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

If you are contacted by ASIO, or an Australian Federal Police officer,

⇒ Remain calm;
⇒ You should ask them to explain what they want to search;
⇒ If they are ASIO officers and they do not have a warrant, you do not need to comply with their requests. You may co-operate in these circumstances only if you are comfortable doing so;
⇒ If they are AFP officers, they may search or question you even if they don’t have a warrant, and you would need to co-operate with them. But remember:

**Do not say anything to the AFP or state police unless you have talked to your lawyer first.**

⇒ If possible, contact a lawyer or ask someone in the house to contact a lawyer immediately;
⇒ If you need to, you may request that a friend sit in with you;
⇒ If you have any trouble understanding anything they say, always ask for an interpreter. In the mean time do not say anything, except to confirm your name and address;
⇒ If they do have a warrant, ask to see it;
⇒ 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;
⇒ Make a photocopy of the warrant and keep it if you can. If you do not have access to a copier, ask for a copy;
⇒ Keep a record of the names of the officers visiting you, the date and the time;
⇒ Keep a detailed record of any contact, touching, harassment or intimidation shown to you by any officer.
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Disclaimer

If you find yourself in a difficult situation, you should always seek advice from a lawyer. This book 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 16 June 2004. The law may have 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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1. Introduction

Since 2002, the Australian government has introduced a raft of anti-terrorism legislation, ostensibly as part of its campaign to guarantee Australia’s security and to comply with Australia’s international obligations. Regardless of the intention and the application of the law, the legislation has a disproportionate effect on one particular group within the Australian populace. There is little doubt that the Muslim community bears the brunt of the legislation; indeed, evidence of this is already apparent. At the time of publication, all people arrested under the legislation have been Muslim, and all of the 17 proscribed terrorist organisations are linked to Muslim organisations. This is different to, say, the United States, where less than 60 per cent of the organisations listed are linked to Islamic groups.

This booklet attempts to answer people’s general questions about anti-terrorism legislation. 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’s actions are not beyond scrutiny. There are avenues of redress for people affected by the exercise of these powers, some of which are outlined in this booklet.

The law in this area is complex, but we strongly advise that you read the booklet fully and carefully, in order to understand your rights.

This area of law is also developing very rapidly. Please check our website regularly (http://amcran.org) for updates, translations and new editions. God-willing, the booklet will be available in different languages soon. If you have any suggestions, or other questions you would like to be included in future editions of the booklet, we would be more than happy to hear from you.

You should not rely on this booklet as a substitute for legal advice because it is only intended as general information only. If you find yourself in a difficult situation you should contact your lawyer immediately for legal advice. Some organisations that might assist you are included at the end of the booklet.
2. ‘Terrorism’ offences

There are two main types of ‘terrorist’ 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?

To be a terrorist act, there must be 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. It 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

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 to preparing for, engaging in, or assisting in 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 didn’t know for sure or didn’t check.

2.1.3 What are the different types of terrorist act crimes and the penalties for them?

The crimes are listed in the table below. Note that the law does not just prohibit acts such as bombing, it also makes it an offence to do things in preparation of doing a terrorist act, or even just possessing things connected with preparing for a terrorist act. We have included the different penalties that apply if a person knowingly or recklessly committed the acts.
<table>
<thead>
<tr>
<th>Offence</th>
<th>Maximum penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Knowing, Reckless</td>
<td></td>
</tr>
<tr>
<td>Engaging in a terrorist act</td>
<td>Life imprisonment</td>
</tr>
<tr>
<td>Other acts done in preparation for, or planning, terrorist acts</td>
<td>Life Imprisonment</td>
</tr>
<tr>
<td>Financing a terrorist act, whether the act occurs or does not occur,</td>
<td>Life Imprisonment</td>
</tr>
<tr>
<td>with money, weapons or equipment</td>
<td></td>
</tr>
<tr>
<td>Providing or receiving training connected with preparing for,</td>
<td>25 years</td>
</tr>
<tr>
<td>assisting in terrorist acts</td>
<td>15 years</td>
</tr>
<tr>
<td>Possessing things connected with preparing for, assisting in</td>
<td>15 years</td>
</tr>
<tr>
<td>terrorist acts</td>
<td>10 years</td>
</tr>
<tr>
<td>Collecting or making documents likely to facilitate terrorist acts</td>
<td>15 years</td>
</tr>
<tr>
<td></td>
<td>10 years</td>
</tr>
</tbody>
</table>

2.1.4 What if the act occurs overseas?

For most of the offences, it does not matter whether or not a terrorist act actually happens, or that the activity was not performed in Australia.

