



Australian Government

Department of Home Affairs

Control Orders, Preventative Detention Orders, Continuing Detention Orders, Temporary Exclusion Orders, and Powers in Relation to Terrorist Acts and Terrorism Offences

**Annual Report
2020-21**

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Control Orders

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The Australian Federal Police (AFP) Minister is required under section 104.29 of the *Criminal Code Act 1995* (the Criminal Code) to provide a report in respect of control orders during the year ending on 30 June 2021.

The provisions of this section of the legislation require the report to include:

- a)**
 - (i)** the number of ordinary interim control orders made
 - (ii)** the number of urgent interim control orders made by electronic means
 - (iii)** the number of urgent interim control orders made in person
- b)** the number of interim control orders that the AFP elected not to confirm
- c)** the number of control orders confirmed at a confirmation hearing
- d)** the number of control orders declared void at a confirmation hearing
- e)** the number of control orders revoked at a confirmation hearing or upon application by the subject or the AFP Commissioner
- f)** the number of control orders varied at a confirmation hearing or upon application by the subject or the AFP Commissioner
- g)** particulars of:
 - (i)** any complaints made or referred to the Commonwealth Ombudsman that related to control orders
 - (ii)** any information given under section 40SA of the *Australian Federal Police Act 1979* that related to control orders and raised an AFP conduct or practices issue (within the meaning of that Act)
- h)** the number of monitoring warrants issued in relation to a control order
- i)** the number of monitoring warrants executed in relation to a control order
- j)** the report prepared by the Commonwealth Ombudsman detailing the results of any inspections of AFP records in relation to monitoring warrants
- k)** for control orders relating to people who are 14 to 17 years of age – the matters referred to in (a) to (j) in so far as those matters specifically relate to those control orders

Control Orders 2020-21

a) (i)	Interim control orders made	6
(ii)	Urgent interim control orders made – electronic	0
(iii)	Urgent interim control orders made – in person	0
b)	Interim control orders – not elected to confirm	0
c)	Control orders confirmed	7
d)	Control orders declared void	0
e)	Control orders revoked	0
f)	Control orders varied	3
g) (i)	Complaints to Commonwealth Ombudsman	0
(ii)	Information given under AFP Act raising issues	0
h)	Number of monitoring warrants issued	26
i)	Number of monitoring warrants executed	25
j)	Reports prepared by the Commonwealth Ombudsman	1
k)	Control orders relating to people 14 to 17 years of age	0

Commonwealth Ombudsman Report – Monitoring Control Orders 2020-21

Under section 3ZZUB of the *Crimes Act 1914* (the Act) the Commonwealth Ombudsman (the Ombudsman) may inspect the records of the AFP to determine the extent of compliance with the provisions of Part IAAB of the Act, relating to monitoring of compliance with control orders. Under section 3ZZUH, the Ombudsman must report to the Minister for Home Affairs the results of any such inspection.

From 22-25 June 2021, the Ombudsman inspected the AFP's Part IAAB records relating to eight premises warrants which expired between 1 July 2019 and 30 June 2020.

The Ombudsman did not identify significant compliance issues during this inspection; however, 11 contraventions of the provisions of Part IAAB were identified (see below) and the below feedback was given:

- 10 suggestions regarding minor compliance issues, and
- 10 better practice suggestions to further support the AFP to maintain its compliance and mitigate compliance risks.

These contraventions did not indicate significant compliance issues by the AFP, and the AFP advised no prosecutions were affected.

Inspection findings

a)	Contraventions of section 3ZZNC regarding a constable's obligations before entry when executing a monitoring warrant in relation to a premises	8
b)	Contravention of section 3ZZRA regarding providing a receipt for things seized	1
c)	Contravention of section 3ZZKF(2)(b) regarding the recording of and grounds for searches of a person under a premises warrant	1
d)	Contravention of section 3ZZOA(7) regarding the period of a warrant	1

Preventative Detention Orders

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The AFP Minister is required by section 105.47 of the Criminal Code to provide a report in respect of preventative detention orders during the year ending on 30 June 2021.

The provisions of this section of the legislation require the report to include:

- a) the number of initial preventative detention orders made
- b) the number of continued preventative detention orders made
- c) (i) whether a person was taken into custody under each order
(ii) if so, how long the person was detained for
- d) particulars of:
 - (i) any complaints made or referred to the Commonwealth Ombudsman that related to the detention of a person under a preventative detention order
 - (ii) any information given under section 40SA of the *Australian Federal Police Act 1979* during the year that related to the detention of a person under a preventative detention order and raised an AFP conduct or practices issue (within the meaning of that Act)
- e) the number of prohibited contact orders made
- f) the number of preventative detention orders and prohibited contact orders that a court has found not to have been validly made or that the Administrative Appeals Tribunal has declared to be void

Preventative Detention Orders 2020-21

a)	Initial preventative detention orders made	0
b)	Continued preventative detention orders made	0
c) (i)	Persons taken into custody under each order	0
(ii)	Detention period	0
d) (i)	Complaints to Commonwealth Ombudsman	0
(ii)	Information given under AFP Act raising issues	0
e)	Prohibited contact orders made	0
f)	Orders declared invalid or void	0

Continuing Detention Orders

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The AFP Minister is required under section 105A.22 of the Criminal Code to provide a report in respect of continuing detention orders during the year ending on 30 June 2021.

