—Making an urgent interim control order’. This change was included in v63.</p>
<p>Section 104.6, ‘Requesting an urgent interim control order by electronic means’ (104.5 in v28):</p> <ul style="list-style-type: none"> • in paragraph (1)(a), ‘thinks’ is changed to ‘considers’ • the note after subsection (2) is changed to the effect that the Attorney-General’s consent must be obtained by the AFP rather than simply sought (reference to section 104.10) • the wording of paragraphs (4)(a) and (c) is changed consequent on previous points • a new note is added after subsection (4) • the words ‘of the order being completed’ are deleted from the note after subsection (5). <p>These changes were included in v63.</p>

<p>Section 104.7, ‘Making an urgent interim control order by electronic means’ (104.6 in v28):</p> <ul style="list-style-type: none"> • the words ‘by electronic means’ are added to the heading • in subsection (2), the words ‘in the terms of the request’ are deleted, and a reference to subsection 104.5 is added • paragraph (5)(c) is amended to reflect the Attorney-General’s consent being obtained rather than sought • the previous note after subsection (5) is deleted (again in relation to sought/obtained). <p>These changes were included in v63.</p>
<p>Sections 104.8 ‘Requesting an urgent interim control order in person’ and 104.9 ‘Making an urgent interim control order in person’ are new. These changes were included in v63.</p>
<p>Section 104.10, ‘Obtaining the Attorney-General’s consent within 4 hours’ (104.7 in v28):</p> <ul style="list-style-type: none"> • the heading is changed from ‘Seeking ... ‘ to ‘Obtaining ... ‘ the Attorney-General’s consent • subsection (1) is rearranged and reflects the addition of section 104.8 • the words ‘In any case’ are prefixed to subsection (2) • subsection (3) is new. <p>These changes were included in v63.</p>
<p>Section 104.11, ‘Court to assume that exercise of power not authorised by urgent interim control order’ (104.8 in v28):</p> <ul style="list-style-type: none"> • in paragraph (a), the words ‘the exercise of a power under, or in respect of, a control order made under section 104.6 was duly authorised’ are replaced with ‘an interim control order was duly made under section 104.7’ • the words ‘that the exercise of the power was not duly authorised’ are replaced with ‘that the order was not duly made’. <p>These changes were made <i>after</i> v63.</p>
<p>A new subdivision heading is added: ‘Subdivision D—Confirming an interim control order’. This change was included in v63.</p>
<p>Section 104.12, ‘Service, explanation and notification of an interim control order’ (104.9 in v28):</p> <ul style="list-style-type: none"> • the words ‘and notification’ are added to the heading. This change was made <i>after</i> v63. • subsection (1) is amended to require 48 hours notice of a hearing to confirm an interim control order, and to require the person to be furnished with a summary of the grounds on which the order is made. Awareness of new sections 104.14 and 104.22 is required, and mention of language skills is also added. These changes were included in v63. • new subsection (3) is added. This change was included in v63. • new subsections (2) and (5) are added, including a notification to the Queensland Public Interest Monitor (‘QPIM’) where relevant. These changes were made <i>after</i> v63.
<p>Section 104.13, ‘Lawyer may request a copy of an interim control order’ (104.10 in v28):</p> <ul style="list-style-type: none"> • in subsection (1), the person’s lawyer may now obtain a copy of the summary of the grounds on which the order is made; consequential amendments are made to subsection (2). These changes were included in v63.
<p>Section 104.14, ‘Confirming an interim control order’, is new. Most of the section was included in v63 as section 104.8C, but reference to the QPIM in paragraph (1)(e) was made <i>after</i> v63, and subsections (2) and (3) were also added after v63.</p>
<p>Section 104.15, ‘When a declaration, or a revocation, variation or confirmation of a control order, is in force’, is new. This change was included in v63 as section 104.8D.</p>
<p>Section 104.16, ‘Terms of a confirmed control order’, is new, although it is similar to—but much briefer than—section 104.5. This change was included in v63 as section 104.8E.</p>