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 is an organisation classified by the
Australian government as terrorist organisation. The government can proscribe an organisation if it is satisfied that the organisation is directly or indirectly involved in a ‘terrorist act’.

As at June 2004, organisations proscribed as terrorist organisations are as follows:

- Hizballah
- Hamas
- Lashkar-e-Tayyiba
- Al Qaeda or Islamic Army
- Jemaah Islamiyah
- Abu Sayyaf Group
- Harakat Ul-Mujahideen
- Armed Islamic Group
- Salafist Group for Call and Combat/ GSPC
- Ansar al-Islam
- 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

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 proscribed list, it could still be considered a terrorist organisation, but the government has to prove that it is a terrorist organisation in a court of law.

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

Just like terrorist acts, different penalties apply depending on whether you knew 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:
<table>
<thead>
<tr>
<th>Offence</th>
<th>Maximum penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Knowing</td>
</tr>
<tr>
<td>Directing the activities of a terrorist organisation</td>
<td>25 years</td>
</tr>
<tr>
<td>Intentionally recruiting for a terrorist organisation</td>
<td>25 years</td>
</tr>
<tr>
<td>This also includes inducing, inciting or encouraging other people to</td>
<td></td>
</tr>
<tr>
<td>join or participate</td>
<td></td>
</tr>
<tr>
<td>Training a terrorist organisation or receiving training from a terrorist</td>
<td>25 years</td>
</tr>
<tr>
<td>organisation</td>
<td></td>
</tr>
<tr>
<td>Directly or indirectly getting funds to or from a terrorist organisation</td>
<td>25 years</td>
</tr>
<tr>
<td>Providing support or resources to a terrorist organisation to help them</td>
<td>25 years</td>
</tr>
<tr>
<td>engage in terrorist activities</td>
<td></td>
</tr>
<tr>
<td>Membership of a terrorist organisation. It is an offence to be a member</td>
<td>10 years</td>
</tr>
<tr>
<td>of a terrorist organisation, even informally. You are also regarded as</td>
<td></td>
</tr>
<tr>
<td>a member if you have taken steps to try to become a member. If you find</td>
<td></td>
</tr>
<tr>
<td>out that an organisation is a terrorist organisation, you should take</td>
<td></td>
</tr>
<tr>
<td>all reasonable steps to cancel your membership as soon as possible</td>
<td></td>
</tr>
</tbody>
</table>

The *Anti-Terrorism Bill 2004* currently being considered by Parliament seeks to amend the offence of training or receiving training from a terrorist organisation. It proposes to increase the penalty for recklessly training with a terrorist organisation from 15 years to 25 years. It also proposes to make it an offence punishable by a maximum penalty of 15 years imprisonment to train with a terrorist organisation that has been listed by the government, even if you did not know that it was one, and you were not reckless.
2.3 Other terrorism-related offences

2.3.1 Planting a bomb, an explosive or other lethal device

It is an offence to deliver, place, discharge or detonate a device in or against a public place, a government facility, a public transport system or an infrastructure facility, intending to cause death or serious harm to people, or to cause extensive destruction to that place, facility or system. The penalty for this offence is life imprisonment.

2.3.2 Freezing of assets linked to terrorist activity

The Charter of the United Nations Act 1945 allows for certain people, entities or assets to be proscribed as being linked to terrorist activities. The Foreign Minister must list a person if he is satisfied that the person commits terrorist acts; he must also list entities owned or controlled by that person, and anyone acting on behalf of that person.

The legislation allows for the freezing of the assets of these people or entities that are listed. It is an offence punishable by a maximum penalty of 5 years imprisonment to deal with these freezeable assets in any way. It is also an offence with a maximum penalty of 5 years imprisonment to give any asset to a proscribed person or entity.

