



Crime and Corruption Commission
QUEENSLAND

Review of the
Terrorism (Preventative Detention)
Act 2005

Call for public submissions

March 2018

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1. Introduction

1.1 Background

Following the attacks in the United States on 11 September 2001, the Council of Australian Governments (COAG) agreed in April 2002 that the state and territory governments would all pass legislation referring power to the Commonwealth to make laws relating to terrorist acts. After the London Underground bombings in July 2005, COAG agreed that:

- the Commonwealth laws on terrorism, located in the Criminal Code (Cth), would be further amended to provide for “preventative detention for up to 48 hours to restrict the movement of those who pose a terrorist risk to the community”.
- similar legislation allowing preventative detention for up to 14 days would be enacted in each state and territory.

Within ten weeks of the COAG agreement, the Queensland Parliament passed the [Terrorism \(Preventative Detention\) Act 2005 \(“the TPDA”\)](#). The objective of the TPDA is to allow a person to be taken into custody and detained for a short period of time to:

- prevent a terrorist act that is capable of being carried out, and could occur, in the near future from occurring; or
- preserve evidence of, or relating to, a recent terrorist act.

The TPDA commenced on 16 December 2005 and is due to automatically expire on 16 December 2025. So far, the TPDA has never been used.

1.2 About the review

Section 83A of the TPDA requires the Minister for Police and Minister for Corrective Services (the Minister) to review the need for, and effectiveness of, the Act. The Minister is required to table a report on the outcome of the review in Parliament by 19 November 2018.

In March 2017, the Minister gave his approval for the review to be conducted by the Crime and Corruption Commission (CCC). The CCC is due to provide its report to the Minister in September 2018.

The CCC’s review will:

- examine the need for the TPDA. This includes issues such as whether the policy objectives of the TPDA and the reasons for them remain valid, and whether the TPDA is necessary and proportionate.
- examine the effectiveness of the TPDA. This includes issues such as whether the TPDA is effective in helping police to prevent terrorist acts and preserve evidence of terrorist acts, whether the TPDA promotes national consistency and interoperability in countering terrorism, and whether the TPDA contains adequate safeguards against abuse.
- identify whether any changes are required to the TPDA.

The CCC’s review is not an examination of Queensland’s or Australia’s counter-terrorism legislation, policy and practice more broadly.

1.3 Invitation for submissions

The CCC is giving members of the public the opportunity to contribute to the review of the TPDA via written submissions on key issues. To make a submission to the CCC:

- Review the section below, “Key questions to guide your submission”.
- Ensure that your submission clearly addresses one or more of these key questions. If it does not, the CCC may decide not to accept your submission. Your submission does not need to address every question.
- Clearly identify how you would like the CCC to treat your submission, based on the following options:
 - **Public submission** — the CCC may refer to or quote directly from the submission, and name the source of the submission, in relevant publications. Public submissions may be published on the CCC website.
 - **Anonymous submission** — the CCC may refer to or quote directly from the submission in relevant publications but will not identify its source. Anonymous submissions, with all identifying information removed, may be published on the CCC website.
 - **Confidential submission** — the CCC will not quote or refer to the submission in any report or publication. Confidential submissions will not be published on the CCC website.

If there is no clear selection of one of these options, the CCC will regard your document as a public submission. Note that the CCC will not make public any submission or, where practicable, any part of a submission that:

- contains allegations of corrupt conduct or police misconduct
- contains identifying information about a third party (the names of people, businesses or organisations), offensive material (including abusive or threatening behaviour), defamatory material, or links to other websites
- does not address issues relevant to the review
- infringes the intellectual property rights of others
- promotes commercial interests.

1.4 Where to send your submission

Send your submission to the CCC **by COB Thursday 29 March** by one of the following methods.