<p>Section 104.17, ‘Service of a declaration, or a revocation, variation or confirmation of a control order’, is new. This change was included in v63 as section 104.9A.</p>
<p>Section 104.18, ‘Application by the person for a revocation or variation of a control order’ (104.11 in v28):</p> <ul style="list-style-type: none"> • the words ‘or variation’ are added to the heading, and consequential changes elsewhere. This change was included in v63. • in subsection (3), the QPIM must be notified of an application where relevant. This change was made <i>after</i> v63. • previous subsection (4) of v28, ‘However, the control order remains in force until the Court revokes the order.’, is deleted. This change was included in v63. • the person, his/her lawyer and the QPIM may bring additional evidence and call witnesses. This change was made <i>after</i> v63. • previous subsection (6) on revocation is deleted. This change was included in v63. • new subsection (5) on the power of the court to control proceedings is added. This change was made <i>after</i> v63.
<p>Section 104.19, ‘Application by the AFP Commissioner for a revocation or variation of a control order’ (104.12 in v28):</p> <ul style="list-style-type: none"> • opportunity to revoke a control order is added to subsection (1). This change was included in v63. • the person who is subject to the control order must be informed of applications for revocation or variation of a control order (new subsection (2)). This change was included in v63. • for Queensland persons or cases, the QPIM must also be informed of applications for revocation or variation of a control order (new subsection (2)). This change was made <i>after</i> v63. • new subsection (3) enables the person, his/her lawyer, the AFP and, for Queensland persons or cases, the QPIM to bring additional evidence and call witnesses. The changes in relation to the AFP and the PIM were made <i>after</i> v63. • new subsection (4) states that the court’s power to control proceedings is not otherwise limited by new subsection (3). This change was made <i>after</i> v63. • the previous subsection (3) is moved, reworded, to new section 104.20. This change was included in v63.
<p>Section 104.20, ‘Revocation or variation of a control order’, is new, apart from subsection (3), relocated from section 104.12 in v28. This change was included in v63 as section 104.12A.</p>
<p>Section 104.21, ‘Lawyer may request a copy of a control order’, is new, but is similar to section 104.13. This change was included in v63 as section 104.12B.</p>
<p>Section 104.22, ‘Treatment of photographs and impressions of fingerprints’:</p> <ul style="list-style-type: none"> • subsection (1) was subsection 104.4(6) in v.28 • subsection (2) requires destruction of photographs and fingerprints after one year • subsection (3) establishes a new offence of misuse of photographs or fingerprints, with a penalty of two years imprisonment. <p>These changes were included in v63 as section 104.12C.</p>
<p>Section 104.23, ‘Application by the AFP Commissioner for addition of obligations, prohibitions or restrictions’, is new. This change was included in v63 as section 104.12D.</p> <ul style="list-style-type: none"> • in subsection (3), notice must be given to the QPIM where relevant. This change was made <i>after</i> v63. • in subsection (4), the AFP and the QPIM may bring additional evidence and call witnesses. This change was made <i>after</i> v63.

