

2002-2003-2004

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Anti-terrorism Bill (No. 2) 2004**

**No.     , 2004**

*(Attorney-General)*

**A Bill for an Act relating to foreign travel documents, persons in relation to whom ASIO questioning warrants are being sought, associating with terrorist organisations, the transfer of prisoners, forensic procedures, and for other purposes**



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1 **A Bill for an Act relating to foreign travel**  
2 **documents, persons in relation to whom ASIO**  
3 **questioning warrants are being sought, associating**  
4 **with terrorist organisations, the transfer of**  
5 **prisoners, forensic procedures, and for other**  
6 **purposes**

7 The Parliament of Australia enacts:

8 **1 Short title**

9 This Act may be cited as the *Anti-terrorism Act (No. 2) 2004*.

10 **2 Commencement**

11 (1) Each provision of this Act specified in column 1 of the table  
12 commences, or is taken to have commenced, in accordance with

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column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1	The 28th day after the day on which this Act receives the Royal Assent.	
3. Schedule 2	The 28th day after the day on which this Act receives the Royal Assent.	
4. Schedule 3	The day after this Act receives the Royal Assent.	
5. Schedule 4	The day on which this Act receives the Royal Assent.	
6. Schedule 5, items 1 to 5	The day on which this Act receives the Royal Assent.	
7. Schedule 5, item 6	The later of: (a) the start of the day on which this Act receives the Royal Assent; and (b) immediately after the commencement of Schedule 3 to the <i>Australian Federal Police and Other Legislation Amendment Act 2004</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	

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Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

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(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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### **3 Schedule(s)**

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Each Act that is specified in a Schedule to this Act is amended or

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repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect

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according to its terms.

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# Schedule 1—Foreign travel documents

## *Passports Act 1938*

### **1 Before section 1**

Insert:

### **Part 1—Preliminary**

#### **2 At the end of section 4A**

Add:

(2) Subsection (1) does not apply to Parts 2, 3 and 4 of this Act.

#### **3 Subsection 5(1)**

Insert:

*competent authority* means a competent authority for the purposes of section 13, 14 or 15.

#### **4 Subsection 5(1)**

Insert:

*document* includes:

- (a) any paper or other material on which there is writing; or
- (b) any paper or other material on which there are marks, figures, symbols or perforations that are:
  - (i) capable of being given a meaning by persons qualified to interpret them; or
  - (ii) capable of being responded to by a computer, a machine or an electronic device; or
- (c) any article or material (for example, a disk or a tape) from which information is capable of being reproduced with or without the aid of any other article or device.

#### **5 Subsection 5(1)**

Insert:

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***enforcement officer*** means:

- (a) an officer of Customs within the meaning of the *Customs Act 1901*; or
- (b) a member or a special member of the Australian Federal Police; or
- (c) an officer of the police force of a State or Territory; or
- (d) a person, or a person who is one of a class of persons, authorised in writing by the Minister to exercise the powers and perform the functions of an enforcement officer.

**6 Subsection 5(1)**

Insert:

***foreign passport*** means a passport issued by or on behalf of the government of a foreign country.

**7 Subsection 5(1)**

Insert:

***foreign travel document*** means:

- (a) a foreign passport; or
- (b) a document of identity issued for travel purposes by or on behalf of the government of a foreign country (whether or not also issued for another purpose).

**8 Subsection 5(1)**

Insert:

***Minister's determination*** means an instrument made by the Minister for the purposes of this Act under section 24.

**9 Subsection 5(3)**

Omit "(other than paragraph (f))".

**10 Subsection 5(3)**

Omit "9B (other than paragraph (b)),".

**11 Subsection 5(4)**

Repeal the subsection.

1 **12 After section 6A**

2 Insert:

3 **Part 1A—Australian passports**  
4

5 **13 Paragraph 9(1)(a)**

6 Omit “a passport”, substitute “an Australian passport”.

7 **14 Paragraph 9(1)(b)**

8 Omit “a passport”, substitute “an Australian passport”.

9 **15 At the end of paragraphs 9A(1)(a), (b), (c), (d) and (e)**

10 Add “or”.

11 **16 Paragraph 9A(1)(f)**

12 Repeal the paragraph.

13 **17 Subsection 9A(2)**

14 Omit “(f)”, substitute “(e)”.

15 **18 Section 9B**

16 Repeal the section.

17 **19 Subsection 10(2)**

18 Repeal the subsection (but not the penalty at the foot of the subsection).

19 **20 Before subsection 11(1)**

20 Insert:

21 (1A) This section does not apply to offences against Part 2 or 3 of this  
22 Act.

23 **21 Before subsection 12(1)**

24 Insert:

25 (1A) This section does not apply in relation to Parts 2, 3 or 4 of this Act.

26 **22 At the end of the Act**

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1 Add:

2 **Part 2—Enforcement officers’ powers in relation to**  
3 **foreign travel documents**

4 **Division 1—Requesting the Minister to order surrender of**  
5 **foreign travel documents**

6 **13 Request relating to Australian law enforcement matters**

7 (1) If a competent authority believes on reasonable grounds that:  
8 (a) a person is the subject of an arrest warrant issued in Australia  
9 in respect of an indictable offence against a law of the  
10 Commonwealth, a State or Territory; or  
11 (b) a person (including a person who is in prison) is prevented  
12 from travelling internationally by force of:  
13 (i) an order of a court of the Commonwealth, a State or  
14 Territory; or  
15 (ii) a condition of parole, or of a recognisance, surety, bail  
16 bond or licence for early release from prison, granted  
17 under a law of the Commonwealth, a State or Territory;  
18 or  
19 (iii) a law of the Commonwealth, or an order or other  
20 direction (however described) under a law of the  
21 Commonwealth;  
22 the competent authority may request the Minister to make an order  
23 under section 16 in relation to the person’s foreign travel  
24 documents.

