

7 JULY 2020

MIGRATION AMENDMENT (PROHIBITING ITEMS IN IMMIGRATION DETENTION FACILITIES) BILL 2020

*Supplementary submission to the Legal
and Constitutional Affairs Committee*

VISA
CANCELLATIONS
WORKING GROUP

ABOUT THE VISA CANCELLATIONS WORKING GROUP

The Visa Cancellations Working Group is a national group with significant expertise in the area of visa cancellations and migration more generally. The Working Group has twice been invited to give evidence before Senate Committee Inquiries since its establishment in 2018.

Its membership includes multiple LIV Accredited Specialists in Immigration Law, and is comprised of individuals from private law firms, not-for-profit organisations, community legal centres, and tertiary institutions, including :

- Abode Migration;
- Amnesty International;
- Asylum Seeker Resource Centre;
- Australian Human Rights Commission;
- AUM Lawyers;
- Brigidine Asylum Seekers Project;
- Carina Ford Immigration Lawyers;
- Clothier Anderson Immigration Lawyers;
- Darebin Community Legal Centre;
- Erskine Rodan & Associates;
- Estrin Saul Lawyers and Migration Specialists;
- FCG Legal;
- Fitzroy Legal Service;
- Federation of Ethnic Communities Councils of Australia Inc;
- Flemington Kensington Community Legal Centre;
- Foundation House;
- Immigration Advice and Rights Centre;
- Jesuit Refugee Service (JRS) Australia;
- Justice Connect;
- Kah Lawyers;
- Monash University;
- Multicultural Development Australia;
- MYAN Australia;
- NSW Council for Civil Liberties;
- Peter McMullin Centre on Statelessness;
- Refugee Legal;
- Refugee Advice & Casework Service;
- Russell Kennedy;
- Salvos Legal;
- Slater & Gordon;
- Tasmanian Refugee Legal Service;
- The Australian Human Rights Commission;
- The Kaldor Centre;
- The Law Institute of Victoria;
- The Refugee Council of Australia;
- The Settlement Council of Australia;
- The University of Melbourne;
- Victoria Legal Aid, and
- Welcome Lawyers.

1. We thank the Committee for the opportunity to appear at the public hearing on 3 July 2020 and to provide supplementary submissions to this important inquiry.
2. We take this opportunity to squarely address the suggestion that current powers available to the Australian Border Force (**ABF**) are insufficient to manage the 'risk' posed by detainees. This position was advanced by the Department of Home Affairs (the **Department**) in its submission of 1 July 2020 and raised by Committee members during the first session of the 3 July 2020 public hearing.

'RISK' POSED BY DETENTION POPULATION

3. Neither the Department's submissions, nor those of Serco Asia Pacific, provide any evidence to support the suggestion of increased 'risk' posed by detainees, or evidence to suggest that existing 'risks' cannot be adequately addressed by existing broad powers. Neither submission even gives the term 'risk' content, despite its purported existence being used to justify a significant expansion of powers.
4. As stated in our initial submissions and in evidence before the Committee, we dispute, in the strongest terms, the use of Serco 'risk classifications' to assess the behavioural or recidivist threat posed by immigration detainees. We remind the Committee that the only acceptable evidence of criminal activity in immigration detention are criminal convictions. Mere assertions are unacceptable, particularly given the level of surveillance in detention and the level of cooperation with authorities. After that evidence is provided, the burden of showing how mobile phones are connected to that offending, and the nature and type of risk that is connected to that offending, must be discharged to justify such extraordinary measures.
5. Notably, Serco's submissions do not annex the method used to calculate risk. In the experience of members of the Working Group, based on risk assessments our members have access to, 'risk' is calculated by detention providers in a manner that relates to their internal management protocol – based on factors including:
 - A person's mental or physical health;
 - Their risk of self-harm or suicide, including past self-harm;
 - The length of their detention;
 - Whether they have been subject to use of force, for example during inter-facility transfers (noting this is used as a matter of course);
 - Whether they have been involved in complaints or protests, including food or fluid refusal;
 - 'Incidents' in detention, noting these records are managed by facility staff and there is no right of reply or review attached, and that incidents can be as simple as being near ('involved' in) a verbal altercation;
 - Their compliance or non-compliance with instructions or Behavioural Management Plans;
 - Their resistance to removal from Australia, and visa pathways available to them, and
 - Whether they have been involved in the discovery of contraband.¹
6. The Working Group is aware of examples where a person with no criminal history is deemed to be a medium risk of aggression or violence. Similarly, the Working Group is

¹ Noting again that 'contraband' has not been defined, but in the Working Group's experience extends to include benign articles including buttoned shirts, spreads, coins and hairclips. The Committee should require comprehensive evidence be provided regarding what has been deemed contraband in the past.

aware of cases where a forensic psychiatrist has assessed a person's risk of recidivism as low, but they are assessed as high or extreme risk by Serco. The assessments do not accurately reflect a person's risk of criminality toward others.