Email: TPDAreview@ccc.qld.gov.au

Post: Review of the *Terrorism (Preventative Detention) Act 2005*
Crime and Corruption Commission
Policy and Research unit
GPO Box 3123
Brisbane Qld 4001

Fax: 07 3360 6333

1.5 Submissions that contain allegations of corrupt conduct or police misconduct

The submission process is not the correct avenue for reporting corrupt conduct or police misconduct to the CCC. Should you wish to do this, please see [the CCC's website](#) for further information.

You may also call 07 3360 6060, or toll-free (in Queensland outside Brisbane) on 1800 061 611. The CCC will forward any submissions containing allegations of corrupt conduct or police misconduct to its corruption area for assessment. Alternatively, you may report your allegations to the Queensland Police Service directly.

1.6 Privacy statement

No submission marked as confidential will be published on the CCC's website. However, any submission may be subject to disclosure under the *Right to Information Act 2009*, and applications to access submissions will be determined in accordance with that Act.

Submissions are due by COB Thursday 29 March. The CCC may not consider late submissions.

2. Key questions to guide your submission

Please note: your submission does not need to address every question.

2.1. Overall need for the *Terrorism (Preventative Detention) Act 2005*

1. When the Terrorism (Preventative Detention) Act (“the TPDA”) was introduced in 2005, it was said to be “essential because the nature of the terrorism threat means that police may need to intervene earlier to prevent a terrorist act with less knowledge than they would have had using traditional policing methods.”¹

With reference to the current terrorism threat in Queensland and Australia:

- a) Is this rationale still relevant?
 - b) Are the provisions in the TPDA proportionate to this threat?
2. No preventative detention orders (PDOs) have been sought in Queensland since the TPDA commenced on 16 December 2005. Does this lack of use suggest that the TPDA is not necessary?
 3. It has been said in relation to preventative detention legislation like the TPDA that “it is far better to have it and not need it than need it and not have it”.² What are the arguments for and against this position?
 4. Are there alternative ways of achieving the policy objectives of:
 - a) preventing a terrorist act that is capable of being carried out, and could occur, in the near future from occurring?
 - b) preserving evidence of, or relating to, a recent terrorist act?³

In particular, are there alternatives that would be equally effective but have a less restrictive effect on rights and freedoms?

5. Do the provisions of the TPDA provide an adequate and appropriate balance between community safety and the rights and freedoms of individuals? If not, what is required to address the imbalance?

1 Explanatory Notes for the Terrorism (Preventative Detention) Bill 2005, <<https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2005-1180>>

2 Queensland Parliament 2015, *Record of proceedings (Hansard)*, p. 2811 [online], <https://www.parliament.qld.gov.au/documents/hansard/2015/2015_11_11_WEEKLY.pdf>

3 See objects of the TPDA in s. 3, modified by s. 8(3)–(5).

2.2 Overall effectiveness of the TPDA

1. Does the TPDA give police the means to:
 - a) prevent a terrorist act?
 - b) preserve evidence of or relating to a terrorist act?

If not, what are the TPDA's specific shortcomings?

2. Are there any aspects of the TPDA that may limit its effectiveness in:
 - a) preventing terrorist acts?
 - b) preserving evidence of or relating to terrorist acts?

If so, what changes to the TPDA would help to improve its effectiveness?

2.3 Scope of preventative detention orders

1. The maximum permitted duration of a PDO is 14 days. Is this appropriate? Why or why not? If it is not, what is a more appropriate alternative?
2. In Queensland, the subject of a PDO must be at least 16 years of age. Is 16 an appropriate minimum age, or should it be increased or decreased? Why?

2.4 Seeking preventative detention orders

1. Any police officer can apply for a PDO under the TPDA. This contrasts with most other Australian jurisdictions, where police officers must seek approval or be specially authorised to apply for a PDO. Are the current Queensland provisions appropriate, or should consideration be given to restricting who can apply for a PDO? What would be the practical consequences of this?

