

Anti-Terrorism
Laws:

ASIO, the Police and You

Second Edition



What do I do if ASIO or the AFP come to visit me?

If you are contacted by the Australian Security Intelligence Organisation (ASIO), or an Australian Federal Police (AFP) officer,

- Remain calm;
- Ask them to identify who they are and to explain what they want;
- If they want to search you or your premises, ask to see their warrant. If they say they do not have a warrant, tell them that you object to being searched (but if they insist, do not use force to stop them).
- If they are AFP officers or State police officers, you can confirm your name and address. However,

Do not make a statement or give an interview to the police unless you have talked to a lawyer first.

- If possible, contact a lawyer or ask someone in the house to contact a lawyer immediately (See the resources section in the back of this guide for legal contacts);
- Request that a friend sit in with you;
- 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;
- Take note of exactly what the warrant authorises the officers to do; you do not have to do any more than what is stated on the warrant;
- Check if there are any restrictions or conditions to what the officers can do;
- Keep a record of the names 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 experienced.

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If you find yourself in a difficult situation, you should always seek advice from a lawyer. This booklet is not intended as legal advice, and should not be relied on as a substitute for legal advice. AMCRAN and its partners exclude liability for any loss suffered by any person resulting in any way from the use of, or reliance on, this material or its text.

The information in this booklet reflects the law as it stands on 1 October 2005. The law has changed since then. You should check with your lawyer for changes to the law. You could also check our website regularly for updates, translations and more: <http://amcran.org>.

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IMPORTANT NOTICE

This booklet covers the anti-terror laws as they stood at 1 October 2005. It does not contain information on the latest legislative amendments in the Anti-Terrorism Act 2005 and Anti-Terrorism Bill (No. 2) 2005. The proposed changes, including the introduction of control orders, preventative detention, new sedition offences, and stop question and search powers, will be incorporated into the booklet in the coming months once the new laws are enacted.

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Preface to the Second Edition

With the help of a dedicated team of volunteers, AMCRAN, the UTS Community Law Centre, and the NSW Council for Civil Liberties produced the first edition of the booklet *Terrorism laws: ASIO, the Police and You*. Four thousand copies were printed and distributed, and all that remain of them now are a few copies, sitting in a lonely photocopy paper box.

It was clear that the first edition addressed a desire for knowledge about anti-terrorism laws in the community. It also became clear that while the government had invested a huge amount of money in introducing anti-terrorism laws and doubling the funding to bodies such as ASIO and the AFP, it had not spent anywhere near as much as required in educating the community. This is despite the substantive impact of the new anti-terrorism laws on the rights and responsibilities of Australian citizens.

Yet the booklet was already out of date by the time it was officially released. Anti-terrorism laws were being introduced (and are still being introduced), and two new pieces of legislation had been passed between the time when the first edition was printed and when it was actually launched. One other significant limitation was that the booklet was only available in English. Furthermore, community legal education sessions have been conducted (using the first edition) that revealed new concerns from the community. All of these factors have contributed to the need for a second edition.

Through the generous funding of the Law and Justice Foundation of NSW, we are now able to produce copies in Arabic, Bahasa Indonesia and Urdu. The new edition (with the change in title from “Terrorism Laws” to “Anti-terrorism Laws”) includes updated sections, covering the new association offence and the secrecy provisions. It also includes minor corrections to some legal issues, some of which resulted from correspondence between AMCRAN and the Federal Attorney-General. We also address questions that have arisen in practice over the last two years and some questions that have arisen out of the authors’ own work with the community.

We hope you find this second edition useful.

1. Introduction

Since 2002, the Australian Government has introduced different pieces of anti-terrorism legislation as part of its campaign to guarantee Australia's security and to comply with Australia's international obligations.

This booklet attempts to answer people's general questions about the anti-terrorism laws. It also talks about 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 in this booklet.

This area of law is developing very rapidly, and is very complex, but we strongly advise you to read this booklet fully and carefully in order to understand your rights. There is also a series of translations of this booklet: Arabic, Bahasa Indonesia and Urdu. Please check our website regularly (<http://amcran.org/>) for updates.

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.

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

2. 'Terrorism' offences¹

There are two main types of 'terrorism' offences under Australian law: crimes related to 'terrorist acts', and crimes related to 'terrorist organisations'.

2.1 Crimes related to 'terrorist acts'

2.1.1 What is a 'terrorist act'?

For an action to be categorised as a 'terrorist act' under Australian law, the perpetrator(s) must be shown to have an intention to coerce or influence the public or any government by **intimidation**. There must also be an intention to advance a political, religious or ideological cause. The person must also do, plan to do, or threaten to do, one of the following things:

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

Planning or threatening to carry out any of these acts is also an offence.

However, it may not be a terrorist act if the action is advocacy, protest, dissent or industrial action.

2.1.2 What if I unknowingly end up involved in a terrorist act?

Even if you did not actually know that what you were doing was connected with a terrorist act, you may still be found guilty of an offence if you were *reckless*, i.e. there was a chance that it was connected to a terrorist act but you did not know for sure or did not check.