The provisions of this section of the legislation require the report to include:

- a) the number of applications for continuing detention orders made
- b) the number of applications for interim detention orders made
- c) the number of continuing detention orders made
- d) the number of interim detention orders made
- e) the number of applications for review of continuing detention orders made by terrorist offenders
- f) the number of continuing detention orders affirmed
- g) the number of continuing detention orders varied
- h) the number of continuing detention orders revoked

Continuing Detention Orders 2020-21

a)	Applications for continuing detention orders made	1
b)	Applications for interim detention orders made	2
c)	Continuing detention orders made	1
d)	Interim detention orders made	2
e)	Applications for review of continuing detention orders made by terrorist offenders	0
f)	Continuing detention orders affirmed	0
g)	Continuing detention orders varied	0
h)	Continuing detention orders revoked	0

Temporary Exclusion Orders

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The Minister is required under section 31 of the *Counter-Terrorism (Temporary Exclusion Orders) Act 2019* to provide a report in respect of the operation of that Act during the year ending on 30 June 2021.

The provisions of this section of the legislation require the report to include:

- a)** the number of temporary exclusion orders made
- b)** the number of temporary exclusion orders revoked
- c)** the number of temporary exclusion orders taken to never have been made because of the operation of paragraph 14(7)(a)
- d)** the number of times a temporary exclusion order came into force immediately after it was made
- e)** the number of temporary exclusion orders made in relation to persons aged 14 to 17 years
- f)** the number of return permits issued
- g)** for each condition mentioned in subsections 16(9) and (10)—the number of return permits on which the condition was imposed
- h)** the number of return permits varied or revoked
- i)** the number of persons subject to a return permit who entered Australia
- j)** the number of persons (if any) charged with an offence against this Act

Temporary Exclusion Orders 2020-21

a)	Temporary exclusion orders made	3
b)	Temporary exclusion orders revoked	3
c)	Temporary exclusion orders taken to never have been made because of the operation of para. 14(7)(a)	0
d)	Number of times a temporary exclusion order came into force immediately after it was made	3
e)	Temporary exclusion orders made in relation to persons aged 14 to 17	0
f)	Return permits issued	3
g)	Return permits on which a condition was imposed under para:	
(i)	16(9)(a)	1
(ii)	16(9)(b)	0
(iii)	16(9)(c)	0
(iv)	16(9)(d)	0
(v)	16(10)(a)	3
(vi)	16(10)(b)	3
(vii)	16(10)(c)	2
(viii)	16(10)(d)	2
(ix)	16(10)(e)	2
(x)	16(10)(f)	2
(xi)	16(10)(g)	0
(xii)	16(10)(h)	3
(xiii)	16(10)(i)	3
(xiv)	16(10)(j)	2
(xv)	16(10)(k)	3
(xvi)	16(10)(l)	0
(xvii)	16(10)(m)	0
(xviii)	16(10)(n)	0
h)	Return permits varied or revoked	0
i)	Persons subject to a return permit who entered Australia	1
j)	Persons charged with an offence against this Act	0

Powers in Relation to Terrorist Acts and Terrorism Offences

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The AFP Minister is required under section 3UJB of the *Crimes Act 1914* to provide a report in respect of powers exercised under Division 3A of the Act in relation to terrorist acts and terrorism offences during the year ending on 30 June 2021.

The provisions of this section of the legislation require the report to include:

- a)** the number of instances when an AFP police officer or officers exercised a power to:
 - (i)** seize terrorism related items or serious offence related items, and give a notice in relation to the seizure
 - (ii)** enter a premises without a search warrant in order to prevent a thing from being used in connection with a terrorism offence because there is a serious and imminent threat to a person's life, health or safety
- b)** the number of incidents when an AFP police officer or officers exercised a power to:
 - (i)** require a person to provide their name and personal details, or
 - (ii)** stop and search a person
- c)** the number of applications made for declarations that Commonwealth places are prescribed security zones
- d)** the number of declarations made that Commonwealth places are prescribed security zones

Powers in Relation to Terrorist Acts and Terrorism Offences 2020-21

a)		
(i)	Instances items seized and notices given	0
(ii)	Instances of entry onto premises without a warrant	0
b)		
(i)	Incidents where a person was required to provide their name and personal information	0
(ii)	Incidents where a person was stopped and searched	0
c)		
	Applications made for declarations that Commonwealth places are prescribed security zones	0
d)		
	Declarations made that Commonwealth places are prescribed security zones	0