<p>Section 104.23, ‘Varying a control order’, is new. This change was included in v63 as section 104.12E.</p> <ul style="list-style-type: none"> • subsection (3), giving the court the option not to make additional orders, was added <i>after</i> v63.
<p>Section 104.25, ‘Terms of a varied control order’, is new. This change was included in v63 as section 104.12F.</p>
<p>Section 104.26, ‘Service and explanation of a varied control order’, is new. This change was included in v63 as section 104.12G. Subparagraph (1)(a)(ii), giving the person the right to a summary of the grounds for the new order, was added <i>after</i> v63, as was subsection (2) for the protection of national security information.</p>
<p>Section 104.27, ‘Offence for contravening a control order’ (104.13 in v28) is unchanged.</p>
<p>Section 104.28, ‘Special rules for young people’ (104.14 in v28):</p> <ul style="list-style-type: none"> • in subsection (1), the words ‘A control order has no effect’ are changed to ‘A control order cannot be requested, made or confirmed’ for persons under 16. This change was included in v63. • subsection (2) is a combination of subsections (2) and (3) from v63. • successive control orders are permitted against 16 and 17-year-olds. This change was included in v63.
<p>Section 104.29, ‘Reporting requirements’ (section 104.15, ‘Annual report’, in v28), is altered, taking into account the new provisions relating to: interim and confirmed control orders, revocation, variation and voiding of control orders. These changes were included in v63.</p>
<p>Section 104.30, ‘Requirement to notify Attorney-General of declarations, revocations or variations’, is new. This change was included in v63 as section 104.15A.</p>
<p>Section 104.31, ‘Queensland public interest monitor functions and powers not affected’, is new. This change was included in v63 as section 104.15B.</p>
<p>Section 104.32, ‘Sunset provision’ (104.16 in v28) stated in v28: ‘This Division ceases to have effect at the end of 10 years after it commences.’ In the Bill, the section states that any control orders in force ten years after the Division commences will expire, and that control orders may not be requested, made or confirmed after that date. These changes were included in v63.</p>
<p>Preventative detention orders</p>
<p>After section 105.1, ‘Object’, a new note is added referring to section 105.42. This change was included in v63.</p>
<p>Section 105.2, ‘Issuing authorities for continued preventative detention orders’, provision is added for the appointment of state or territory Supreme Court judges, retired judges, and the President or Deputy President of the Administrative Appeals Tribunal. The provision for appointment of state or territory Supreme Court judges was added <i>after</i> v63.</p>
<p>Section 105.3, ‘Police officer detaining person under a preventative detention order’ is widened from application only to AFP officers—as it was in v28—to include other police forces, and a hierarchy of responsibility is established, making the AFP responsible before other police.</p>
<p>Section 105.4, ‘Basis for applying for, and making, preventative detention orders’:</p> <ul style="list-style-type: none"> • original subsection (1) is split into subsections (1) and (2), separating the requirements relating to the application by the AFP and the making of an order by an issuing authority. This change was included in v63. • the definition of <i>subject</i> is separated into subsection (3). This change was included in v63. • new paragraph (5)(c) is added, imposing a requirement that detention be necessary to preserve evidence of a terrorist act if a preventative detention order is to be issued. This

<p>change was made <i>after</i> v63.</p> <ul style="list-style-type: none"> • subsections (1) and (5) are reworded to take new subsections (2) and (3) into account. This change was included in v63.
<p>Section 105.5, ‘No preventative detention order in relation to person under 16 years of age’:</p> <ul style="list-style-type: none"> • the wording is widened to take account of detention by police forces other than the AFP • new paragraphs (2)(c) and (d), and a new subsection (3), are added, to enable liaison between the AFP and other police forces for release of persons under 16-years-old. <p>These changes were included in v63.</p>
<p>Section 105.6, ‘Restrictions on multiple preventative detention orders’:</p> <ul style="list-style-type: none"> • the title has been changed from ‘Preventative detention allowed only once in relation to a particular terrorist act’ • the word ‘detained’ is replaced with ‘taken into custody’ (paragraph (b) of each subsection) • new subheadings and new subsections (2), (4), (5) and (6) are added, requiring new information if a successive detention order is to be made, and dealing with detention orders under corresponding state laws. <p>These changes were included in v63.</p>
<p>Section 105.7, ‘Application for initial preventative detention order’:</p> <ul style="list-style-type: none"> • two notes are added after subsection (1). This change was included in v63. • in subsection (2), new paragraphs are added about the length of detention, a person’s age, previous requests for variation or revocation of control orders, and previous detention under corresponding state laws. Slight amendments were made to these paragraphs <i>after</i> v63. • new subsections (3) and (4) are added. These changes were included in v63.
<p>Section 105.8, ‘Senior AFP member may make initial preventative detention order’:</p> <ul style="list-style-type: none"> • the title has been changed from ‘Initial preventative detention order’. • two notes are added after subsection (1). • new subsection (7) is added, allowing over two hours of visiting rights for the young and for persons incapable of managing their own affairs. <p>These changes were included in v63.</p>
<p>Section 105.10, ‘Extension of initial preventative detention order’:</p> <ul style="list-style-type: none"> • in paragraph (2)(b), the words ‘considers ... is reasonably necessary for the purpose for which the order was made’ replace ‘considers ... should be made’. This change was included in v63. • in paragraph (2)(c), the words ‘or further extensions’ are added. This change was made <i>after</i> v63. • in subsection (3), the words ‘if the issuing authority is satisfied that detaining the person under the order for the period as extended, or further extended, is reasonably necessary for the purpose for which the order was made’ are added. This change was included in v63.
<p>Section 105.11, ‘Application for continued preventative detention order’:</p> <ul style="list-style-type: none"> • in subsection (1), the words ‘If an initial preventative detention order is in force in relation to a person in relation to a terrorist act’ are added, and the end of the sentence is also changed. This change was included in v63. • a new note is added after subsection (1). This note was changed <i>after</i> v63. • in subsection (2), new paragraphs are added about the length of detention, a person’s age, previous requests for variation or revocation of control orders, and previous detention under corresponding state laws. Slight amendments were made to these