¹ The *Criminal Code* is the most important piece of legislation relating to terrorism offences. The full name of the relevant section is Schedule 1 of the *Criminal Code Act 1995* (Cth) starting from section 100.1. It can be found at http://www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/

2.1.3 What are the different types of offences related to a terrorist act and what are the penalties for them?

The offences are listed in the table below. Note that the law makes it an offence to do many of the things in preparation of, or leading up to a terrorist act, or even just possessing 'things' connected with preparing for a terrorist act. In addition, it does not matter whether or not the terrorist act actually happens. Penalties that apply if a person knowingly or recklessly committed the acts are:

Offences ²	Maximum Penalty	
	Knowingly	Recklessly
Engaging in a terrorist act	Life imprisonment	
Other acts done in preparation for, or planning, terrorist acts	Life imprisonment	
Financing a terrorist act, whether the act occurs or does not occur, 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 intended to facilitate a terrorist act	15 years	10 years
Collecting or making documents likely to facilitate terrorist acts	15 years	10 years

2.1.4 What if the terrorist act occurs overseas?

For all of the above offences, it does not matter whether or not the conduct occurred inside or outside Australia.

² The *Criminal Code*, from ss 101.1 to 101.6.

2.2 Crimes related to 'terrorist organisations'

2.2.1 What organisations are considered 'terrorist organisations'?

There are two main types of 'terrorist organisations' according to Australian law.

The **first type** is a *proscribed organisation*, which means that the organisation is banned in Australia. The government can ban an organisation if it is satisfied that the organisation is directly or indirectly engaged in preparing, planning, assisting or fostering the doing of a terrorist act.

As at 1 July 2005, organisations banned as 'terrorist organisations' are as follows³:

- Hizballah External Security Organisation
- Hamas's Izz al-Din al-Qassam Brigades
- Lashkar-e-Tayyiba
- Al Qaeda or Islamic Army
- Jemaah Islamiyah
- Abu Sayyaf Group
- Jamiat ul-Ansar (formerly Harakat Ul-Mujahideen - HUM)
- Armed Islamic Group
- Al-Jihad / Egyptian Islamic Movement
- Asbat Al-Ansar
- Islamic Army of Aden
- Islamic Movement of Uzbekistan
- Jaish-I-Mohammed
- Lashkar-I-Jhangvi
- Palestinian Islamic Jihad
- Al-Zarqawi Network
- Ansar al-Islam
- Salafist Group for Call and Combat/ GSPC

The **second type** of terrorist organisation is any organisation that is directly or indirectly engaged in preparing, planning, assisting or fostering the doing of a terrorist act, whether or not any 'terrorist' act actually occurs. This means that even if an organisation is not on the banned list, it could still be an offence to be involved with the organisation. That the organisation is a terrorist organisation would have to be proved in court.

³ Criminal Code Regulations,
see: www.nationalsecurity.gov.au/agd/www/nationalsecurityhome.nsf/Page/Listing_of_Terrorist_Organisations

2.2.2 What are the offences relating to ‘terrorist organisations’?

Just like ‘terrorist act’ offences, different penalties apply depending on whether you *knew* that the organisation you were involved in was a terrorist organisation, or if you were *recklessly* involved, i.e., you thought there might be some chance it was a terrorist organisation, but you did not investigate further. The offences are as follows:

Offences ⁴	Maximum Penalty	
	Knowingly	Recklessly
Directing the activities of a terrorist organisation	25 years	15 years
Intentionally recruiting for a terrorist organisation. This also includes inducing, inciting or encouraging other people to join or participate	25 years	15 years
Providing training to a terrorist organisation or receiving training from a terrorist organisation	25 years	15 years
Directly or indirectly getting funds to or from 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
Membership of a terrorist organisation	10 years	-
Associating with a terrorist organisation	3 years	-

Directly or indirectly getting funds to or from a terrorist organisation:

It is an offence to directly or indirectly send funds to or receive funds from a terrorist organisation. There is also punishment if you were “reckless”. Consider the following scenario.

⁴ The *Criminal Code*, from ss 102.2 to 102.8.

Scenario: Sending funds

Ann donated money to her local charity to assist the homeless in Pakistan as she has done for several years. While Ann has no reason to believe her charity has any connection with any of the 18 organisations listed as terrorist organisations, she is concerned that she should protect herself as she knows the laws are very broad. Ann confirms with the charity that the money will be directed to a homelessness project and she also confirms that the charity is not banned in Australia. While Ann has taken steps to identify the organisation to make sure it is not banned, if she has reason to believe that the organisation is directly or indirectly engaged in preparing, planning, assisting or fostering the doing of a 'terrorist act' she may be committing an offence, if that organisation is later proved to be a terrorist organisation by a court.

Receiving Funds:

It is an offence to receive funds from a terrorist organisation, except if it was received from a banned organisation solely for the purpose of:

- providing legal representation for proceedings relating to terrorism charges, or
- to provide assistance to ensure that the organisation complies with Commonwealth or State laws

Membership of a terrorist organisation:

It is an offence to be a member of a terrorist organisation, even informally. You are also regarded as a member if you have taken steps to try to become a member. 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.

Training with a terrorist organisation:

It is an offence both to provide training to, and to receive training from, a terrorist organisation. The offence may be committed even if the training is for a completely innocent purpose. In addition, if an organisation is one that has been banned by the government, and if you have trained with it, then the burden is on you to produce evidence that you were not reckless as to the identity of the organisation. If you cannot produce any such evidence, then you could be found guilty of this offence even if the prosecution cannot prove that you were reckless as to the identity of the organisation.

Associating with a member, promoter or director of a banned organisation:

The association offence was introduced in 2004, and is one of the more controversial offences. It only applies to banned organisations. The law says that it is an offence to associate (which means to meet, or to communicate) with a person who is a member, promoter or director of a banned terrorist organisation, if you know that they are involved with a terrorist organisation, and by associating with them you intend to provide support for the continued existence or expansion of the organisation.