25 (2) In this section:

26 **competent authority**, in relation to a circumstance mentioned in  
27 paragraph (1)(a) or (b), means:

- 28 (a) a person who has responsibility for, or powers, functions or  
29 duties in relation to, that circumstance under a law of the  
30 Commonwealth, a State or Territory (other than a person who  
31 is specified in a Minister’s determination as not being a  
32 competent authority in relation to the circumstance); or  
33 (b) a person specified in a Minister’s determination as a  
34 competent authority in relation to the circumstance.
-

1                    *prevented from travelling internationally* includes:

- 2                    (a) required to remain in Australia; and  
3                    (b) required to surrender a passport; and  
4                    (c) not permitted to apply for a passport; and  
5                    (d) not permitted to obtain a passport.

6                    **14 Request relating to international law enforcement co-operation**

- 7                    (1) If a competent authority believes on reasonable grounds that:  
8                    (a) a person is the subject of an arrest warrant issued in a foreign  
9                    country in respect of a serious foreign offence; or  
10                    (b) a person (including a person who is in prison) is prevented  
11                    from travelling internationally by force of:  
12                    (i) an order of a court of a foreign country; or  
13                    (ii) a condition of parole, or of a recognisance, surety, bail  
14                    bond or licence for early release from prison, granted  
15                    under a law of a foreign country, or other similar  
16                    arrangement made under a law of a foreign country; or  
17                    (iii) a law of a foreign country, or an order or other direction  
18                    (however described) under a law of a foreign country.

19                    the competent authority may request the Minister to make an order  
20                    under section 16 in relation to the person's foreign travel  
21                    documents.

- 22                    (2) In this section:

23                    *competent authority*, in relation to a circumstance mentioned in  
24                    paragraph (1)(a) or (b), means:

- 25                    (a) an approved representative; or  
26                    (b) an employee of the Commonwealth who is specified in a  
27                    Minister's determination as a competent authority in relation  
28                    to the circumstance; or  
29                    (c) an agency (within the meaning of the *Financial Management  
30                    and Accountability Act 1997*) that is specified in a Minister's  
31                    determination as a competent authority in relation to the  
32                    circumstance.

33                    *prevented from travelling internationally* includes:

- 34                    (a) required to remain in the foreign country concerned; and  
35                    (b) required to surrender a passport; and

- 1 (c) not permitted to apply for a passport; and  
 2 (d) not permitted to obtain a passport.

3 ***serious foreign offence*** means an offence against the law of a  
 4 foreign country:

- 5 (a) for which the maximum penalty is death or imprisonment, or  
 6 other deprivation of liberty, for a period of not less than 12  
 7 months; or  
 8 (b) if the offence does not carry a penalty under the law of the  
 9 country—the conduct constituting which is, under a treaty to  
 10 which the country and Australia are parties (being a treaty  
 11 relating in whole or in part to the surrender of persons  
 12 accused or convicted of offences), required to be treated as an  
 13 offence for which the surrender of persons is allowed by the  
 14 country or Australia; or  
 15 (c) the conduct constituting which would, if engaged in in  
 16 Australia, constitute an indictable offence against this Act; or  
 17 (d) the conduct constituting which would, if engaged in in  
 18 Australia, constitute an offence specified in a Minister’s  
 19 determination made for the purposes of subparagraph  
 20 15(1)(a)(v).

21 **15 Request relating to potential for harmful conduct**

- 22 (1) If a competent authority suspects on reasonable grounds that:  
 23 (a) unless a person’s foreign travel documents are surrendered,  
 24 the person would be likely to engage in conduct that:  
 25 (i) might prejudice the security of Australia or a foreign  
 26 country; or  
 27 (ii) might endanger the health or physical safety of other  
 28 persons (whether in Australia or a foreign country); or  
 29 (iii) might interfere with the rights or freedoms of other  
 30 persons (whether in Australia or a foreign country) set  
 31 out in the International Covenant on Civil and Political  
 32 Rights; or  
 33 (iv) might constitute an indictable offence against this Act;  
 34 or  
 35 (v) might constitute an indictable offence against a law of  
 36 the Commonwealth, being an offence specified in a  
 37 Minister’s determination; and

1 (b) the person should be required to surrender the person's  
2 foreign travel documents in order to prevent the person from  
3 engaging in the conduct;  
4 the competent authority may request the Minister to make an order  
5 under section 16 in relation to the person's foreign travel  
6 documents.

7 Note: The text of the International Covenant on Civil and Political Rights is  
8 set out in Australian Treaty Series 1980 No. 23. In 2004 this was  
9 available in the Australian Treaties Library of the Department of  
10 Foreign Affairs and Trade, accessible on the Internet through that  
11 Department's world-wide web site.

12 (2) In this section:

13 ***competent authority:***

14 (a) in relation to a circumstance mentioned in subsection (1) that  
15 relates to Australia, means:

16 (i) a person who has responsibility for, or powers, duties or  
17 functions in relation to, the circumstance under a law of  
18 the Commonwealth, a State or Territory (other than a  
19 person who is specified in a Minister's determination as  
20 not being a competent authority in relation to the  
21 circumstance); or

22 (ii) a person specified in a Minister's determination as a  
23 competent authority in relation to the circumstance; or

24 (b) in relation to a circumstance mentioned in subsection (1) that  
25 relates to a foreign country, means:

26 (i) an approved representative; or

27 (ii) an employee of the Commonwealth who is specified in  
28 a Minister's determination as a competent authority in  
29 relation to the circumstance; or

30 (iii) an agency (within the meaning of the *Financial*  
31 *Management and Accountability Act 1997*) that is  
32 specified in a Minister's determination as a competent  
33 authority in relation to the circumstance.