2.5 Making preventative detention orders

1. In Queensland, initial PDOs can only be made by a senior police officer (Assistant Commissioner, Deputy Commissioner or Commissioner), and final PDOs can only be made by a specially appointed judge or retired judge of the Supreme Court. Some other Australian jurisdictions require PDOs to be made by the Supreme Court. Are the current issuing authorities in the TPDA appropriate, or should changes be considered?
2. Are the criteria for making PDOs under section 8, subsections (3) to (5) of the TPDA appropriate? Are there any criteria that should be removed or amended?
3. Should there be any additional criteria for making PDOs? For example, should there be a requirement to show that detaining a person under a PDO is the least restrictive or only effective way of preventing a terrorist act/preserving evidence of a terrorist act?⁴ What consequences would such a requirement have?

4 See ss. 18(4)(c) and (6)(c), *Terrorism (Extraordinary Temporary Powers) Act 2006* (ACT).

2.6 Police powers in relation to detainees

1. Police questioning of detainees for the purpose of investigating an offence or planned offence is not an objective of PDOs in Queensland. The TPDA provides that police can only question a detainee in limited circumstances (e.g. to confirm the detainee's identity or ensure their safety).⁵ Are the TPDA's current restrictions on questioning detainees appropriate when considering the preventative aims of the TPDA?
2. There have been recent moves in Australia to strengthen pre-charge detention schemes for terrorism suspects, including allowing police to question detainees for investigative purposes.⁶
 - a) What are the pros and cons of this?
 - b) If Queensland was to introduce such questioning powers in state-based legislation, would they be better established as a standalone scheme as in New South Wales [Part 2AA of the *Terrorism (Police Powers) Act 2005*], or incorporated into the existing preventative detention scheme as recommended by the 2017 Victorian Independent Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers?
 - c) How else could a strengthened, nationally consistent pre-charge detention scheme be achieved?
3. The TPDA allows police to seek prohibited contact orders, which prohibit the subject of a PDO from contacting a specific other person. Are the current TPDA provisions relating to prohibited contact orders necessary and appropriate?

2.7 Safeguards against abuse

1. Do the existing safeguards in the TPDA provide adequate protections against abuse (both individually and collectively)? The term "safeguards" is intended to capture a wide range of protections, including:
 - the obligation to provide PDO subjects with notice of an application for a final order
 - the obligation to provide detainees with information about their PDO
 - subject to lawful monitoring, the right for detainees to contact family, the Ombudsman, the CCC, a lawyer, and a guardian or support person for children and people with impaired capacity
 - detainees' entitlement to free legal assistance from Legal Aid Queensland
 - oversight of the exercise of powers in relation to the PDO by a nominated senior police officer
 - oversight of PDOs by the Public Interest Monitor
 - the review of final PDOs by the Supreme Court
 - the requirement for the Police Minister to report on PDO applications to Parliament.

⁵ See s. 53, TPDA.

⁶ In April 2016, the Council of Australian Governments (COAG) agreed in-principle to using "the New South Wales model as the basis for a strengthened nationally consistent pre-charge detention scheme for terrorism suspects". "The New South Wales model" refers to the provisions contained in Part 2AA of the *Terrorism (Police Powers) Act 2005*, which commenced in May 2016. Part 2AA allows police to arrest (without a warrant), detain and question a person who is suspected of being involved in a recent or imminent terrorist act for the purposes of helping to respond to or prevent the terrorist act. "Respond to" includes prosecuting the persons involved in committing the terrorist act and preventing those persons and their associates from committing further terrorist acts.

2. Are there any safeguards that should be removed or amended?
3. Should any additional safeguards be inserted into the TPDA?
4. Does the TPDA contain appropriate offences and sufficient penalties to ensure that safeguards are complied with?

2.8 National consistency and interoperability

1. How does the TPDA promote national consistency and interoperability in Australia's approach to counter-terrorism? Is the TPDA essential to this?
2. Are there any inconsistencies, conflicts or legislative gaps that affect the interoperability of the TPDA and relevant legislation in other Australian jurisdictions? If so, please describe:
 - the nature of these
 - their consequences
 - how they could be addressed.



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