paragraphs <i>after</i> v63.
<p>Section 105.12, ‘Judge, Federal Magistrate, AAT member or retired judge may make continued preventative detention order’:</p> <ul style="list-style-type: none"> • the title is amended to take into account additions to the list of issuing authorities. This change was made <i>after</i> v63. • a new note is added after subsection (1). This note was changed slightly <i>after</i> v63. • in subsection (2), a long sentence beginning ‘Section 105.4...’ is added. This change was made <i>after</i> v63. • New subsection (7) is added, allowing over two hours of visiting rights for the young and for persons incapable of managing their own affairs. This change was included in v63.
<p>Section 105.13, ‘Duration of continued preventative detention order’:</p> <ul style="list-style-type: none"> • A new note is added after subsection (1). This change was included in v63.
<p>Section 105.14, ‘Extension of continued preventative detention order’:</p> <ul style="list-style-type: none"> • in paragraph (2)(b), the words ‘considers ... is reasonably necessary for the purpose for which the order was made’ replace ‘considers ... should be made’. This change was included in v63. • in paragraph (2)(c), the words ‘or further extensions’ are added. This change was made <i>after</i> v63. • a new note is added after subsection (2). This change was included in v63. • in subsection (4), the words ‘if the issuing authority is satisfied that detaining the person under the order for the period as extended, or further extended, is reasonably necessary for the purpose for which the order was made’ are added. This change was included in v63.
<p>Section 105.15, ‘Prohibited contact order (person in relation to whom preventative detention order is being sought)’:</p> <ul style="list-style-type: none"> • in subsection (4), the words ‘purpose of the preventative detention order’ replace ‘objectives of the preventative detention order’. • a new note is added after subsection (4). <p>These changes were included in v63.</p>
<p>Section 105.16, ‘Prohibited contact order (person in relation to whom preventative detention order is already in force)’:</p> <ul style="list-style-type: none"> • in subsection (4), the words ‘in achieving the purpose for which the preventative detention order was made’ replace ‘in achieving the objectives of the preventative detention order’ • a new note is added after subsection (4). <p>These changes were included in v63.</p>
<p>Section 105.17, ‘Revocation of preventative detention order or prohibited contact order’:</p> <ul style="list-style-type: none"> • new subheadings are added. This change was made <i>after</i> v63. • the wording is widened to take account of detention by police forces other than the AFP, changes are made to subsections (1) and (4), and new subsections (2) and (5) are added, to enable liaison between the AFP and other police forces. These changes were included in v63.
<p>Section 105.18, ‘Status of person making continued preventative detention order’:</p> <ul style="list-style-type: none"> • subsection (2) is amended to take into account additions to the list of issuing authorities. This change was made <i>after</i> v63.
<p>Section 105.19, ‘Power to detain person under preventative detention order’:</p> <ul style="list-style-type: none"> • in subsection (1), the power to take into custody and detain a person is extended from AFP officers to police officers in general. This change was included in v63. • new subsections (2)–(9) are added. These changes replace the original section 104.23,