1 **Division 2—Demands for foreign travel documents**

2 **16 Demand for foreign travel document if authorised by Minister**

3 (1) If a competent authority makes a request under section 13, 14 or 15  
4 in relation to a person, the Minister may order the surrender of the  
5 person's foreign travel documents.

6 (2) If the Minister has made an order under subsection (1), an  
7 enforcement officer may demand that the person surrender to the  
8 officer the person's foreign travel documents.

9 (3) If the person does not immediately surrender the person's foreign  
10 travel documents, the officer may:

- 11 (a) seize the person's foreign travel documents; and  
12 (b) seize any foreign travel document of the person that is not in  
13 the possession or control of any person.

14 (4) Subsection (3) does not authorise an enforcement officer to enter  
15 premises that the officer would not otherwise be authorised to  
16 enter.

17 (5) A person commits an offence if:

- 18 (a) an enforcement officer demands under subsection (2) that the  
19 person surrender the person's foreign travel documents; and  
20 (b) the officer informs the person that the Minister has ordered  
21 the surrender of the person's foreign travel documents and  
22 that the officer is authorised to make the demand; and  
23 (c) the officer informs the person that it may be an offence not to  
24 comply with the demand; and  
25 (d) the person has possession or control of one or more of the  
26 person's foreign travel documents; and  
27 (e) the person fails to surrender those documents to the officer  
28 immediately.

29 **Penalty:** Imprisonment for 1 year or 20 penalty units, or both.

30 (6) A foreign travel document obtained by an enforcement officer  
31 under this section may be retained for so long as there is a  
32 competent authority who:

- 1 (a) believes on reasonable grounds that a circumstance  
2 mentioned in section 13 or 14 applies in relation to the  
3 person; or  
4 (b) suspects on reasonable grounds that a circumstance  
5 mentioned in section 15 applies in relation to the person.
- 6 (7) Despite subsection (6), a foreign travel document must be returned  
7 to the person to whom it was issued if, on review by the  
8 Administrative Appeals Tribunal:  
9 (a) the Tribunal sets aside the decision of the Minister to order  
10 the surrender of the document; and  
11 (b) either:  
12 (i) the Tribunal substitutes a decision not to order the  
13 surrender of the document; or  
14 (ii) the Tribunal remits the matter for reconsideration and,  
15 on that reconsideration, the Minister decides not to  
16 order the surrender of the document.

17 **17 Demand for suspicious foreign travel document**

- 18 (1) An enforcement officer may demand that a person surrender to the  
19 officer:  
20 (a) a foreign travel document that has been obtained, or that the  
21 officer suspects on reasonable grounds has been obtained, by  
22 means of a false or misleading statement, false or misleading  
23 information or a false or misleading document; or  
24 (b) a foreign travel document or other document that has been  
25 used, or that the officer suspects on reasonable grounds has  
26 been used, in the commission of an offence against this Act.
- 27 (2) A person commits an offence if:  
28 (a) an enforcement officer demands under subsection (1) that the  
29 person surrender a document; and  
30 (b) the officer informs the person that the officer is authorised to  
31 demand that document; and  
32 (c) the officer informs the person that it may be an offence not to  
33 comply with the demand; and  
34 (d) the person has possession or control of the document; and  
35 (e) the person fails to surrender the document to the officer  
36 immediately.



1                   Penalty: Imprisonment for 1 year or 20 penalty units, or both.

2                   (3) A document surrendered to an enforcement officer under this  
3                   section may be retained for so long as there is an enforcement  
4                   officer who suspects on reasonable grounds:

- 5                   (a) that the document was obtained by means of a false or  
6                   misleading statement, false or misleading information or a  
7                   false or misleading document; or  
8                   (b) that the document has been used in the commission of an  
9                   offence against this Act.

10                   **Part 3—Offences relating to foreign travel**  
11                   **documents**  
12

13                   **18 Making false or misleading statements in relation to foreign**  
14                   **travel document applications**

15                   (1) A person commits an offence if:

- 16                   (a) the person makes a statement (whether orally, in writing or  
17                   any other way) to another person; and  
18                   (b) the statement:  
19                   (i) is false or misleading; or  
20                   (ii) omits any matter or thing without which the statement is  
21                   misleading; and  
22                   (c) the statement is made in, or in connection with, an  
23                   application for a foreign travel document.

24                   Penalty: Imprisonment for 10 years or 1,000 penalty units, or  
25                   both.

26                   (2) Subsection (1) does not apply:

- 27                   (a) as a result of subparagraph (1)(b)(i)—if the statement is not  
28                   false or misleading in a material particular; or  
29                   (b) as a result of subparagraph (1)(b)(ii)—if the statement did not  
30                   omit any matter or thing without which the statement is  
31                   misleading in a material particular.

32                   Note:        The defendant bears an evidential burden in relation to the matters in  
33                   subsection (2). See subsection 13.3(3) of the *Criminal Code*.

1 **19 Giving false or misleading information in relation to foreign**  
2 **travel document applications**

- 3 (1) A person commits an offence if:  
4 (a) the person gives information to another person; and  
5 (b) the information:  
6 (i) is false or misleading; or  
7 (ii) omits any matter or thing without which the information  
8 is misleading; and  
9 (c) the information is given in, or in connection with, an  
10 application for a foreign travel document.

11 Penalty: Imprisonment for 10 years or 1,000 penalty units, or  
12 both.

- 13 (2) Subsection (1) does not apply:  
14 (a) as a result of subparagraph (1)(b)(i)—if the information is not  
15 false or misleading in a material particular; or  
16 (b) as a result of subparagraph (1)(b)(ii)—if the information did  
17 not omit any matter or thing without which the statement is  
18 misleading in a material particular.