Importantly, you would still be committing an offence **even if you did not know** that the organisation is one of the organisations on the government's ban list, provided that you knew it satisfied the definition of being an organisation that is 'engaged in preparing, planning, assisting or fostering the doing of a terrorist act'.

If you associate with someone whom you know to be involved with a terrorist organisation (that is, you believe the organisation is directly or indirectly engaged in preparing, planning, assisting or fostering the doing of a terrorist act), but **you do not believe that the organisation is a banned organisation**, then it is a defence if you can show that your ignorance was not reckless.

Scenario 1

Ahmet knew that Simon was a member of XYZ organisation. Ahmet thought that XYZ was a good charitable organisation that raised money for orphans, and had no connection to any violent activities. Ahmet visited Simon at his home and told him that it was good that he was a part of XYZ and that they should continue with their work. A week later Ahmet wrote an e-mail to Simon to see how things with XYZ were going, and he wrote at the end, "Keep up with the good work!" Ahmet was not aware that XYZ is a banned organisation.

Under the laws, Ahmet would not be charged with committing the association offence.

Scenario 2

Bilal knew that Raymond was a member of QRS organisation. Bilal thought that QRS was a good charitable organisation that raised money for the widows and orphans of those engaged in the armed struggle. Bilal visited Raymond at his home and told him that it was good that he was a part of QRS and that they should continue with their work. A week later Bilal wrote an e-mail to Raymond to see how things with QRS were going, and he wrote at the end, "Keep up with the good work!" Bilal was not aware that QRS is a part of XYZ, a banned organisation.

Under the laws, Bilal might be charged with committing the association offence. By supporting the families of armed fighters, XYZ is arguably indirectly fostering the doing of terrorist acts. Bilal might have a defence if he can show that he was not reckless as to the connection between QRS and XYZ.

However, there are exceptions to this offence. For example, it is okay for a close family member to associate with a person connected with a terrorist organisation about a family or domestic matter. There is also an exemption if the association is at a place of public religious worship, or if the association is to provide humanitarian aid or legal advice or representation about certain matters.

2.3 Other terrorism-related offences

2.3.1 Planting a bomb, an explosive or other lethal device⁵

It is against the law to plant or set off a bomb in a public place where it is intended to cause death or serious injury or serious damage to property. The maximum penalty is life imprisonment.

2.3.2 Freezing of assets linked to terrorist activity⁶

It is against the law to deal with the money or assets of a person or organisation if they are on the 'Consolidated' list.⁷ This list is different to the banned terrorist organisations list described above (see Part 2.2.1) and has over 500 individuals and organisations. The Foreign Minister lists a person or organisation if the Minister is satisfied that the person or organisation commits terrorist acts. Under this listing law, a 'terrorist act' is not defined.

The law permits the Minister to freeze the assets of people or entities that are listed. It is against the law to deal with these frozen assets in any way. The maximum punishment is 5 years imprisonment. It is also against the law to give any asset to a person or organisation on this list.

⁵ The *Criminal Code*, s. 72.3.

⁶ *Charter of the United Nations (Terrorism and Dealings with Assets) Act 2002*.

⁷ The Consolidated List can be found at the website of the Department of Foreign Affairs and Trade at http://www.dfat.gov.au/icat/freezing_terrorist_assets.html.

The law prohibits the use of any asset belonging to the organisation, or any supply of an asset to the organisation. For example, making donations to the organisation, or collecting money on behalf of the organisation, which is then supplied to the organisation, is prohibited. Assistance which does not take the form of providing property of some sort (which includes money, cheques, shares etc) is not an offence.

2.3.3 Engaging in hostile activities overseas⁸

Australian citizens and residents are prohibited from preparing to engage in hostile activities overseas, including recruiting other people. It is also an offence to engage in hostile activities overseas to overthrow the government of that country, causing death or injury to the head of state, or unlawfully destroying or damaging any property of the government of that country. This offence carries a maximum penalty of 20 years imprisonment.

⁸ *Crimes (Foreign Incursions and Recruitment) Act 1978.*

3. Organisations that have powers under anti-terrorism legislation

There are two main organisations empowered under the anti-terrorism legislation.

The *Australian Security Intelligence Organisation (ASIO)* is an agency that gathers intelligence relating to security. 'Intelligence' is just another word for 'information.' **ASIO** gathers intelligence by looking at newspapers, radio and television, and also by questioning people, using spies and informants, and intercepting communications such as mail, telephones and emails. It is not responsible for law enforcement, i.e., arresting people.

ASIO has the power to question you and to also detain you for questioning for the purpose of gathering intelligence. **ASIO** officers do not carry arms and they do not have the power to arrest and charge you.

The other main organisation is the *Australian Federal Police (AFP)*. The **AFP** investigates federal crimes, including terrorism offences, and enforces federal criminal law. **AFP** officers have general police powers of search, arrest and detention. It is the **AFP** who would normally arrest you if you were suspected of being involved with or committing a terrorism-related offence. In this booklet we only look at the **AFP** powers in relation to offences under Commonwealth law, and in some cases specifically with respect to terrorism offences.

3.1 How do ASIO and the AFP operate?

It is very important to understand the differences between ASIO and the AFP. For example, ASIO officers may only search, question or detain you if they have a warrant to do so. ASIO must obtain the Attorney-General's consent before obtaining a warrant from a Federal Magistrate or Judge, and they must 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 also 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 the police unless your lawyer is present, except in order 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'.