<p>‘Use of force’—the shoot-to-kill provision which has been widely discussed. Police officers are now given the same powers as they would have when arresting a person for an offence.</p> <ul style="list-style-type: none"> Persons are also given new rights to make representations to the AFP about their detention (new subsection (8)). <p>Subsections (2)–(4) were included in v63, and subsections (5)–(9) were added <i>after</i> v63.</p>
<p>The term ‘AFP member’ is replaced by ‘police officer’ throughout sections 105.20–105.32, 105.37–105.39, 105.42–105.43. These changes were included in v63.</p>
<p>Section 105.21, ‘Requirement to provide name etc.’:</p> <ul style="list-style-type: none"> new paragraph (2)(c) is added, requiring evidence of status to be provided by non-uniformed police. in subsection (4), police officers are required to provide their number or rank if requested to do so; editorial changes are also made. <p>These changes were included in v63.</p>
<p>Section 105.22, ‘Power to enter premises’:</p> <ul style="list-style-type: none"> the words ‘and with such assistance from other police officers as is necessary’ are added to subsection (1). <p>This change was included in v63.</p>
<p>Original section 105.23, ‘Use of force’, is deleted; see section 105.19 above.</p>
<p>Section 105.25, ‘Warrant under section 34D of the <i>Australian Security Intelligence Organisation Act 1979</i>’ (105.26 in v28):</p> <ul style="list-style-type: none"> a new note is added after subsection (3), that a non-AFP police officer will need to obtain the approval of a senior AFP member before releasing a person from detention. <p>This change was included in v63.</p>
<p>Section 105.26, ‘Release of person from preventative detention’ (105.27 in v28):</p> <ul style="list-style-type: none"> subsections (1) and (4) are reworded to make the police the grammatical subject, rather than the detainee. This change was included in v63. the note after subsection (1) has a new reference to Part IAA (‘Search warrants and powers of arrest’) of the <i>Crimes Act 1914</i>. This change was made <i>after</i> v63. new subsection (2) is added requiring AFP approval for release of a detainee by another police force, and requiring release of a detainee if for ASIO questioning. This change was included in v63. paragraph (4)(b) has a new reference to Part IC of the Crimes Act. This change was made <i>after</i> v63. in subsection (6), the definite article is replaced in three places with the indefinite article. This change was made <i>after</i> v63. in the note after subsection (6), the phrase ‘protective detention’ is replaced with ‘preventative detention’—a correction. This change was included in v63. a new note is added after subsection (7). This change was included in v63.
<p>Section 105.27, ‘Arrangement for detainee to be held in State or Territory prison or remand centre’, is new. This change was included in v63.</p>
<p>Section 105.28, ‘Effect of initial preventative detention order to be explained to person detained’:</p> <ul style="list-style-type: none"> the original section 105.28 has been divided into four, becoming sections 105.28–105.31. This change was included in v63. the word ‘initial’ is added to the title. This change was included in v63. paragraph (2)(e) is reworded, and two subparagraphs are added, specifying that complaints may cover the order itself and the person’s treatment. This change was included in v63. new paragraph (2)(f) is added, outlining rights to complain about treatment by state

police. This change was included in v63.

- in subparagraph (2)(g)(ii), the words ‘in connection with the *person’s detention under the order*’ are added. This change was included in v63.
- new paragraph (2)(i) is added, giving the detainee the right to the name and telephone number of the senior AFP member overseeing the order. This change was made *after* v63.
- a new note is added after subsection (2). This change was included in v63.
- subsection (3) was subsection (5) in the original section 105.28.

Section 105.29, ‘Effect of continued preventative detention order to be explained to person detained’:

- this section constituted subsections (3)–(5) in the original section 105.28
- the word ‘continued’ is added before ‘order’ in subsections (2)(b) and (e). This change was made *after* v63.
- paragraph (2)(d) is reworded, and two subparagraphs are added, specifying that complaints may cover the order itself and the person’s treatment. This change was included in v63.
- new paragraph (2)(f) is added, outlining rights to complain about treatment by state police. This change was included in v63.
- in subparagraph (2)(f)(ii), the words ‘in connection with the *person’s detention under the order*’ are added. This change was included in v63.
- new paragraph (2)(h) is added, giving the detainee the right to the name and telephone number of the senior AFP member overseeing the order. This change was made *after* v63.

Section 105.30, ‘Person being detained to be informed of extension of preventative detention order’:

- this section constituted subsection (6) in the original section 105.28
- the words ‘or further extension’ are added on line 4. This change was included in v63.