19 Note: The defendant bears an evidential burden in relation to the matters in  
20 subsection (2). See subsection 13.3(3) of the *Criminal Code*.

21 **20 Producing false or misleading documents in relation to foreign**  
22 **travel document applications**

- 23 (1) A person commits an offence if:  
24 (a) the person produces a document to another person; and  
25 (b) the document is false or misleading; and  
26 (c) the document is produced in, or in connection with, an  
27 application for a foreign travel document.

28 Penalty: Imprisonment for 10 years or 1,000 penalty units, or  
29 both.

- 30 (2) Subsection (1) does not apply if the document is not false or  
31 misleading in a material particular.

32 Note: The defendant bears an evidential burden in relation to the matter in  
33 subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- 1 (3) Subsection (1) does not apply to a person who produces a  
2 document if the document is accompanied by a written statement  
3 signed by the person (or, in the case of a body corporate, by a  
4 competent officer of the body corporate):  
5 (a) stating that the document is, to the knowledge of the  
6 first-mentioned person, false or misleading in a material  
7 particular; and  
8 (b) setting out, or referring to, the material particular in which  
9 the document is, to the knowledge of the first-mentioned  
10 person, false or misleading.

11 Note: The defendant bears an evidential burden in relation to the matter in  
12 subsection (3). See subsection 13.3(3) of the *Criminal Code*.

## 13 **21 Improper use or possession of a foreign travel document**

- 14 (1) A person commits an offence if:  
15 (a) the person uses a foreign travel document in connection with  
16 travel or identification; and  
17 (b) the document has been cancelled.

18 Penalty: Imprisonment for 10 years or 1,000 penalty units, or  
19 both.

- 20 (2) A person commits an offence if:  
21 (a) the person uses a foreign travel document in connection with  
22 travel or identification; and  
23 (b) the document was not issued to the person.

24 Penalty: Imprisonment for 10 years or 1,000 penalty units, or  
25 both.

- 26 (3) A person commits an offence if:  
27 (a) the person provides another person with a foreign travel  
28 document that was issued to the first-mentioned person; and  
29 (b) the first-mentioned person is reckless as to whether the  
30 document is or will be used by the other person in connection  
31 with travel or identification.

32 Penalty: Imprisonment for 10 years or 1,000 penalty units, or  
33 both.

- 34 (4) A person commits an offence if:

- 1 (a) the person has possession or control of a foreign travel  
2 document; and  
3 (b) the person knows that the document was not issued to the  
4 person.

5 Penalty: Imprisonment for 10 years or 1,000 penalty units, or  
6 both.

- 7 (5) Subsections (1), (2), (3) and (4) do not apply if the person has a  
8 reasonable excuse.

9 Note: The defendant bears an evidential burden in relation to the matter in  
10 subsection (5). See subsection 13.3(3) of the *Criminal Code*.

## 11 **22 Possessing, making or providing false foreign travel documents**

- 12 (1) A person commits an offence if:  
13 (a) the person has possession or control of a document; and  
14 (b) the person knows that the document is a false foreign travel  
15 document.

16 Penalty: Imprisonment for 10 years or 1,000 penalty units, or  
17 both.

- 18 (2) A person commits an offence if:  
19 (a) the person:  
20 (i) makes a false foreign travel document; or  
21 (ii) provides a false foreign travel document to another  
22 person; and  
23 (b) the person does so with the intention that the false foreign  
24 travel document may be used, acted on or accepted as if it  
25 were a passport or document of identity issued by or on  
26 behalf of the government of a foreign country.

27 Penalty: Imprisonment for 10 years or 1,000 penalty units, or  
28 both.

- 29 (3) Subsections (1) and (2) do not apply if the person has a reasonable  
30 excuse.

31 Note: The defendant bears an evidential burden in relation to the matter in  
32 subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- 33 (4) In this section:
-

***false foreign travel document:***

(a) means a document:

(i) that purports to be a passport issued by or on behalf of the government of a foreign country but that was not issued by or on behalf of that government; or

(ii) that purports to be a document of identity issued for travel purposes by or on behalf of the government of a foreign country for the purposes of travel but that was not issued by or on behalf of that government; and

(b) includes a foreign travel document that has been altered by a person who is not authorised to alter that foreign travel document.

***make***, in relation to a false foreign travel document, includes alter a document so as to make it a false document (whether or not it was already a false document before the alteration).**Part 4—Miscellaneous****23 Administrative review**

(1) Application may be made to the Administrative Appeals Tribunal for review of a decision by the Minister under section 16 to order the surrender of a person's foreign travel documents.

(2) For the purposes of section 27 of the *Administrative Appeals Tribunal Act 1975*, the only person whose interests are taken to be affected by the decision is the person whose foreign travel documents are ordered to be surrendered.

(3) The Minister may, if the Minister makes a decision in response to a request under section 15, certify that the decision involved matters of international relations or criminal intelligence.

(4) Despite section 43 of the *Administrative Appeals Tribunal Act 1975*, if the Minister has given a certificate under subsection (3) in relation to a decision, then in any review of that decision the Administrative Appeals Tribunal may only make a decision:

(a) affirming the Minister's decision; or

- 1 (b) remitting the decision to the Minister for reconsideration in  
2 accordance with any directions or recommendations of the  
3 Tribunal.

4 **24 Minister's determinations**

- 5 (1) The Minister may make instruments specifying any of the matters  
6 that this Act provides may be specified in a Minister's  
7 determination.

- 8 (2) An instrument made under subsection (1) is a disallowable  
9 instrument for the purposes of section 46A of the *Acts*  
10 *Interpretation Act 1901*.