The two agencies sometimes 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.

For more detail on ASIO's powers to detain and question people, see Part 5.1; for information about AFP powers to arrest, detain and question see Part 5.2.

We now discuss the 'search powers' of both ASIO and the AFP.

4. Searching

4.1 Can ASIO or the AFP search my house?

ASIO may only search your house if they have a warrant.⁹ 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 precisely what the ASIO officer is permitted to search under the warrant.

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, and so on. They may search through any electronic equipment, safe, box, drawer, parcel, envelope or other container. They may inspect, examine, copy and remove any record or thing.

The AFP,¹⁰ as distinct from ASIO, may also obtain a warrant to search a place or vehicle if they have reasonable grounds to suspect that evidence of a federal crime may be found at that moment, or at some time in the next three days.

A warrant to search premises allows the police to enter the place or car to search for and record fingerprints and other samples of things, to take photographs, and to record the search on video.

4.2 Can they search without a warrant?

ASIO is not allowed to search without a warrant.

However, the AFP may search without a warrant if they reasonably suspect that some evidence that needs to be seized urgently is in a car, and that it is likely to be hidden, lost or destroyed if it is not taken. In this case, the officer may stop, detain and search the car for that evidence. If they find other evidence during the search, they may also take that away. During the search the police may examine any container, such as boxes or suitcases, in or on the vehicle.

⁹ For ASIO's search powers see *Australian Security Intelligence Organisation Act 1979* s. 25.

¹⁰ For AFP's search powers see *Crimes Act 1914*, Part IAA, Division 2.

However, when a police officer searches a car without a warrant, he or she must:

- perform the search in a public place;
- not detain the car once the search is complete, unless it is suspected of being stolen;
- not damage any container when opening it, unless you refused to help open it.

Any item taken during a search without a warrant must be returned to you unless it is to be used as evidence or a magistrate orders that it be retained.

4.3 If the owner of the house is not at home, do I still have to let them 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 valid warrant to search those premises then they can enter, whether or not you are the owner of the premises.

4.4 Can they take things away, including my passport?

ASIO may remove and retain for a reasonable time any record or thing relevant to a security matter that they find in the course of their search under a valid warrant. Your passport may only be taken during a search if it was somehow relevant to a security matter, for the purpose of inspecting, examining or copying it, but not in order to prevent you from leaving the country.

The AFP may take away anything that they think might be evidence of *any* offence and which they reasonably believe might be hidden, lost, destroyed or used to commit an offence in the future. They may also take away anything that they reasonably believe is a dangerous item or that might help you escape.

The AFP must give you a receipt for any item that they remove. They must also tell you where they are taking the item and allow you to be present when the item is examined at that place. The item must be returned within three days, unless a magistrate or other authorised person

gives an extension. They must tell you if an extension is applied for and you also have the right to say why you think it should be returned immediately. If during the search, the police seize any item that can be easily copied, such as a document, film, computer file or computer disk, then you may ask for a copy of that item and the police must give you a copy as soon as practicable.

4.5 Can they 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 security. This type of warrant is only valid for six months. They may inspect and examine any data, including printing, removing and copying it, and they may add, delete or alter other data in order to achieve that purpose.

4.6 Do I have to cooperate?

When dealing with both **ASIO** and the **AFP**, you should remain calm. You do not have to cooperate if **ASIO** does not have a warrant. However, if **ASIO** does have a warrant, it is against the law to refuse to cooperate. An **ASIO** warrant authorises them to use force that is necessary and reasonable to do the things specified in the warrant.

It is a crime to harm or threaten to harm a police officer. You could be sent to prison for up to 13 years if you harm a police officer, or up to nine years if you threaten to harm a police officer. It is also a crime punishable by up to two years imprisonment to obstruct, hinder, intimidate or resist a police officer performing his or her duties.

4.7 Can I watch them search through my things?

Yes. Generally search warrants do not allow them to detain you in any way, unless this is specified in the warrant. You are free to move about and they 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.

You have the right to observe the search unless you are under arrest or if you try to interfere with the search. However, the police may still search in more than one place on the premises at the same time.

4.8 Can they search me?

When the law talks about searching a person, it specifies three different types of search:

- **frisk search:** a search of a person where the officer quickly runs his or her hands over the person's outer clothing. You may be asked to remove any clothing or hand over any item you are carrying for examination. However, the removal of clothing and handing over of items is *voluntary* and you do not need to comply with this request during a frisk search.
- **ordinary search:** you may be asked to remove items like your overcoat, coat, jacket, gloves, shoes or hat to be examined. 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 and the **AFP** do **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. They may only conduct a strip search if you have been detained (see Part 5 for information on Arrest, Detention and Questioning). However, the warrant may authorise ASIO and the AFP to conduct a frisk search or an ordinary search on you 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.

4.9 Can I stop an officer of 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). A strip search must **only** be conducted by someone of the same gender.

5. Arrest, detention and questioning

As stated above, the AFP is a traditional police force with investigative and arrest powers, while ASIO may only question or detain you to gather intelligence if they have a warrant. With respect to detention and questioning, the powers and responsibilities of ASIO and the AFP are much more different than in other areas, and so they are discussed separately in this booklet.

5.1 ASIO detention and questioning powers¹¹

Detention and questioning by ASIO is different to detention or arrest by the AFP. ASIO has no power to arrest you, but they can get the AFP to question you and detain you if they believe it would help them gather intelligence in relation to a terrorism offence. For the definition of a terrorism offence, see Part 2 above.