Section 105.32, ‘Copy of preventative detention order and summary of grounds’ (105.29 in v28):

- the words ‘and summary of grounds’ are added to the title. This change was made *after* v63.
- in subsection (1), a new paragraph is added requiring the detainee to be given a summary of the grounds for his or her detention. This change was made *after* v63.
- new subsection (2) is then added, for the protection of national security information. This change was made *after* v63.
- a new subsection (3) is added, exempting police from having a copy of an order when detaining a person. This change was included in v63.
- subsection (4) (subsection (2) in v28 and v63) is added to in relation to initial and continued preventative detention orders. This change was included in v63.
- a new subsection (5) is added, requiring a copy of an extended order to be given to a detainee. This change was included in v63.
- the original subsection (6), preventing a lawyer who is subject to a prohibited contact order from being given a copy of a client’s preventative detention order, is moved to a new section 105.40. This change was included in v63.
- in subsection (6), a new paragraph is added so that a summary of the grounds for detention may be given to the detainee’s lawyer. Subsection (9) is similarly amended. These changes were made *after* v63.
- the wording is also changed from ‘a lawyer nominated by the person being detained’ to ‘a lawyer acting for the person in relation to the order’. This change was included in v63.

<ul style="list-style-type: none"> • two new notes are added after subsection (6). These changes were included in v63. • subsection (11) on the lawfulness of detention not being affected by failure to comply with certain provisions, is extended to cover new subsection (5).
Section 105.33, ‘Humane treatment of person being detained’ (105.30 in v28 and v63), is unchanged except for the addition of ‘or <i>being detained</i> ’.
Section 105.34, ‘Restriction on contact with other people’ (105.31 in v28): <ul style="list-style-type: none"> • reference to contact with the Ombudsman being prevented by a prohibited contact order is deleted from the second note. This change was made <i>after</i> v63.
Section 105.35, ‘Contacting family members etc.’ (105.32 in v28): <ul style="list-style-type: none"> • a new paragraph (1)(f) is added, giving police officers discretion to allow a detainee to contact another person. • a new subsection (2) is added, clarifying that detainees may not disclose their detention nor how long it will be. These changes were included in v63.
Section 105.36, ‘Contacting Ombudsman etc.’ (105.33 in v28): <ul style="list-style-type: none"> • a new subsection (2) is added, on rights to contact state equivalents to the Commonwealth Ombudsman. This change was included in v63.
Section 105.37, ‘Contacting lawyer’ (105.34 in v28 and v63): <ul style="list-style-type: none"> • in subsection (1), new paragraphs (a), (d) and (e) are added, relating to obtaining advice from a lawyer, complaints to state authorities about one’s treatment, and arranging a lawyer to act in a court hearing. • new subsection (2) is added, specifying that contact with a lawyer may be by visits, or by telephone fax or email; the latter three were previously included in subsection (1). These changes were included in v63.
Section 105.38, ‘Monitoring contact under section 105.35 or 105.37’ (105.35 in v28): <ul style="list-style-type: none"> • new subsection (5) makes communication between a detainee and a lawyer inadmissible in court proceedings. This change was included in v63.
Section 105.39, ‘Special contact rules for person under 18 or incapable of managing own affairs’ (105.36 in v28 and v63): <ul style="list-style-type: none"> • in subsection (1), the term ‘protective detention order’ is corrected to ‘preventative detention order’. This change was made <i>after</i> v63. • new subsection (3) is added, to the effect that both parents or guardians may be contacted, and the length of the detention order may be disclosed to them. This change was included in v63. • in subsection (5), the option of daily contact for longer than two hours is made available, and a note is added after the subsection. This change was included in v63. • in subsection (6), the term ‘for a longer period’ is replaced by ‘for a period that is longer than the period provided for in subsection (5).’ This change was included in v63. • in subsection (7), the words ‘such’ and ‘effectively’ are added—changes made <i>after</i> v63 and <i>before</i> v63 respectively.
Section 105.40, ‘Entitlement to contact subject to prohibited contact order’ (105.37 in v28), is unchanged.
Section 105.41, ‘Disclosure offences’ (105.38 in v28): <ul style="list-style-type: none"> • in subsection (1) relating to offences by detainees, in addition to other rewording, the subparagraph relating to what is disclosed—‘any information that the detainee gives the offender in the course of the contact’—is deleted, and it becomes an offence instead to disclose ‘the period for which the subject is being detained’. This change was included in v63. • paragraph (1)(d) is amended to allow disclosure under the special rules relating to those