11 **25 Regulations**

- 12 The Governor-General may make regulations prescribing matters:  
13 (a) required or permitted by this Part or by Part 2 or 3 of this Act  
14 to be prescribed; or  
15 (b) necessary or convenient to be prescribed for carrying out or  
16 giving effect to this Part or to Part 2 or 3 of this Act.

1  
2 **Schedule 2—Persons in relation to whom**  
3 **ASIO questioning warrants are being**  
4 **sought**  
5

6 *Australian Security Intelligence Organisation Act 1979*

7 **1 After section 34JB**

8 Insert:

9 **34JBA Surrender of passport by person in relation to whom**  
10 **warrant is sought**

11 (1) If the Director-General has sought the Minister's consent to request  
12 the issue of a warrant under section 34D in relation to a person,  
13 then, as soon as practicable after that person is notified of that  
14 action and of the effect of this subsection, the person must deliver  
15 to an enforcement officer every passport that:

16 (a) is an Australian passport (as defined in the *Passports Act*  
17 *1938*), or a foreign passport, that has been issued to the  
18 person; and

19 (b) the person has in his or her possession or control.

20 Penalty: Imprisonment for 5 years.

21 (2) The Director-General must cause a passport delivered under  
22 subsection (1) to be returned to the person to whom it was issued,  
23 as soon as practicable after the first of the following events:

24 (a) the Minister refuses to consent to request the issue of a  
25 warrant under section 34D in relation to the person;

26 (b) an issuing authority refuses to issue a warrant under  
27 section 34D in relation to the person;

28 (c) if a warrant under section 34D is issued in relation to the  
29 person—the period specified in the warrant under paragraph  
30 34D(6)(b) ends;

31 but the Director-General may cause the passport to be returned to  
32 that person earlier.

33 (3) Subsection (2) does not require:

- 1 (a) the return of a passport during a period specified under  
2 paragraph 34D(6)(b) in another warrant that specifies the  
3 person to whom the passport was issued; or  
4 (b) the return of a passport that has been cancelled.
- 5 (4) If a warrant under section 34D is issued in relation to the person, a  
6 person approved under subsection 24(1) in relation to the warrant  
7 may, after a passport of the first-mentioned person is delivered  
8 under subsection (1) and before it is returned under subsection (2):  
9 (a) inspect or examine the passport; and  
10 (b) make copies or transcripts of it.
- 11 (5) In this section:
- 12 *enforcement officer* means any of the following:  
13 (a) a member of the Australian Federal Police;  
14 (b) an officer of the police force of a State or Territory;  
15 (c) an officer of Customs (within the meaning of the *Customs*  
16 *Act 1901*).

17 **34JBB Person in relation to whom warrant is sought must not leave**  
18 **Australia without permission**

- 19 (1) A person commits an offence if:  
20 (a) the person has been notified:  
21 (i) that the Director-General has sought the Minister's  
22 consent to request the issue of a warrant under  
23 section 34D in relation to the person; and  
24 (ii) of the effect of this subsection in connection with that  
25 action; and  
26 (b) the person leaves Australia; and  
27 (c) the leaving occurs after the person has been notified that the  
28 Director-General has sought the Minister's consent and of the  
29 effect of this subsection in connection with that action, and  
30 before the first of the following events:  
31 (i) if the Minister refuses to consent to request the issue of  
32 a warrant under section 34D in relation to the person—  
33 that refusal;  
34 (i) if an issuing authority refuses to issue a warrant under  
35 section 34D in relation to the person—that refusal;



- 1 (ii) if a warrant under section 34D is issued in relation to  
2 the person—the period specified in the warrant under  
3 paragraph 34D(6)(b) ends; and  
4 (d) the person does not have written permission from the  
5 Director-General to leave Australia at the time the person  
6 leaves Australia.

7 Penalty: Imprisonment for 5 years.

- 8 (2) The Director-General may give written permission for a person to  
9 leave Australia at a specified time. The permission may be given  
10 either unconditionally or subject to specified conditions.

11 Note 1: The Director-General may revoke or amend the permission. See  
12 subsection 33(3) of the *Acts Interpretation Act 1901*.

13 Note 2: If permission is given subject to a condition and the condition is not  
14 met, the permission is not in force.

## 15 **2 Application of item 1**

16 The amendments made by item 1 of this Schedule apply to a person in  
17 relation to whom the Director-General has sought the Minister's  
18 consent to request the issue of a warrant under section 34D of the  
19 *Australian Security Intelligence Organisation Act 1979* on or after the  
20 commencement of that item.

1  
2 **Schedule 3—Associating with terrorist**  
3 **organisations**  
4

5 *Criminal Code Act 1995*

6 **1 Subsection 102.1(1) of the *Criminal Code***

7 Insert:

8 *associate*: a person associates with another person if the person  
9 meets or communicates with the other person.

10 **2 Subsection 102.1(1) of the *Criminal Code***

11 Insert:

12 *close family member* of a person means:

- 13 (a) the person's spouse, de facto spouse or same-sex partner; or  
14 (b) a parent, step-parent or grandparent of the person; or  
15 (c) a child, step-child or grandchild of the person; or  
16 (d) a brother, sister, step-brother or step-sister of the person; or  
17 (e) a guardian or carer of the person.