For more information and a full list of current proscribed people or entities, visit: http://www.dfat.gov.au/icit/freezing_terrorist_assets.html.

2.3.3 Engaging in hostile activities overseas

Currently, 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 14 years imprisonment. However, a defence to these charges may be that you were fighting with the armed forces of that foreign country.

The Anti-Terrorism Bill 2004 currently before Parliament will amend this by increasing the maximum penalty from 14 years to 20 years, and by specifying that the defence of fighting with the armed forces does not apply if the armed forces are a ‘terrorist’ organisation (see Part 2.2.1 for the definition of a ‘terrorist’ organisation).
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, but it is not responsible for law enforcement.

ASIO has the power to question you to gather intelligence, and even to detain you for questioning. However, ASIO officers do not carry guns, and they do not have the power to arrest you.

The other agency is the *Australian Federal Police* (AFP), which is the federal police force. The AFP investigates federal crimes, like terrorism, 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 committing a terrorism-related offence.

3.1 How do ASIO and AFP operate?

It is very important to understand the differences between ASIO and the AFP. For example, ASIO officers can only search, question or detain you if they have a warrant to do so. ASIO must obtain the Attorney-General’s consent before getting 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 can also detain you immediately without a warrant if they reasonably suspect that anything in your control or operation will 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 or until you talk to your lawyer.

Both 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.

See Part 5.1 for more detail on what ASIO powers are to detain and question people, and Part 5.2 for information about AFP powers to arrest, detain and question.

The next section talks about the searching powers of both ASIO and AFP.
4. Searching

4.1 Can ASIO or AFP search my house?

ASIO can only search your house if they have a warrant. If the warrant specifies that they can only enter your premises at a certain time, you do not have to allow them access at other times. Make sure you check precisely what the warrant permits the ASIO officer to search.

A warrant may enable ASIO to search for any record or thing that they consider relevant to a security matter. They may search through any computer, electronic equipment, safe, box, drawer, parcel, envelope or other container. They may inspect, examine, copy and remove any record or thing.

The AFP, 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 can 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, then 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 containers, such as boxes or suitcases, in or on the vehicle.

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;
• 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 within 60 days 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, or if you represent the occupier, you are entitled to see a copy of the warrant. If the officer has a warrant to search those premises then they can enter, whether or not you are the owner of the premises.

4.4 Can they take things away, including my passport?

ASIO can 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 can 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.

If the AFP take any items away, they must give you a receipt for them. They must also tell you where they are taking the item and allow you to be there when it 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 can 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 can gain access 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 the data, removing it, 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?

You should be cooperative as an ASIO warrant also authorises them to use force that is necessary and reasonable to do the things specified in the warrant.

When dealing with the AFP, you should also remain calm. 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 9 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 who is 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 that is also authorised in the warrant. You are free to move about and they cannot stop you from being there 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 can still search in more than one place on the premises at one 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 garments. You can be asked to remove any clothing or hand over any items 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 can 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 can 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. A strip search must only be conducted by someone
of the same gender.
5. Arrest, detention and questioning

As stated above, AFP are 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 the ASIO and the AFP are much more different than in other areas, and so they are discussed separately in this booklet. We first look at ASIO’s detention and questioning powers, and then we will look at the AFP’s arrest, detention and questioning powers.

5.1 ASIO detention and questioning powers

Detention by ASIO is different to detention or arrest by AFP. ASIO has no power to arrest you, but they are allowed to question you and detain you if they believe it would help them gather intelligence in relation to a ‘terrorism’ offence.

As with searching, ASIO needs a warrant in order to detain you. The warrant may require you to present yourself immediately or at a specific time for questioning, or it may authorise ASIO to take you into custody immediately 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, and you may be required to give them your passport.

5.1.1 What happens if I’m detained?

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 acts as an independent person and is there to ensure that the questioning is conducted properly.

Remember, any questioning must occur before this 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. They must let you know when any recording has started.
5.1.2 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 detained;
- what the warrant authorises ASIO to do;
- that it is an offence not to cooperate with them;
- 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 the 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 the warrant permits you to contact 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.

5.1.3 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 well in English.