<p>under 18 or incapable of managing their own affairs. This change was included in v63.</p> <ul style="list-style-type: none"> • new subsection (2) establishes disclosure offences by lawyers, with a penalty of five years imprisonment. This change was included in v63, but mention of representations to the AFP was made <i>after</i> v63. • in subsection (3)—previously subsection (2)—dealing with disclosures under the rules for those under 18 and incapable of managing their own affairs, new subparagraph (b)(iii) makes it an offence to disclose the length of a detention order; new subparagraph (c) permits parents/guardians to share with each other the information received from a detainee; new subparagraphs (e)(ii) and (iii) permit disclosure for complaints to state authorities, and for representations to the AFP. All except the last change were included in v63. • new subsections (5), (6) and (7) establish offences by interpreters, by persons who receive information from others about a preventative detention order, and by police. These changes were included in v63.
<p>Section 105.42, ‘Questioning of person prohibited while person is detained’ (105.39 in v28 and v63):</p> <ul style="list-style-type: none"> • in subsection (1), paragraphs (a)–(c) are added, permitting questioning for limited purposes; the original subsection (2) becomes paragraph (1)(a). • new subsections (2) and (3) are added, with notes, prohibiting questioning by ASIO while a person is in preventative detention, and prohibiting questioning by ASIO or the AFP while a person is in state preventative detention. <p>These changes were included in v63.</p>
<p>Section 105.43, ‘Taking fingerprints, recordings, samples of handwriting or photographs’ (105.40 in v28 and v63):</p> <ul style="list-style-type: none"> • original paragraph (1)(b)—[AFP member must not] ‘require any other person to submit to the taking of identification material (but nothing in this paragraph prevents such a person consenting to the taking of identification material).’—is deleted. This change was included in v63. • in subsections (4) and (6), ‘under 18’ becomes ‘under 18 years of age’; in paragraph (6)(d), ‘a parent or guardian’ becomes ‘the parent or guardian’; in three notes, reference to subsection (12) is corrected to subsection (11). These changes were made <i>after</i> v63. • in subsection (7), ‘under 18 years of age, or is capable of managing’ becomes ‘under 18 years of age and is capable of managing’. This change was included in v63.
<p>Section 105.44, ‘Use of identification material’ (105.41 in v28 and v63), is unchanged.</p>
<p>Section 105.45, ‘Offences of contravening safeguards’ (105.42 in v28 and v63):</p> <ul style="list-style-type: none"> • in subparagraphs (b)(v)–(vii), precise subsections are mentioned rather than simply sections. The subsections named are slightly different: in subparagraph (v), an erroneous mention—in v63—of subsection (4) is deleted, and in subparagraph (vi), mention of subsections (4) and (6) was added <i>after</i> v63.
<p>Sections</p> <ul style="list-style-type: none"> • 105.46, ‘Nature of functions of Federal Magistrate’ (105.43 in v28 and v63) • 105.47, ‘Annual report’ (105.44 in v28 and v63) • 105.48, ‘Ombudsman functions and powers not affected’ (105.45 in v28 and v63) <p>are unchanged.</p>
<p>Section 105.49, ‘Queensland public interest monitor functions and powers not affected’, is new. This change was included in v63.</p>
<p>Section 105.50, ‘Law relating to legal professional privilege not affected’ (105.46 in v28 and v63), is unchanged.</p>
<p>Section 105.51, ‘Legal proceedings in relation to preventative detention orders’, replaces—</p>

to the effect of allowing *some* role for state courts *after* preventative detention has run its course—original section 105.47, ‘Jurisdiction of State and Territory courts excluded’. This change was included in v63, and new subsection (3) is the same as the original subsection (2) in v28, but new subsections (5)–(9), relating to the Administrative Appeals Tribunal, were added to the new section 105.47 *after* v63:

Note that subsection (4) of the Bill erroneously refers to the *Administrative Decisions (Judicial Review) Act 1997*, rather than ‘1977’.