18 **3 At the end of Subdivision B of Division 102 of the *Criminal***  
19 ***Code***

20 Add:

21 **102.8 Associating with terrorist organisations**

22 (1) A person commits an offence if:

23 (a) on 2 or more occasions:

- 24 (i) the person intentionally associates with another person  
25 who is a member of, or a person who promotes or  
26 directs the activities of, an organisation; and  
27 (ii) the person knows that the organisation is a terrorist  
28 organisation; and  
29 (iii) the association provides support to the organisation; and  
30 (iv) the person intends that the support assist the  
31 organisation to expand or to continue to exist; and

- 1 (v) the person knows that the other person is a member of,  
2 or a person who promotes or directs the activities of, the  
3 organisation; and  
4 (b) the organisation is a terrorist organisation because of  
5 paragraph (b), (c), (d) or (e) of the definition of **terrorist**  
6 **organisation** in this Division (whether or not the organisation  
7 is a terrorist organisation because of paragraph (a) of that  
8 definition also).

9 Penalty: Imprisonment for 3 years.

- 10 (2) A person commits an offence if:  
11 (a) the person has previously been convicted of an offence  
12 against subsection (1); and  
13 (b) the person intentionally associates with another person who  
14 is a member of, or a person who promotes or directs the  
15 activities of, an organisation; and  
16 (c) the person knows that the organisation is a terrorist  
17 organisation; and  
18 (d) the association provides support to the organisation; and  
19 (e) the person intends that the support assist the organisation to  
20 expand or to continue to exist; and  
21 (f) the person knows that the other person is a member of, or a  
22 person who promotes or directs the activities of, the  
23 organisation; and  
24 (g) the organisation is a terrorist organisation because of  
25 paragraph (b), (c), (d) or (e) of the definition of **terrorist**  
26 **organisation** in this Division (whether or not the organisation  
27 is a terrorist organisation because of paragraph (a) of that  
28 definition also).

29 Penalty: Imprisonment for 3 years.

30 (3) Strict liability applies to paragraphs (1)(b) and (2)(g).

- 31 (4) This section does not apply if:  
32 (a) the association is with a close family member and relates  
33 only to a matter that could reasonably be regarded (taking  
34 into account the person's cultural background) as a matter of  
35 family or domestic concern; or

- 1 (b) the association is in a place being used for public religious  
2 worship and takes place in the course of practising a religion;  
3 or  
4 (c) the association is only for the purpose of providing aid of a  
5 humanitarian nature; or  
6 (d) the association is only for the purpose of providing legal  
7 advice or legal representation in connection with:  
8 (i) criminal proceedings or proceedings related to criminal  
9 proceedings (including possible criminal proceedings in  
10 the future); or  
11 (ii) proceedings relating to whether the organisation in  
12 question is a terrorist organisation.
- 13 Note: A defendant bears an evidential burden in relation to the matters in  
14 subsection (4). See subsection 13.3(3).
- 15 (5) This section does not apply unless the person is reckless as to the  
16 circumstance mentioned in paragraph (1)(b) and (2)(g) (as the case  
17 requires).
- 18 Note: A defendant bears an evidential burden in relation to the matter in  
19 subsection (5). See subsection 13.3(3).
- 20 (6) This section does not apply to the extent (if any) that it would  
21 infringe any constitutional doctrine of implied freedom of political  
22 communication.
- 23 Note: A defendant bears an evidential burden in relation to the matter in  
24 subsection (6). See subsection 13.3(3).
- 25 (7) A person who is convicted of an offence under subsection (1) in  
26 relation to the person's conduct on 2 or more occasions is not liable  
27 to be punished for an offence under subsection (1) for other  
28 conduct of the person that takes place:  
29 (a) at the same time as that conduct; or  
30 (b) within 7 days before or after any of those occasions.

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## Schedule 4—Transfer of prisoners

### *Administrative Decisions (Judicial Review) Act 1977*

#### **1 After paragraph (xa) of Schedule 1**

Insert:

- (xb) decisions of the Attorney-General under Part II or III of the *Transfer of Prisoners Act 1983* refusing applications or requests, or refusing to give consent, on the ground that, or on grounds that include the ground that, refusal is necessary in the interests of security (within the meaning of that Act);
- (xc) decisions of the Attorney-General under Part IV of the *Transfer of Prisoners Act 1983*;

### *Transfer of Prisoners Act 1983*

#### **2 Subsection 3(1) (definition of *prison*)**

Repeal the definition, substitute:

*prison* includes:

- (a) any place where a person who has been sentenced to imprisonment may be detained to undergo that imprisonment; and
- (b) any place where a person who has been charged with an offence may be remanded in custody for that offence.

#### **3 Subsection 3(1)**

Insert:

*remand prisoner* means a person who has been charged with an offence against a law of the Commonwealth, a State or a Territory, and who has been remanded in custody for that offence.

#### **4 Subsection 3(1) (definition of *return transfer order*)**

Omit “or 16A”, substitute “, 16A or 16C”.

#### **5 Subsection 3(1)**

Insert:

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*security* means:

- (a) the protection of, and of the people of, the Commonwealth and the several States and Territories from:
  - (i) espionage; or
  - (ii) sabotage; or
  - (iii) politically motivated violence; or
  - (iv) promotion of communal violence; or
  - (v) attacks on Australia's defence system; or
  - (vi) acts of foreign interference; orwhether directed from, or committed within, Australia or not; and
- (b) the carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a).

**6 Subsection 3(1)**

Insert:

*security transfer order* means an order for the transfer of a prisoner made under section 16B.

**7 Subsection 3(1) (before paragraph (a) of the definition of *transfer order*)**

Insert:

- (aa) a security transfer order; or

**8 Subsection 3(1) (at the end of paragraph (a) of the definition of *transfer order*)**

Add "or".

**9 Subsection 3(1) (at the end of the definition of *transfer order*)**

Add:

- ; or (d) an order under section 16D or 16E.

**10 Subsection 3(10)**

After "transfer order", insert "(other than an order under Part IV)".