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

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

Even though the warrant must specify that you are able to contact a lawyer if you are detained, the prescribed authority can prevent you from contacting your lawyer if he or she believes that your contacting that 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 you are allowed to contact a lawyer, this contact may be monitored. Your lawyer must be provided with a copy of the warrant.
A lawyer may be allowed to be with you when you are being questioned, but they are not allowed to intervene in the questioning process except to ask for clarification of an ambiguous question. During breaks in questioning, ASIO must provide a reasonable opportunity for your lawyer to provide advice to you.

Your lawyer may be removed if ASIO think your lawyer is unduly disrupting the questioning. If this happens, you may contact another lawyer.

5.1.5 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 detained for questioning by ASIO. This means that you are required by law to give any information ASIO requests under the warrant, even if the answer is self-incriminating. If you do not answer their questions, you could face a maximum penalty of five years imprisonment.

Any information or evidence you provide to ASIO is not admissible as evidence against you in criminal proceedings. 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).

5.1.6 How long can they question me?

ASIO can question you for 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 can question you is 24 hours. If the prescribed authority does not give permission for further questioning, they must release you 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.

5.1.7 How long can they detain me?

A warrant permits your detention for up to 48 hours, but they can seek permission from the prescribed authority to detain you for longer, but no more than seven
days in total. However, there is nothing to stop ASIO from applying for further warrants after your release.

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

ASIO may conduct an ordinary search (see Part 4.8).

They can also conduct a strip search, 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.

5.1.9 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 can 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, then the search will be conducted by someone of the same gender if practicable.

5.1.10 Can I communicate with my family members?

You are not allowed to contact anyone at any time while you are detained. You do not have the right to contact a lawyer or family member 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).

5.1.11 Do I have to tell the truth? Can I tell other people what happened?

If you have 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.
While the warrant is still in force, it is an offence to tell anyone, including the media, anything that reveals that the warrant has been issued, what's in it, or any facts relating to how the warrant is executed. This offence carries a maximum penalty of five years imprisonment.

During the period of the warrant and also within two years from the date of its expiry, it is an offence to tell anyone any 'operational information'. Operational information includes any information that ASIO has, where ASIO gets their information from, or an operational capability, method or plan that ASIO uses in its investigations.

If you are the person detained or questioned, or a lawyer representing or advising a person who has been detained or questioned, you would be guilty of the offence even if you did not know that the information is 'operational information', and were not reckless as to whether or not it was. If you are not the person detained or questioned, you would only be guilty of the offence if the prosecution can show you were reckless as to whether or not it was 'operational information'.

5.2 ASIO powers of detention and questioning of minors

There are special rules that apply to you if you are under 18 years of age. Further, the rules are different again if you are 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 16 or 17 years old?

If you are between 16 and 17, 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 ASIO, 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 or guardian. You should not answer any questions until they arrive.
However, if your parent or guardian is being unduly disruptive during questioning, they may be asked to leave. If they are, you can 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, 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, 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 powers

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

If the AFP reasonably suspect 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 must show their identification number on the front of their uniform. You should also write down that number 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.

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.

5.3.3 Can they arrest me on the street?

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

The warrant 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 can 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 can only use reasonable force, 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 can also take away any item that is in plain view if they reasonably suspect that it is evidence of a crime.
The police can 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 can 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 can, if they have not already, perform an ordinary search on you.

At the police station, the police can 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 can be seized. For the definitions of ‘ordinary search’ and ‘strip search’, please see Part 4.8.

5.3.8 Do they have to tell me anything?

If you are under arrest, or if an officer reasonably suspects that you have committed a crime, then he or she must ‘caution’ you before asking you any questions. This means that they must tell you that “you do not have to say or do anything, but anything you say or do may be used in evidence”.

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

Once the AFP has arrested you, 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 the 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 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 can 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 can make a note of any actions you make, like laughing or shrugging your shoulders. So remain calm at all times and do not react to their questions if you choose to be silent.

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.

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 How long can they detain me?

As at 16 June 2004, the AFP can only hold you for a maximum of four hours. The police can apply to a magistrate or other authorised person to extend your detention by a maximum of eight hours. They can only ask for an extension once. An extension can only be granted if it is necessary to protect or to get further evidence, or to complete the investigation.