As with searching, ASIO needs a warrant in order to detain or question you. The warrant may be a *detention* warrant, which would authorise ASIO to have the AFP take you into custody immediately for questioning, or it may be a *questioning* warrant, which would require you to present yourself at a specific time and place for questioning.

The warrant may also specify other things, for example, that you are not allowed to leave Australia for the period of the warrant. Under a valid

¹¹ Details of the ASIO's special powers in relation to terrorism offences can be found in s34 *ASIO Act* 1979 (Cth). This Act can be found at http://www.austlii.edu.au/au/legis/cth/consol_act/asioa1979472/

5.1.1 What happens if they approach me for a 'friendly chat'?

If there is no warrant to question or detain you, then you are not obliged to go anywhere with ASIO officers and/or to answer any of their questions. You should only talk to them if you want to. If you are unsure whether any information you may have would have a detrimental effect on you or anyone, it is best to consult your lawyer.

Keep in mind, however, that if there is no warrant, then anything we discuss in this Part (Part 5.1) will not apply. In particular, the secrecy provisions will not apply, and it may be permissible for you to disclose the fact that you have been questioned by ASIO and any other operational information.

5.1.2 What happens when I'm being questioned under either warrant?

If you have been taken into custody under a warrant, you should be immediately brought before a 'prescribed authority' for questioning. A 'prescribed authority' is a former or serving senior Judge or the President or Deputy President of the Administrative Appeals Tribunal. 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 they 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.

5.1.3 What must they tell me when 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 please see Part 7);
- your right to apply to a federal court to review your warrant or to seek a remedy relating to their treatment of you under the warrant (which must be repeated to you once in every 24 hours);
- whether there are any limits on contacts with others, and if so, whom 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.

5.1.4 Do I have a right to an interpreter?

If you require an interpreter, you may request one, and the prescribed authority has to 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.

5.1.5 Do I have a right to have my lawyer present when they interrogate me?

If it is a *questioning* warrant, the law is unclear as to whether you are entitled to a lawyer, however, you should ask for one. If it is a *detention* warrant, you are normally allowed to see a lawyer, but even this can be denied if the prescribed authority decides that contacting any particular lawyer may alert another person that a terrorism offence is being investigated, or some document that 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, but your conversations with the lawyer may be monitored.

If a lawyer is allowed to be with you during questioning, he or she may ask for clarification of ambiguous questions, but apart from that, he or she is not allowed to interrupt questioning. Your lawyer may be removed if the prescribed authority thinks your lawyer is unduly disrupting the questioning. If this happens, you may contact another lawyer. During breaks in questioning, you have the opportunity to speak with your lawyer.

5.1.6 Do I have a right to silence? Can I be compelled to testify against myself?

You do **not** have the right to silence if you are being questioned under a valid warrant. Normally, if there is no warrant, you don't have to speak to ASIO, but if you do, you can tell anyone about it. But if ASIO has a *warrant*, it is against the law not to answer their questions. The maximum penalty for not answering ASIO questions when they have a warrant is five years imprisonment.

Any information or evidence you give to ASIO under a warrant **cannot** be used in court against you later. It is different to the situation where you have been arrested by the AFP for committing an offence, in which case the police must caution you that anything you say or do may be used in evidence against you (see Part 5.3.10 for comparison).

Having said this, there may be some incidental or derivative use of the information that you give. Firstly, the information could be used to further ASIO's investigations, in which case it may lead them to other intelligence or other information that may be used against you.

Secondly, the information may be used against you in court if you are being charged with one of the offences in the Act, for example, for providing a false statement, which carries a penalty of 5 years imprisonment. In these limited circumstances, the information given by you under a questioning warrant could be used against you.

5.1.7 How long can they question me?

Under a *questioning* warrant, ASIO may question you for up to eight hours at a time and they may request permission from the prescribed authority to question you for two further 8-hour blocks. This means that the maximum period of time they may question you is 24 hours. If the prescribed authority does not give permission for further questioning, you must be released immediately. However, you must not be questioned continuously for more than 4 hours without being offered a break, and the breaks must be at least 30 minutes. They 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, they must release you immediately.

5.1.8 How long can they detain me?

Under a *detention* warrant, you are brought before the prescribed authority to answer questions until they reach the maximum number of hours permitted under the legislation (i.e. 24 hours, or 48 hours if there is an interpreter), but this must not exceed seven days in total. However, if ASIO believes they have new evidence about your activities, they may apply for a further warrant to detain you for another 7 days.

5.1.9 What kind of body searches can ASIO carry out on me while I am in detention?

If you are being questioned under an ASIO warrant, ASIO will ask you the questions, but the AFP will physically detain you. The AFP may conduct an ordinary search (see Part 4.8 for definition of 'ordinary search' and 'strip search').

A strip search may also be conducted, but only if they suspect 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. They may ask a doctor to be present, and they may use reasonable force if necessary.

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

5.1.10 Can they order me to remove my head covering if I am a Muslim woman?

If a strip search is being conducted, then only a female officer may require you to remove your head veil. The law is not clear whether an ordinary search which allows the officer to ask you to remove your hat for examination also includes a Muslim woman's head covering. If so, the search will be conducted by someone of the same gender **if practicable**.

