



Counter-Terrorism Legislation Amendment Act (No. 1) 2018

No. 74, 2018

**An Act to amend various Acts relating to
counter-terrorism, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Counter-Terrorism Legislation Amendment Act (No. 1) 2018

No. 74, 2018

An Act to amend various Acts relating to counter-terrorism, and for related purposes

[Assented to 24 August 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Counter-Terrorism Legislation Amendment Act (No. 1) 2018*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	25 August 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Control orders and preventative detention orders

Administrative Decisions (Judicial Review) Act 1977

1 After paragraph (dab) of Schedule 1

Insert:

(daba) decisions of senior AFP members in relation to consent for the purposes of applications to vary interim control orders under section 104.11A of the *Criminal Code*;

Criminal Code Act 1995

2 Subsection 104.5(1A) of the *Criminal Code*

Omit “72 hours”, substitute “7 days”.

3 After Subdivision C of Division 104 of the *Criminal Code*

Insert:

Subdivision CA—Varying an interim control order

104.11A Varying an interim control order

(1) An application to vary an interim control order may be made to the issuing court by:

- (a) the person in relation to whom the order is made; or
- (b) a senior AFP member.

Note: For example, an application may be made to vary an interim control order to reflect a change in the mobile telephone number of the person in relation to whom the order is made.

(2) The issuing court may vary the interim control order, but only if the court is satisfied that:

- (a) written consent to the variation has been given by:
 - (i) if the application is made by the person in relation to whom the order is made—a senior AFP member; or

Schedule 1 Amendments

Part 1 Control orders and preventative detention orders

- (ii) if the application is made by a senior AFP member—the person in relation to whom the order is made; and
 - (b) the variation does not involve adding any obligations, prohibitions or restrictions to the order; and
 - (c) the variation is appropriate in the circumstances.
- (3) A variation begins to be in force when the order for the variation is made, or at a later time ordered by the issuing court.

4 Subsection 104.14(3) of the *Criminal Code*

Omit “Before”, substitute “Subject to subsection (3A), before”.

5 After subsection 104.14(3) of the *Criminal Code*

Insert:

- (3A) To avoid doubt, in proceedings under this section, the issuing court:
 - (a) must take judicial notice of the fact that the original request for the interim control order was made in particular terms; but
 - (b) may only take action on evidence adduced, and submissions made, under subsection (1) in relation to the confirmation of the order.

Note: The *Evidence Act 1995* covers the admissibility of evidence adduced under subsection (1).

6 After section 104.28A of the *Criminal Code*

Insert:

104.28AA Costs in control order proceedings

- (1) In proceedings in relation to a control order (including proceedings to vary or revoke a control order), an issuing court must not make an order for costs against the person in relation to whom the control order is sought (or has been made).
- (2) However, subsection (1) does not apply to the extent that the court is satisfied that the person has acted unreasonably in the conduct of the proceedings.

7 Subsections 104.32(1) and (2) of the *Criminal Code*

Omit “7 September 2018”, substitute “7 September 2021”.

8 At the end of subsection 105.8(8) of the *Criminal Code*

Add:

; and (d) notify the Parliamentary Joint Committee on Intelligence and Security in writing of the making of the order.

9 At the end of subsection 105.12(8) of the *Criminal Code*

Add:

; and (c) notify the Parliamentary Joint Committee on Intelligence and Security in writing of the making of the order.

10 At the end of subsections 105.15(6) and 105.16(6) of the *Criminal Code*

Add:

; and (c) notify the Parliamentary Joint Committee on Intelligence and Security in writing of the making of the prohibited contact order.

11 Subsections 105.53(1) and (2) of the *Criminal Code*

Omit “7 September 2018”, substitute “7 September 2021”.

Part 2—Foreign incursions and recruitment: declared areas

Criminal Code Act 1995

12 Paragraph 119.2(3)(e) of the *Criminal Code*

Repeal the paragraph, substitute:

(e) performing an official duty for:

- (i) the United Nations, or an agency of the United Nations;
or
- (ii) the International Committee of the Red Cross;

13 Subsection 119.2(6) of the *Criminal Code*

Omit “7 September 2018”, substitute “7 September 2021”.

14 Subsection 119.3(6) of the *Criminal Code*

Repeal the subsection, substitute:

- (5A) Even if paragraph (5)(b) does not apply in relation to a declaration, the Foreign Affairs Minister may revoke the declaration if that Minister considers it necessary or desirable to do so.
- (6) To avoid doubt, if a declaration of an area is revoked under subsection (5) or (5A), the revocation of the declaration does not prevent the area from being subsequently declared under subsection (1) if the Foreign Affairs Minister becomes, or remains, satisfied as mentioned in subsection (1).

15 Subsection 119.3(7) of the *Criminal Code*

Repeal the subsection, substitute:

- (7) The Parliamentary Joint Committee on Intelligence and Security may:
 - (a) review a declaration; and
 - (b) report the Committee’s comments and recommendations to each House of the Parliament before the end of the applicable disallowance period for that House.

Note: A declaration may be disallowed by either House of Parliament under section 42 of the *Legislation Act 2003*.

- (8) In addition, at any time while a declaration is in effect, the Parliamentary Joint Committee on Intelligence and Security may:
- (a) review the declaration; and
 - (b) report the Committee's comments and recommendations to each House of the Parliament.