Section 105.52, ‘Review by State and Territory courts’, was added *after* v63.

Section 105.53, ‘Sunset provision’ (105.48 in v28 and v63):

- the words ‘This Division ceases to have effect at the end of 10 years after it commences.’ are replaced with two subsections to the effect that orders would cease to be in force after ten years, and no new orders could be applied for or made after ten years. This change was included in v63.

Schedule 5

In item 6, the words ‘requesting information’ are changed to ‘the requesting of information’ (change included in v63); this change is also made in item 9.

The sunset provision (section 3UK) is significantly different from v28, but identical to v63.

Schedule 6

In three places, the phrase ‘will assist’ has been amended to ‘are relevant to, and will assist’ (subsections 3ZQN(1), 3ZQO(1) and 3ZQO(2), dealing with power to obtain documents). These changes were included in v63.

Schedule 7

In the definition of *sedition* (subsection 30A(3)), the word order is changed and ‘by law in’ becomes ‘by law of’: ‘to urge another person to attempt, otherwise than by lawful means, to procure a change to any matter established by law in the Commonwealth’ becomes ‘to urge another person to attempt to procure a change, otherwise than by lawful means, to any matter established by law of the Commonwealth’. This change was included in v63.

In proposed section 80.2 (sedition), subsections (4) and (6), the scope of the term *recklessness* is limited by reference to the preceding subsection: ‘Recklessness applies to the element of the offence *under subsection ...*’ These changes were made *after* v63.

In proposed subparagraph 80.3(1)(b)(iii), the words ‘or a Territory’ are changed to ‘, a Territory’. This change was included in v63.

In paragraph 80.3(1)(c), the defence against sedition is widened by changing the words ‘any matter established by law’ to ‘any matter established by law, policy or practice’. This change was made *after* v63.

In item 18, the amendment of the *Surveillance Devices Act 2004* is extended to cover Division 80 of the Criminal Code. This change was included in v63.

Schedule 8

Unchanged in all versions.

Schedule 9

In item 5, the definition of *prescribed particulars* is changed from ‘particulars prescribed by the regulations for the purposes of section 24F.’ to ‘particulars prescribed by the regulations for the purposes of sections 24E and 24F.’ This change was included in v63.

In item 9 (section 15AA), the words ‘with a person’ are added at the end of paragraph (1)(b): ‘finds a bearer negotiable instrument <i>with a person</i> ’. This change was made <i>after</i> v63.
In the same item, an extra condition is added to subsection (4): ‘(i) fails to comply with the request; or (ii) fails to give the report as required by subsection (3).’ This change was made <i>after</i> v63.
In item 11, subsection 24E(1) has two new paragraphs: ‘ that fact (a) the person’s name and all prescribed particulars; and (b) the fact that the person carries on such a business.’ This change was included in v63.
Also in item 11, the requirement to make the Register of Providers of Remittance Services available for inspection on the Internet (subsection 24F(3)), has been deleted, and other subsections have been renumbered. This change was included in v63.
In item 16, the words ‘under section 17FA’ have been added to paragraph 29(4)(ba): ‘causing a cash dealer to include customer information relating to an international funds transfer instruction <i>under section 17FA</i> that is false or misleading in a material particular;’ This change was included in v63.
In item 21, after the new heading for Schedule 3AA, the note has been corrected: ‘ <i>Note: see subsection 15AA(6).</i> ’ This change was included in v63.

Schedule 10

In item 2, the words ‘of the Organisation’ are added to subsection 23(6): ‘The Director-General, or a senior officer <i>of the Organisation</i> appointed by the Director-General ... ’ This change was included in v63.
In the same subsection, a new definition is added: ‘ <i>senior officer of the Organisation</i> means an officer of the Organisation who holds or performs the duties of an office that is: (a) equivalent to a position occupied by an SES employee; or (b) designated as an office of Coordinator by the Director-General under section 85.’ This change was included in v63.
The title of item 14 is changed to name the relevant paragraph rather than the subparagraph. This change was made <i>after</i> v63.

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