5.1.11 Do I have to tell the truth?

If you have been given a warrant for questioning, it is an offence to not appear, punishable by a maximum of five years imprisonment. During questioning it is an offence to give false or misleading answers, punishable by a maximum of five years imprisonment.

5.1.12 Can I communicate with my family members?

Under a detention warrant, you are restricted from contacting others. You do not have the right to contact a lawyer or family member unless you are a minor (see Part 5.2 below) or unless 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 7).

5.1.13 Can I tell other people what happened?

A warrant to detain or question you will have an 'expiry date', which is usually 28 days. Before the warrant has 'expired', it is an offence to tell anyone, including the media, *anything* that reveals that the warrant has been issued, what is in it, or any facts relating to how the warrant is executed. This offence carries a maximum penalty of five years imprisonment.

After the warrant has expired, you still may not reveal 'operational information' within 2 years of the expiry of the warrant. 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.

If you tell someone about your detention or questioning under an ASIO warrant, then you are breaking the law and that other person would 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 the police. While the 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, it would be against the law for William to tell the police, his wife, or the journalist where he has been for the past 7 days.

However, the law allows you to disclose information:

- to complain to the IGIS or the Ombudsman;
- to a lawyer to ask for legal advice in connection with an issued warrant;
- to a lawyer to ask for legal representation in seeking a remedy in relation to an issued warrant, or a remedy for their treatment under a warrant;
- for the initiation, conduct or conclusion of legal representation in relation to a remedy.

5.2 ASIO powers of detention and questioning of minors¹²

There are special rules that apply to you if you are under 18 years of age. However, the rules do not apply to anyone under 16.

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

If you are under 16 years old, you cannot be detained or questioned by ASIO. If you are forcibly taken into custody, you should let the prescribed authority know as soon as possible that you are under 16. They must not question you and you must be released immediately.

5.2.2 Can I be detained by ASIO if I am between 16 and 18 years old?

If you are 16 or 17 years old, a warrant may be issued if ASIO believe that you will commit, are committing, or have committed a terrorism offence. The warrant must allow you to contact your parents or guardians, or if they are not acceptable to you, anyone who is able to represent your interests. You can contact them at any time while you are in detention.

You must only be questioned in the presence of your parent, guardian, or person who is representing your interest. You should not answer any questions until they arrive.

¹²ASIO's powers with respect to young people are contained in s 34NA of the *ASIO Act 1979* (Cth).

However, if your parent or guardian is being unduly disruptive during questioning, they may be asked to leave. If they are, you may ask for another person to be present, and you can contact that person. If this happens, you should not answer any questions until the person arrives.

5.2.3 If I am 16 or 17 years old, can they search me?

Yes, they may conduct both an ordinary and a strip search on you. A strip search must be conducted with your parent or guardian in the room, or someone who can represent your interests. The same rules that apply for general strip-searching also apply (see Part 4.8 for definition of 'strip search').

5.2.4 If I am 16 or 17 years old, how long can they detain me?

You cannot be questioned for more than 2 hours at a time without a break. A warrant allows for your detention for 48 hours only, but it may be extended up to 7 days.

5.3 AFP arrest and detention powers¹³

5.3.1 Can the police ask for my name on the street?

If the AFP have a reasonable suspicion that you can help with their inquiries into a crime, then the officers can ask you for your name and address. If they tell you why they need your name and address, you must give it to them unless you have a reasonable excuse.

You should also ask the officers for their name and place of duty. If they are in uniform, they should have an identification name or number on the front of their uniform. You should also 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 the police again or to make a complaint, the process can go smoothly.

¹³ Details of AFP powers can be found in the *Crimes Act 1979* (Cth) Part IAA, Division 4.

5.3.2 Do I have to answer their questions if they approach me on the street?

You do not have to go with a police officer to answer questions unless you are under arrest. If a police officer 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 never say anything to the police unless you talk to your lawyer first**. See Part 5.3.10 below.

5.3.3 Can they arrest me on the street?

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

5.3.4 Can they arrest me without a warrant?

The AFP may also arrest you without a warrant if they reasonably believe that you have committed, are committing, or are likely to commit an offence. As soon as the police officer ceases to have reasonable grounds to believe that you committed the offence, you must be released.

5.3.5 Can they enter private premises to arrest me?

Whether the police have a warrant or not, they can enter premises if they reasonably suspect 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 a person between 9 pm and 6 am. However, if the police believe that the person to be arrested is only in the house during those hours, or if they believe that evidence might be hidden, lost or destroyed unless they act immediately, then the police may enter premises at anytime of the day or night to search for or arrest a person.

5.3.6 What happens if I'm arrested?

When arresting a person, the AFP may only use reasonable force to perform their duty, so they should not harm you if you do not resist arrest. The police officer should also tell you why you are being arrested.

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

The police may frisk search you when you are being arrested, if they reasonably believe you have a dangerous item or an item that might help you escape (see Part 4.8 for definition of 'frisk search'). If they find such an item on you, they may take it from you.

5.3.7 Can they search me once they have arrested me?

If you are taken to a police station, the police may, if they have not already, perform an ordinary search on you.

At the police station, the police may also perform a strip search if they reasonably suspect that you have evidence or an item that is dangerous or that might help you escape. A strip search must be authorised by a senior police officer. Any evidence or dangerous item found during the strip search may be seized. (See Part 4.8 for the definitions of 'ordinary search' and 'strip search').

5.3.8 Do they have to tell me anything?

If a police officer arrests you, they should tell you that you are under arrest and the reason you are under arrest. You should ask 'Why am I under arrest?' if they don't tell you. The police officer should also caution you by saying something like 'You do not have to say anything, but anything you do say may be used in evidence'.

