



Australian Government

Attorney-General's Department

Anti-Terrorism Act
(No. 2) 2005

**Questions and
answers**

Preventative detention

When can a preventative detention order be used?

A preventative detention order can only be used where there is a threat of an imminent terrorist attack or immediately after a terrorist attack.

Who can issue preventative detention orders and for how long?

A senior police officer from the Australian Federal Police can issue a preventative detention order authorising detention of a person for up to 24 hours. A judge or federal magistrate can extend a preventative detention order for an additional 24 hours.

Can children be detained?

Children under 16 years of age cannot be detained.

A young person aged at least 16, but under 18, can be detained but will be detained separately from adult detainees. In addition 16 and 17 year olds are able to have a parent or guardian visit them each day the person is in preventive detention and the police or judge making the order may also allow additional contact.

Can parents discuss their child's detention?

Yes, parents, or other people who are authorised to have contact with the person, can discuss the detention with each other.

What are a person's rights under a preventative detention order?

- A person must be treated with humanity and respect for human dignity and must not be subjected to cruel, inhuman or degrading treatment
- A person has the right to contact a lawyer and to contact family members and employers to let them know they are safe but are not able to be contacted for the time being
- A person cannot be questioned except to confirm their identity or to enable safe detention and any questioning that does occur must be audiotaped and videotaped, and
- A person and their lawyer must be given a copy of the preventative detention order which includes a summary of the grounds of making the order.

Can a person be prevented from contacting a particular person?

If there are reasons to suggest that a particular person is linked to the terrorist act, the AFP could obtain a prohibited contact order which prohibits the detainee from contacting that person.

Where the person is unable to contact their nominated lawyer for security reasons, the AFP will be required to help the detainee to contact another lawyer.

Control orders

When can a control order be used?

A control order can be used where it would substantially assist in preventing a terrorist act or where a person has trained with a terrorist organisation that is listed in the Criminal Code Regulations.

Who can apply for and issue a control order?

The AFP can apply for a control order which must be approved by the Attorney-General. Control orders must be issued by a court.

What can a control order do?

A control order can prohibit or restrict a person from:

- being at specified areas or places or leaving Australia
- communicating or associating with certain people
- accessing or using certain forms of technology or telecommunications (including the internet)
- possessing or using certain articles or substances, and
- carrying out activities, including work activities.

A control order may also include a requirement that the person:

- remain at a premises between certain times each day, or on certain days
- wear a tracking device

- report to someone at a certain time and place
- allow himself or herself to be photographed, and
- participate in counselling or education, if the person consents.

How long can a control order last?

A control order can last for up to 12 months for people aged 18 years or older.

A young person aged 16 or 17 years old can only be the subject of a control order for a maximum of three months.

Can children be the subject of a control order?

A control order cannot apply to children under 16 years of age.

What happens once a control order is issued by a court?

A court will first issue an 'interim' control order. The AFP must give the person a copy of the interim order, which includes a summary of the grounds for making the order, and explain the effect of the order to the person. The interim order will not commence until it is given to the person.

The person's lawyer is also able to obtain a copy of the order and if the person is a Queensland resident and the order is made in that State, the Public Interest Monitor must be notified of the order.

The AFP can confirm an 'interim' control order. If they decide to do this, they must notify the issuing court and the person who is the subject of the interim control order. That person may then attend the court when the court decides whether to confirm the order.

Sedition

What does sedition mean?

The sedition offence is focussed on those who intentionally urge others, through the internet or otherwise, to harm their fellow Australians. In particular sedition is concerned with urging:

- overthrow of the Australian Government or State or Territory Government by violence
- violent interference with elections
- violence against other groups in the community threatening the peace and good government of Australia, and
- assisting an enemy engaged in armed hostilities with the Australian Defence Force.

For a person to commit an offence the person must:

- (a) *intentionally* urge another person to engage in the above conduct, and
- (b) be reckless as to the overthrow of the government, whether a particular election was lawful, or that the group attacked can be distinguished as a specific group. A person is reckless if they are aware of a substantial risk that a result will occur and having regard to the circumstances it is unjustifiable to take that risk.

What type of behaviour would be covered?

An example of sedition under the new offence would be where someone puts up a notice on the internet outlining techniques for attacking newly arrived tourists and calling upon people to engage in that activity. The aim might be to dissuade tourists from visiting Australia or to damage the economy.

Does sedition prevent criticism of government?

No, there are defences to the sedition offence where a person is merely criticising government policy. For example, pointing out mistakes in policies or urging lawful changes to the law would not be an offence under the new provisions.

What else does the Act do?

The Act also:

- amends the Criminal Code to allow for the listing of organisations that advocate the doing of a terrorist act as terrorist organisations
- extends the powers of police to stop, question and search people so that they apply where there are reasonable grounds that a person might have just committed, might be committing, or might be about to commit a terrorism offence in a Commonwealth place

- facilitates lawful AFP requests for certain specified financial and other types of records relating to matters such as travel, utilities and the person's residential address that will assist with the investigation of terrorism and other serious offences
- allows AFP officers to demand documents or ask questions if the officer believes on reasonable grounds that an operator of an aircraft or ship has information or documents relevant to a terrorist act
- allows ASIO officers to demand information and documents from the operator of an aircraft or vessel for the purposes of carrying out ASIO's functions and refines ASIO's warrant regime, and
- strengthens existing offences for financing of terrorism and for providing false or misleading information under an ASIO questioning warrant.

More information

An electronic copy of the *Anti-Terrorism Act (No. 2) 2005* can be accessed via **www.comlaw.gov.au** by selecting 'Browse', then 'Acts (as made 1973+)' and selecting the Act from the alphabetical list.

General information on national security information can be found at **www.nationalsecurity.gov.au**