**11 Part III (after the heading)**

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1           Insert:

2       **Division 1—Trial transfer order**

3       **12 Part IV (heading)**

4           Repeal the heading.

5       **13 Before section 14**

6           Insert:

7       **Division 2—Return of prisoner**

8       **14 After subsection 16(1)**

9           Insert:

10           (1A) However, subsection (1) does not apply if the transfer order in  
11                pursuance of which the person is in that other State or Territory is  
12                an order under Part IV.

13       **15 Before Part V**

14           Insert:

15       **Part IV—Transfer for purpose of security**

16       **16B Transfer of prisoner on security grounds**

- 17           (1) The Attorney-General may make an order in writing for the  
18                transfer of:
- 19                (a) a prisoner serving a federal, Territory or State sentence of  
20                    imprisonment in a prison of a State or Territory; or  
21                (b) a remand prisoner in a prison of a State or Territory;  
22                to another State or Territory if the Attorney-General believes on  
23                reasonable grounds that it is necessary in the interests of security.
- 24           (2) In exercising his or her powers under subsection (1) to make an  
25                order, the Attorney-General must have regard to all matters that he  
26                or she considers relevant, including, but without limiting the  
27                generality of the foregoing:
- 28                (a) the administration of justice; and  
29                (b) the welfare of the prisoner or remand prisoner.

- 1 (3) The Attorney-General must not make an order under subsection (1)  
2 for the transfer of the prisoner or remand prisoner unless both:  
3 (a) the appropriate Minister of the State or Territory in which the  
4 prisoner or remand prisoner is in prison; and  
5 (b) the appropriate Minister of the State or Territory to which the  
6 prisoner or remand prisoner is to be transferred;  
7 have consented in writing to the transfer.

8 **16C Return of prisoner**

- 9 (1) If:  
10 (a) a prisoner or remand prisoner is transferred to a State or  
11 Territory pursuant to:  
12 (i) a security transfer order; or  
13 (ii) a return transfer order under this section (unless it orders  
14 a transfer to the originating State or Territory); and  
15 (b) the Attorney-General reviews the order; and  
16 (c) as a result of the review, the Attorney-General believes on  
17 reasonable grounds that, if he or she were now to consider  
18 the transfer of the prisoner or remand prisoner to the State or  
19 Territory, the order would not be made;  
20 the Attorney-General may make an order in writing for the transfer  
21 of the prisoner or remand prisoner from that State or Territory back  
22 to:  
23 (d) the State or Territory from which he or she has been  
24 transferred pursuant to that order; or  
25 (e) if that State or Territory is not the originating State or  
26 Territory:  
27 (i) the originating State or Territory; or  
28 (ii) any other State or Territory to which the prisoner or  
29 remand prisoner has been transferred, pursuant either to  
30 a security transfer order or to a return transfer order  
31 under this section, since his or her transfer from the  
32 originating State or Territory.
- 33 (2) The Attorney-General must conduct a review of an order referred  
34 to in paragraph (1)(a), within 3 months after:  
35 (a) the day on which the Attorney-General made the order; and  
36 (b) the day on which the Attorney-General last reviewed the  
37 order;



- 1 unless the Attorney-General has made an order under  
2 subsection (1) after a review of that order.
- 3 (3) In exercising his or her powers under subsection (1) to make an  
4 order, the Attorney-General must have regard to all matters that he  
5 or she considers relevant, including, but without limiting the  
6 generality of the foregoing:  
7 (a) the administration of justice; and  
8 (b) the welfare of the prisoner or remand prisoner.
- 9 (4) The Attorney-General must not make an order under subsection (1)  
10 for the transfer of the prisoner or remand prisoner unless both:  
11 (a) the appropriate Minister of the State or Territory in which the  
12 prisoner or remand prisoner is in prison; and  
13 (b) the appropriate Minister of the State or Territory to which the  
14 prisoner or remand prisoner is to be transferred;  
15 have consented in writing to the transfer.
- 16 (5) In this section:  
17 *originating State or Territory* means the last State or Territory in  
18 which the prisoner or remand prisoner was held other than as a  
19 result of an order under this Part.

20 **16D Transfer for court proceedings—general**

- 21 (1) If a security transfer order, or a return transfer order under  
22 section 16C, has been made in relation to a prisoner or remand  
23 prisoner, the Attorney-General may make an order in writing for:  
24 (a) the transfer of the prisoner or remand prisoner from the State  
25 or Territory in which the prisoner or remand prisoner is in  
26 prison to another State or Territory to appear in proceedings  
27 before a court in that other State or Territory; and  
28 (b) the transfer of the prisoner or remand prisoner from the other  
29 State or Territory back to the first-mentioned State or  
30 Territory as soon as practicable after that appearance has  
31 concluded.
- 32 (2) However:  
33 (a) the Attorney-General must not make an order under  
34 subsection (1) if the Attorney-General believes on reasonable  
35 grounds that it is contrary to the interests of security; and

- 1 (b) this section does not apply in relation to the appearance of a  
2 remand prisoner in proceedings for the offence with which he  
3 or she is charged and for which he or she has been remanded  
4 in custody; and
- 5 (c) this section does not apply once the prisoner or remand  
6 prisoner has been returned to the originating State or  
7 Territory (within the meaning of section 16C).
- 8 (3) In exercising his or her powers under subsection (1) to make an  
9 order, the Attorney-General must have regard to all matters that he  
10 or she considers relevant, including, but without limiting the  
11 generality of the foregoing:
- 12 (a) the administration of justice; and  
13 (b) the welfare of the prisoner or remand prisoner.
- 14 (4) The Attorney-General must not make an order under subsection (1)  
15 for the transfers of the prisoner or remand prisoner unless both:
- 16 (a) the appropriate Minister of the State or Territory in which the  
17 prisoner or remand prisoner is in prison at the time the order  
18 is made; and  
19 (b) the appropriate Minister of the State or Territory to which the  
20 prisoner or remand prisoner is to be transferred to appear in  
21 the proceedings;  
22 have consented in writing to the transfers.