5.3.9 Can the police question me after I'm arrested?

Once you have been arrested, they can detain you for questioning for a limited period without charging you with any offence. When questioning you they must record on tape or video any questions that they ask and any answers that you give. The police must give you or your lawyer a copy of the tape of any interviews within seven days.

5.3.10 Do I have to answer their questions?

Anything you say to the police may be used against you in court, which is why you have the right to remain silent. This means that you do not have to answer any questions, and your choice to be silent cannot be used against you in court. **Therefore it is extremely important that you do not say anything unless you get advice from your lawyer first.**

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

If your lawyer is too slow in arriving, then the police must offer you another lawyer.

However, you *must* give a police officer your name and address if you are asked. An officer may make a note of any actions you make, like laughing or shrugging your shoulders during questioning. **Therefore remain calm at all times and do not react to their questions.**

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

5.3.12 What if I'm not an Australian citizen?

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

5.3.13 For how long can they detain me?

The AFP can only hold you for a maximum of four hours. If you are a juvenile (under 18) they may only hold you for a maximum of two hours. The police may apply to a magistrate or other authorised person to extend your detention to up to 24 hours in total. An extension may only be granted if it is necessary to protect or to get further evidence, or to complete the investigation.

Any 'dead time' does not count towards the period of your detention.

'Dead time' includes the time it takes:

- to drive you to the place of detention;
- for you to contact a lawyer, friend, relative, parent or interpreter;
- for your lawyer, friend, relative, parent or interpreter to arrive;
- for you to receive medical help;
- for you to sober up, if you are drunk;
- to organise and conduct an identification parade;
- for the police to get an order from a magistrate to undertake a forensic procedure on you;
- for the police to get an extension of the time they can keep questioning you;
- for the police to inform you of your rights about forensic procedures;
- for you to rest and recover during the questioning;
- to carry out a forensic procedure on you;
- for investigators to collect information, including the time it takes to translate the information.

5.3.14 When will they release me?

After the time limit for holding you has expired, the 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 the police let you go, but arrest you again within two days *for the same crime*, then the maximum time they may hold you the second time is four hours *minus* the amount of time they detained you the first time.

6. What else can ASIO or the AFP do?

If they have a warrant, **ASIO** may use a listening device to record your communications.¹⁴ The warrant must not exceed a period of 6 months, although a new warrant may be issued once an old warrant has expired.

Under the warrants, both ASIO and the AFP may enter your premises and install, test, maintain, or remove a listening device. They may record your conversations, with or without your permission.

The **AFP** also has the power to use listening devices, data surveillance devices, optical surveillance devices and tracking devices. The *Surveillance Devices Act*¹⁵ permits police, including state police, to use optical surveillance devices such as binoculars and video cameras **without a warrant if it does not involve entering onto your premises**. Under certain circumstances, the police may also use a listening or tracking device without a warrant.

Police may also obtain a 'surveillance device warrant' to use surveillance devices on premises or specific objects, or to listen to the conversations of a person whose identity is unknown. A surveillance device warrant authorises the AFP or state police to enter onto premises or adjoining premises to install, maintain and use surveillance devices.¹⁶

¹⁴ *ASIO Act 1979* (Cth), s 26.

¹⁵ See Part 4; ss, 37-40.

¹⁶ *Surveillance Devices Act 2004* (Cth) Part 2 Division 2; s18.

6.2 Can they tap my telephone or other telecommunications?

The AFP can only intercept live communications, such as telephone calls, facsimiles, or Internet chat sessions, if they have a telecommunications interception warrant (a 'TI warrant'). This warrant may also allow an officer to enter premises to install equipment for monitoring telecommunications, even without your permission.¹⁷

A TI warrant is valid for up to 90 days, but the AFP may apply for another warrant if it expires. The warrant also expires immediately when the police no longer reasonably suspect you of committing a terrorist offence.

The AFP may also intercept 'stored communications' **without obtaining a TI warrant**, if they have the network owner's consent or if they have lawful access to the equipment on which it is stored, for example, under another warrant. This means that the AFP may gain access to voicemail, SMS, MMS or e-mail if it is stored on an Internet server, or in a telecommunications system, even if they do not have a TI warrant. However, this power is subject to a 12-month sunset clause, and will lapse on 15 December 2005, unless it is reintroduced by Parliament.

6.3 Can they look through my mail?

If they have a warrant, ASIO may gain access to any postal parcel or any delivered parcel.¹⁸ This type of warrant is valid for 90 days. They may be authorised by a 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 posted or delivered by you or being received by you.

¹⁷ *The Telecommunications (Interception) Act 2004* (Cth)

¹⁸ *ASIO Act 1979* (Cth), s 27.

6.4 Can they monitor my movements using a tracking device?

If they have a warrant, **ASIO** may use tracking devices to track a person or an object, including a car, an aircraft, a vessel, and clothing.¹⁹ This type of warrant will remain valid for 6 months. A warrant may authorise 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.

¹⁹ *ASIO Act 1979* (Cth), s 26B.

7. Lodging a complaint

7.1 Complaints about ASIO

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

It is a good idea to talk to your lawyer, or contact your local Community Legal Centre first, 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 for contacting 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 the complaint within 12 months of the 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 9 of this booklet. You also have the right to ask the Federal Court to review a warrant or their treatment of you under the warrant.