However, the period of detention does not include ‘dead time’, i.e. 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

However, the length of time they can detain you may soon change. The Anti-Terrorism Bill 2004 proposes that the investigation period be allowed to be extended multiple times for up to 20 hours in total. Under the Bill, this period would also exclude the time it takes to get information from overseas, but this ‘dead time’ must not exceed the time difference between Australia and that country.

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
• take 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 can 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?

6.1 Can ASIO or the AFP use a listening device?

If they have a warrant, ASIO can use a listening device to record your communications. The warrant must not exceed a period of 6 months, although a new warrant can 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’s powers to use listening devices may soon be increased to include the use of data surveillance, optical surveillance and tracking devices. The Surveillance Devices Bill 2004 also proposes that the police be able to use optical surveillance devices such as binoculars and video cameras without a warrant if it did not involve entering onto premises. Under certain circumstances, the police could also use a listening or tracking device without a warrant if they have the permission of the Commissioner of Police, Deputy Commissioner of Police or senior member of the AFP.

6.2 Can they tap my telephone or other communications?

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 can also allow an officer to enter premises to install equipment for monitoring telecommunications, even without your permission.

A TI warrant is valid for up to 90 days, but the AFP can 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 Telecommunications (Interception) Amendment Act 2004 recently introduced allows the AFP to 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 can 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.
6.3 Can they look through my mail?

If they have a warrant, ASIO can have access to any postal parcel or any delivered parcel. This type of warrant will remain valid for 3 months. They may be authorised by a warrant to inspect, make copies of the articles, make copies of the cover of the articles, open 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.

6.4 Can they monitor my movements using a tracking device?

If they have a warrant, ASIO can use tracking devices to track a person or an object, including a car, an aircraft, a vessel, and clothing. 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.
7. Lodging a complaint

7.1 Complaints about ASIO

7.1.1 If I want to complain about the conduct of an ASIO agent, 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 can be made orally or in writing to the Inspector-General of Intelligence and Security (IGIS) within one year of the incident. The role of the IGIS is to monitor intelligence and security agencies, including ASIO, to conduct inquiries, and to investigate complaints. It is there 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. 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 you 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 may have sustained, damage to property, any improper conduct or activities of ASIO and its officers, any action or practice that is inconsistent with, or breaches any human right, or constitutes discrimination, in particular, on the basis of sex or race.

Therefore it is 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 5.1.11, it is unlawful to disclose any operational information of ASIO. This means that you would have to keep this information confidential, and only use this information in complaint situations.
In relation to detention and questioning, you may make a complaint if the officers do not ensure that:

- interactions with you are humane and courteous, and that they do not speak to you in a demeaning manner. You must not be questioned in an unfair or oppressive manner;
- if you are to be transported, the transportation is safe and dignified, with adequate ventilation or lighting, and does not expose you to unnecessary physical hardship;
- you 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 that you are provided with other toilet articles for health, cleanliness and the maintenance of self-respect;
- the place of detention and questioning has adequate fresh air ventilation, floor space, lighting and adequate climate control;
- you are provided with three meals a day at the usual hours. If you are fasting, they have to provide you with food at the appropriate times;
- you are 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 are 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; and
- you are 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.

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 you 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 can 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 can be found 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 which only apply to those States. We discuss some of the terrorism-specific laws for NSW, Victoria and Queensland.

8.1 New South Wales

The *Terrorism (Police Powers) Act 2002* 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.

8.2 Victoria

The *Terrorism (Community Protection) Act 2003* gives police special powers to enter premises covertly, i.e., without the occupier’s knowledge, and 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* 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 – it is an offence punishable by a maximum penalty of 25 years imprisonment to destroy or damage a public facility with the intention of causing major economic loss, or major disruption to government functions and the use of services by the public.
The CMC can 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 would like to get involved in working against 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)**

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
Victoria

Victoria Legal Aid
350 Queen Street
Melbourne VIC 3000
Tel: (03) 9269 0234

Your local Community Legal Centre

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

Your local Community Legal Centre

Queensland Law Society (for referral to private lawyers)
Tel: (07) 3842 5888
Fax: (07) 3842 5999
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:

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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