### 23 **16E Transfer for trial of remand prisoner**

- 24 (1) If:
- 25 (a) a security transfer order, or a return transfer order under  
26 section 16C, has been made in relation to a remand prisoner;  
27 and  
28 (b) the remand prisoner is required to appear in proceedings for  
29 the offence with which he or she is charged and for which he  
30 or she has been remanded in custody before a court in a State  
31 or Territory; and  
32 (c) the remand prisoner is in prison in another State or Territory;  
33 the Attorney-General must make an order in writing for:
- 34 (d) the transfer of the remand prisoner from the other State or  
35 Territory to the State or Territory in which he or she is  
36 required to appear; and

1 (e) the transfer of the remand prisoner from the State or Territory  
2 in which he or she is required to appear back to the other  
3 State or Territory as soon as practicable after that appearance  
4 has concluded.

5 (2) However:

6 (a) the Attorney-General is not required to make an order under  
7 subsection (1) if:

8 (i) the Attorney-General believes on reasonable grounds  
9 that it is essential in the interests of security that the  
10 order not be made; and

11 (ii) the court that remanded the remand prisoner in custody  
12 orders that his or her detention may continue; and

13 (b) this section does not apply once the prisoner or remand  
14 prisoner has been returned to the originating State or  
15 Territory (within the meaning of section 16C).

16 **16F Transfer under State transfer laws**

17 (1) If an order under this Part has been made in relation to a prisoner  
18 or remand prisoner:

19 (a) an application must not be made to a court for an order under  
20 a State transfer law for the transfer of the prisoner or remand  
21 prisoner to another State or Territory; and

22 (b) an order (other than an order by a court) must not be made  
23 under a State transfer law for the transfer of the prisoner or  
24 remand prisoner to another State or Territory;

25 unless the Attorney-General has consented in writing to the  
26 transfer.

27 (2) This section does not apply once the prisoner or remand prisoner  
28 has been returned to the originating State or Territory (within the  
29 meaning of section 16C).

30 **16 Subsection 17(5)**

31 After “a transfer order”, insert “(other than an order under Part IV)”.

32 **17 Subsection 17(6)**

33 After “a transfer order”, insert “(other than an order under Part IV)”.

34 **18 At the end of subsection 29(1)**

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1 Add “or the powers under Part IV”.

2 **19 After subsection 29(1)**

3 Insert:

4 (1A) However, a delegation under subsection (1) does not extend to the  
5 power:

6 (a) to make or revoke an order under Part II; or

7 (b) to make an application under section 8; or

8 (c) to give consent for the purposes of subsection 9(2); or

9 (d) to serve notices or make orders under Division 2 of Part III;

10 in any case:

11 (e) that relates to a prisoner or remand prisoner who is subject to  
12 an order under Part IV; or

13 (f) in which making or revoking the order, making the  
14 application, giving the consent or serving the notice would  
15 involve consideration of questions of security.

16 **20 At the end of subsection 29(4)**

17 Add “or the powers under Part IV”.

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## **Schedule 5—Forensic procedures**

### ***Crimes Act 1914***

#### **1 Subsection 3(1)**

Insert:

*State offence* means an offence against a law of a State or the Australian Capital Territory.

#### **2 Division 11A of Part ID (heading)**

Repeal the heading, substitute:

### **Division 11A—Operation of this Part in relation to certain incidents**

#### **3 Paragraph 23YUF(1)(b)**

Omit “occurring outside Australia and Norfolk Island”.

#### **4 Paragraph 23YUF(2)(a)**

Before “one or more”, insert “if the determination would relate to an incident occurring wholly outside Australia and Norfolk Island—”.

#### **5 After subsection 23YUF(2)**

Insert:

(2A) The Minister must not make a determination under paragraph (1)(b) relating to an incident occurring wholly within Australia or Norfolk Island unless:

- (a) the Minister suspects on reasonable grounds that the incident involves the commission of:
  - (i) an offence against a law of the Commonwealth; or
  - (ii) a State offence that has a federal aspect; or
  - (iii) an offence against a law of a Territory; or
- (b) the Minister suspects on reasonable grounds that victims of the incident are persons of a kind with respect to whom the Commonwealth Parliament has power to make laws; or

1 (c) the Minister is satisfied that the incident is or has created a  
2 national emergency.

3 (2B) Without limiting paragraph (1)(b), the reference in that paragraph  
4 to persons of a kind with respect to whom the Commonwealth  
5 Parliament has power to make laws includes references to the  
6 following:

7 (a) aliens;

8 (b) persons receiving pensions, benefits or allowances from the  
9 Commonwealth;

10 (c) members of the Australian Defence Force;

11 (d) persons employed by, or holding an office in, the  
12 Commonwealth;

13 (e) residents of a Territory.

14 (2C) A State offence is taken, for the purposes of  
15 subparagraph (2A)(a)(ii), to have a federal aspect if:

16 (a) it has a federal aspect within the meaning of section 4A of  
17 the *Australian Crime Commission Act 2002*; or

18 (b) it would have a federal aspect within the meaning of that  
19 section if the references in paragraph 4A(2)(d) of that Act to  
20 the Australian Crime Commission included references to the  
21 Australian Federal Police.

## 22 **6 Subsection 23YUF(2C)**

23 Repeal the subsection.

24 Note: This item does not commence at all if Schedule 3 to the *Australian Federal Police and*  
25 *Other Legislation Amendment Act 2004* does not commence. See item 7 of the table in  
26 subsection 2(1).