Part 3—Stop, search and seize powers

Crimes Act 1914

16 After Subdivision C of Division 3A of Part IAA

Insert:

Subdivision CA—Reporting on exercise of powers under this Division

3UJA Report after powers are exercised

- (1) As soon as practicable after the exercise of a power or powers by an AFP police officer (or officers) under Subdivision B in relation to an incident, the Commissioner must give a report to the following:
 - (a) the Minister;
 - (b) the Independent National Security Legislation Monitor;
 - (c) the Parliamentary Joint Committee on Intelligence and Security.
- (2) The report must state, in relation to the incident:
 - (a) the number of instances when an AFP police officer (or officers) exercised a power under section 3UE, 3UEA or 3UF; and
 - (b) the circumstances in which an AFP police officer (or officers) exercised powers under section 3UC or 3UD.

Note: The nature of these powers is as follows:

 - (a) for section 3UC—requirement to provide names etc.;
 - (b) for section 3UD—stopping and searching;
 - (c) for section 3UE—seizure of terrorism related items and serious offence related items;
 - (d) for section 3UEA—emergency entry to premises without a warrant;
 - (e) for section 3UF—seizure notices.
- (3) An **AFP police officer** is a member or a special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*).

Note: AFP police officers are police officers within the meaning of this Division (see section 3UA).

3UJB Annual report on exercise of powers

- (1) The Minister must, as soon as practicable after each 30 June, cause to be prepared a report about the exercise of powers under this Division, during the year ended on that 30 June.
- (2) Without limiting subsection (1), a report relating to a year must include the following matters:
 - (a) the number of instances when an AFP police officer (or officers) exercised a power under section 3UE, 3UEA or 3UF;
 - (b) the number of incidents when an AFP police officer (or officers) exercised powers under section 3UC or 3UD;
 - (c) the number of applications made under section 3UI for declarations that Commonwealth places are prescribed security zones;
 - (d) the number of declarations made under section 3UJ that Commonwealth places are prescribed security zones.
- (3) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.
- (4) An **AFP police officer** is a member or a special member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*).

Note: AFP police officers are police officers within the meaning of this Division (see section 3UA).

17 Subsections 3UK(1), (2) and (3)

Omit “7 September 2018”, substitute “7 September 2021”.

Part 4—Special powers relating to terrorism offences

Australian Security Intelligence Organisation Act 1979

18 Section 34ZZ

Omit “7 September 2018”, substitute “7 September 2019”.

Part 5—Review of the exercise of terrorism-related powers

Intelligence Services Act 2001

19 Paragraph 29(1)(bb)

Repeal the paragraph, substitute:

- (bb) to review, by 7 January 2021, the operation, effectiveness and implications of the following:
 - (i) Division 3A of Part IAA of the *Crimes Act 1914* (which provides for police powers in relation to terrorism) and any other provision of the *Crimes Act 1914* as it relates to that Division;
 - (ii) Divisions 104 and 105 of the *Criminal Code* (which provide for control orders and preventative detention orders in relation to terrorism) and any other provision of the *Criminal Code Act 1995* as it relates to those Divisions;
 - (iii) sections 119.2 and 119.3 of the *Criminal Code* (which provide for declared areas in relation to foreign incursion and recruitment); and
- (bba) to monitor and review:
 - (i) the performance by the AFP of its functions under Division 3A of Part IAA of the *Crimes Act 1914*; and
 - (ii) the basis of the Minister’s declarations of prescribed security zones under section 3UJ of that Act; and

Part 6—Technical amendments

Criminal Code Act 1995

20 Subsection 105A.5(5) of the *Criminal Code*

Omit “the AFP Minister”, substitute “a Minister (the *decision-maker*)”.

21 Paragraph 105A.5(6)(a) of the *Criminal Code*

Omit “AFP Minister” (first and second occurring), substitute “decision-maker”.

22 Paragraph 105A.5(6)(a) of the *Criminal Code*

Omit “AFP Minister’s”, substitute “decision-maker’s”.

Part 7—Transitional provisions

Criminal Code Act 1995

23 At the end of Division 106 of the *Criminal Code*

Add:

106.9 Application—*Counter-Terrorism Legislation Amendment Act (No. 1) 2018*

- (1) The amendment of subsection 104.5(1A) made by the *Counter-Terrorism Legislation Amendment Act (No. 1) 2018* (the **amending Act**) applies in relation to an interim control order made on or after the day (the **commencement day**) this section commences, including such an order that was requested before the commencement day.

Note 1: Section 104.5 deals with the terms of an interim control order.

Note 2: This section was inserted by the amending Act.

- (2) Subdivision CA of Division 104 of this Act, as inserted by the amending Act, applies in relation to an interim control order made before, on or after the commencement day.

Note: Subdivision CA of Division 104 deals with the variation of an interim control order.

- (3) Subsection 104.14(3A) of this Act, as inserted by the amending Act, applies in relation to proceedings for the confirmation of an interim control order:

- (a) if the proceedings start on or after the commencement day; and
(b) whether the original request for the interim control order was made before, on or after the commencement day.

Note: Subsection 104.14(3A) deals with the evidentiary status in confirmation proceedings of such an original request.

- (4) Section 104.28AA of this Act, as inserted by the amending Act, applies in relation to the proceedings in relation to a control order (including proceedings to vary or revoke a control order) if:

- (a) the proceedings start on or after the commencement day; or

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Part 7 Transitional provisions

(b) the proceedings had started, but not ended, immediately before the commencement day.

Note: Section 104.28AA deals with costs in control order proceedings.

(5) Subsections 119.3(5A) and (6) of this Act, as substituted by the amending Act, apply in relation to a declaration of the Foreign Affairs Minister made under subsection 119.3(1) before, on or after the commencement day.

Note: Subsections 119.3(5A) and (6) deal with the revocation of declarations made under subsection 119.3(1).

*[Minister's second reading speech made in—
House of Representatives on 24 May 2018
Senate on 26 June 2018]*

(130/18)
