



ANTI-TERRORISM LAWS

This fact sheet provides a brief summary of anti- terrorism laws that have been passed in Australia since 2002, and how they may apply to young people.

This information was produced by Youthlaw and is based on the AMCRAN (Australian Muslim Civil Rights Network) publication entitled *Anti-Terrorism Laws: ASIO, the Police and You* [<http://www.amcran.org/>] and summaries produced by Civil Rights Network <http://www.civilrightsnetwork.org/>

What Is A Terrorist Act?

Terrorist acts are an offence under the Commonwealth *Criminal Code*.

For a terrorist act to occur it must be shown that the perpetrator(s) had an intention to coerce or influence the public or government by intimidation. There must also be an intention to advance a political, religious or ideological cause. They must also do, plan or threaten to:

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

There are a number of offences related to a terrorist act which attract between 10 years to life imprisonment. These offences are:

- providing or receiving training connected to a terrorist act
- preparing for or planning a terrorist act; or
- other acts to facilitate terrorist activity.

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ASIO and the Australian Federal Police

There are significant differences between the powers of ASIO Officers and the Australian Federal Police.

ASIO powers are a complicated and confusing area of law. A good overview can be found in the AMCRAN (Australian Muslim Civil Rights Network) publication entitled *Anti-Terrorism Laws: ASIO, the Police and You* [<http://www.amcran.org/>]. See also the *ASIO Act 1979 (Cth)* and the *Crimes Act 1914*.

ASIO is not a police force, and it cannot charge people with any crimes. But it can get a warrant to detain and question anyone whom it believes to have information relating to any of the criminal offences discussed above.

The AFP is a traditional police force with investigative and arrest powers.

Informal Questioning:

ASIO may ask you for an 'informal chat'. You do not need to answer their questions if you do not want to, UNLESS they have a formal warrant. You can either decline to speak with ASIO or make a time to speak with them at a later date, to allow you to get advice from a lawyer.

ASIO has no power to arrest you, but they can get the AFP to question you and detain you if they believe it would help them gather intelligence.

Formal questioning and detention:

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

ASIO has powers to compulsorily question and detain persons suspected of having information related to a "terrorism" offence. ASIO warrants:

- Can permit up to a week's detention
- Can permit up to 20 hours questioning (48 Hours if require an interpreter)
- Give no right to silence
- Give only limited rights to have a lawyer present , and communication with lawyers are monitored
- Make it illegal to talk about ASIO's actions for the next 2 years, even to friends, family or the police

Stop, Search and Question Powers

All police now have the power to stop, question and search a person where they believe that the person *might* be committing, *might* have committed or *might* be about to commit a terrorist act.

In addition the government is able to declare an area a 'prescribed security zone' if it believes that making the declaration will help prevent a terrorist act or respond to a terrorist act that has occurred. If an area is declared to be a 'prescribed security zone' then anyone in that zone can be stopped, searched and questioned by police without grounds.

In relation to Victorian strip search powers of children between 10 and 17 years old, a police member may only conduct a strip search if:

- the person is suspected of being the target of an authorisation.
- the member believes on reasonable grounds that it is necessary to conduct a strip search having regard to the purposes of the search and the seriousness and urgency of the circumstances.

Control Orders

The Federal Police can apply to a federal court to obtain a control order with respect to a person if a court agrees that:

- making the control order will substantially assist in preventing a terrorist act, or
- that the person has trained with a terrorist organisation.

Under a control order a person can be subject to a wide range of restrictions, prohibitions and requirements, including:

- requiring the person to wear an electronic tracking device;
- requiring the person to remain at certain premises at certain times or days;
- preventing the person being at certain places;
- preventing the person communicating/associating with specified people;
- preventing the person accessing certain telecommunications or technology such as the internet or a mobile phone.

You may have to regularly report to someone, like the police, be photographed and fingerprinted and have counselling.

A control order will last for a maximum of 12 months, but the police will be able to seek a new control order when the old one expires.

Young people between 16 and 18 years may only be subject to control orders that last for 3 months, although a new order can be sought when the old one expires.

A control order cannot be made if you are under 16.

Preventative Detention

The police may seek a preventative detention order if they have reasonable grounds to suspect that the person:

- will engage in a terrorist act OR
 - possesses a thing that is connected with preparation for a terrorist act;
- OR
- has done an act in preparation for or planning of a terrorist act

AND making the order will substantially assist in preventing an imminent terrorist act that is expected to occur in the next 14 days.

The police do not have to tell the person the grounds for their detention.

Under the Commonwealth Act police may seek this order a period up to 48 hours (interim preventative detention order) or 14 days (continued preventative detention order under the Victorian legislation)

Police are required to advise the detainee of his or her right to complain to the Ombudsman or Director, Police Integrity, among other things, his or her treatment while detained.

Under the **Commonwealth** legislation people who are detained may contact one relative and a work colleague but they are only allowed to say that they are safe and cannot be contacted for the time being. The person cannot tell the other person that they are being detained. In some cases, the police are able to prevent contact with certain individual, which may include family members and lawyers.

Under the **Victorian** legislation a detained person may have contact with parents or family members, as well as employers, employees at least once, and tell them they are detained, where and the period of detention.

Persons subject to these orders may apply to the court to revoke or vary them.

A person under 18 who is held under the new laws is detained in a juvenile detention centre, unless there are compelling reasons to the contrary. Preventative detention may apply to young people between 16 and 18 years old, but young people will be able to tell both parents that they are detained.

WHERE TO GET HELP

The Federation of Community Legal Centres

www.communitylaw.org.au

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Youthlaw

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Western Suburbs Legal Service

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Human Rights and Equal Opportunity Commission

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