7.1.2 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 injury you have sustained, damage to property, any improper conduct or activities of ASIO and its officers, any action or practice that breaches any human right, or any conduct that 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, so that you would be in a better position to make a complaint later if there is a need. However, keep in mind that, as discussed in Part 5.1.13, 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 it in complaint situations or in discussions with your lawyer.

In relation to detention and questioning, you may make complaints if your rights are not met. Some of these are:

- 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 or 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.

7.2 Complaints about the AFP

7.2.1 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;
- the Commonwealth Ombudsman; or
- AFP Internal Investigations Division.

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 a good idea to talk to your lawyer or local Community Legal Centre first before you make a complaint.

7.2.2 What can I complain about in relation to 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; or
- assault by an AFP officer.

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 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 complain 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 make the complaint as soon as possible, within one year of the incident. The contact details for the Ombudsman are available in Part 9 of this booklet.

8. State anti-terrorism legislation

In addition to the Australia-wide laws, there are specific laws in some States that only apply to those States. We discuss some of the terrorism-specific laws for New South Wales, Victoria and Queensland.

8.1 New South Wales

The *Terrorism (Police Powers) Act 2002* (NSW) gives police special powers when a special 'authorisation' is made by a senior police officer if there is an imminent threat of a terrorist act or immediately after a terrorist act. 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 June 2005 new laws were passed to allow the NSW police to enter premises covertly, i.e., without the occupier's knowledge.

8.2 Victoria

The *Terrorism (Community Protection) Act 2003* (Vic) gives police special powers to enter premises covertly, i.e., without the occupier's knowledge, and to search for, seize, replace, copy, photograph or record any thing or document. This type of warrant lasts for 30 days.

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.

8.3 Queensland

The *Terrorism (Community Safety) Amendment Act 2004 (Qld)* increases the power of the police and the Crimes and Misconduct Commission (CMC) to investigate terrorism-related crimes with further surveillance powers. The Act introduces a “sabotage” or “threatened sabotage” crime, which makes it an offence to destroy or damage a public facility with the intention of causing major economic loss or major disruption to government functions and use of services by the public. It is punishable by a maximum penalty of 25 years imprisonment.

The CMC may inspect and seize financial records or passports in the course of their investigations, and has the power to require a person to give information about the property, financial transactions or movement of money and assets by another person being investigated.

The CMC and the police also have extended power to obtain a covert search warrant to conduct an undercover search for evidence related to terrorism crimes.

In the event of an actual terrorist act, the police and emergency officers also have public safety powers to respond to incidents involving chemical, biological or radiological substances.

9. Where to go for help

9.1 General Information

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

Australian Muslim Civil Rights Advocacy Network

<http://amcran.org>

Civil Rights Network Victoria

<http://www.civilrightsnetwork.org>

NSW Council for Civil Liberties

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

Victorian Council for Civil Liberties (Liberty Victoria)

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

9.2 Legal Advice

New South Wales

Legal Aid Commission – NSW

Ground Floor

323 Castlereagh Street

Sydney NSW 2000

Tel: (02) 9219 5000

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

Legal Aid Hotline for under 18s

Tel: 1800 101 810

Your local Community Legal Centre

See <http://www.nswclc.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: (03) 9269 0234

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

Your local Community Legal Centre

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

Law Institute for Victoria (for referral to private lawyers)

Tel: (03) 9607 9311

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

Australian Capital Territory

Legal Aid Commission ACT

4 Mort Street

Canberra City ACT

Tel: 1300 654 314

Your local Community Legal Centre

The Law Society of the Australian Capital Territory (for referral to private lawyers)

Tel: (02) 6247 5700

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

Queensland

Legal Aid Queensland

44 Herschel Street

Brisbane QLD 4000

Tel: 1300 65 11 88

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

Your local Community Legal Centre

Queensland Law Society (for referral to private lawyers)

Tel: (07) 3842 5888

Fax: (07) 3842 5999

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

9.3 Complaints

Contact details for complaints: ASIO

Inspector-General of Intelligence and Security

3-5 National Circuit

Barton ACT 2600

Tel: (02) 6271 5692

Fax: (02) 6271 5696

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

info@igis.gov.au

Contact details for complaints: AFP

AFP National Headquarters

68 Northbourne Avenue

Canberra ACT 2601

Tel: (02) 6256 7777

AFP New South Wales Headquarters

110 Goulburn Street

Sydney NSW 2000

Tel: (02) 9286 4000

AFP Victoria Headquarters

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

AFP Queensland Headquarters

203 Wharf Street
Spring Hill QLD 4000
Tel: (07) 3222 1222

Commonwealth Ombudsman

An online complaint form available at:
www.comb.gov.au/complaints_investigations/default.htm

Complaints may be made for the cost of a local call from anywhere in Australia on 1300 362 072.

National Office & Australian Capital Territory

Level 6, 1 Farrell Place
Canberra City ACT 2600
Tel: (02) 6276 0111
Fax: (02) 6249 7829

New South Wales

Level 7, North Wing
Sydney Central
477 Pitt Street
Sydney NSW 2000
Tel: (02) 9218 3000
Fax: (02) 9211 4402

Victoria

Level 10, Casselden Place
2 Lonsdale Street
Melbourne VIC 3000
Tel: (03) 9654 7355
Fax: (03) 9654 7949

Queensland

25th Floor, 288 Edward Street

Brisbane QLD 4000

Tel: (07) 3005 7000

Fax: (07) 3229 4010

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