7. The Committee cannot and must not take anything from statements regarding internal 'risk classifications': the risk assessment framework is often directed to management processes rather than actual risk posed by a particular individual.
8. On the evidence of submitters, the passage of the Bill is likely to exacerbate the presence of these so-called risk factors, not address them. It is likely to make what is already a situation of immense pressure and distress for detainees significantly worse.²
9. Further, it is entirely inappropriate to justify the Bill by reference to what detainees *may do* in the future, by reference to their criminal histories. It was suggested during the public hearing that mobile phones '*may be*' used as '*escape tools*' or in the commission of a criminal offence. It is a basic principle of our system of law that punishment cannot be meted out in advance for an offence which might take place in the future, and where no evidence has been provided that such a risk even exists. Indeed, escape attempts can easily be managed without removing people's phones. Such purely speculative and nebulous justifications cannot be supported.
10. Nor is it appropriate to *assume* risk based on detainees' criminal histories. There is no reason to assume that people once convicted of a criminal offence will again offend in a detention environment. There is no provision for offenders leaving the prison system and entering the community to be subject to ongoing monitoring, on the assumption that they pose a higher risk of reoffending: on completion of a sentence, a person returns to the community. A criminal sentence is intended to rehabilitate offenders; it belies the purpose of sentencing to assume that offenders continue to pose a risk forevermore. Such an assumption should not be entertained by the Committee. Once again, no evidence has been provided which connects past criminal offending with criminal offending in detention and the use of mobile phones.
11. In Australia, we do not apply a separate set of laws to people with criminal histories. Any attempt to ban Australian citizens with criminal histories from use of the internet or phones would rightly cause outrage: why is it appropriate here?
12. There is no reason whatsoever why the basic presumptions of our legal system ought to be reversed in dealing with migrants and refugees.

CURRENT POWERS AVAILABLE TO ABF

13. The Department has ample powers at its disposal to effectively manage and maintain order in detention facilities – including through implementation of detention policies and procedures, control of visitors³ and search and seizure powers under the *Migration Act 1958* (Cth) for items capable of causing injury.⁴
14. In other situations, it is entirely appropriate to require the ABF to rely upon State and Federal police to undertake criminal investigations or impose sanctions such as

² Noting that in detention, there is typically reduced access to recreation, education and support than exists for people in criminal custody. There is also a lack of certainty about the future. The effects on people of prolonged immigration detention is well-documented.

³ *Migration Act 1958* (Cth), s 252G.

⁴ *Ibid*, s 252 (personal searches); s 252A (strip searches); s 252C (retention of things obtained during search).

searches and seizures. There has been no justification advanced for the creation of a new, quasi-criminal jurisdiction applicable to people in detention.

15. It is axiomatic that administrative detention cannot, and must not, be punitive in character. Penalties such as personal or intimate searches and seizures of personal property are criminal in nature. It is only proper that they be carried out by accountable and trained law enforcement officers, who are duly constrained by statutes defining procedure. Indeed, the Commonwealth Ombudsman has called for increased clarity and has warned the Committee that if principles of fairness, transparency, proportionality and procedural fairness are not upheld in the management of detention facilities, there is a risk detention will take on a punitive character.⁵ That would be unlawful, and would likely lead to costly and damaging litigation.
16. In 2012, the Australian Federal Police provided the Senate with a 'Quick Reference Guide' to available State, Territory and Federal laws and investigative powers to deal with disturbances in immigration detention facilities. We **attach** a copy with these submissions for reference.
17. The Guide includes a summary of numerous detention-specific offences and powers available to investigate and enforce them. That guide was provided to the Senate in the course of an inquiry by the Joint Select Committee on Australia's Immigration Detention Network. While outdated, we commend the Committee to that reference – for the fulsome picture it provides of the various offences and investigative powers available to law enforcement officers to preserve order in detention facilities.
18. In its submission, the Department provides four example scenarios in which it claims ABF officers would be 'powerless' to take action to prevent a threat to the detention community.
19. The table below summarises, to the contrary, the array of potential offence provisions and related powers available to State and Federal law enforcement authorities to deal with the threat posed in each of the four hypothetical scenarios. These are non-exhaustive examples – there are also equivalent or other powers in different jurisdictions – but show that behaviour of concern is readily addressed under existing frameworks.

Examples Provided	Existing Offences	Existing Powers
<i>A detainee downloads extremist material on his iPad and is showing it to other detainees. The ABF is powerless to confiscate the detainee's iPad.</i>	<p>Criminal Code 1995 (Cth)</p> <ul style="list-style-type: none"> • s 102.4 – Recruiting for a terrorist organisation (Imprisonment 15-25 years, depending on intent) • s 102.7 – Providing support to a terrorist organisation (Imprisonment 25 years) 	<p>Crimes Act 1914 (Cth)</p> <ul style="list-style-type: none"> • s 3UEA – Entry without warrant for terrorism-related offence • s 3UD – Search (without warrant) • s 3 UE – Seizure of terrorism related items
<i>ABF officers see a visitor hand over a bag containing a white substance to a detainee. The detainee places the bag in his pocket. The ABF is powerless to search the detainee for the suspected drugs.</i>	<p>Criminal Code 1995 (Cth)</p> <ul style="list-style-type: none"> • s308.1 – Possession of controlled drug (2 years imprisonment) 	<p>Migration Act 1958 (Cth)</p> <ul style="list-style-type: none"> • s 252A(1)(a)– Power to conduct a strip search where reasonable suspicion that detainee has a thing capable of being used to inflict bodily injury • s 252G(4) – search of visitor if reasonable suspicion that they possess a thing which may disrupt order of detention centre

⁵ Submission 68 to this Inquiry.

		<p>Crimes Act 1914 (Cth)</p> <ul style="list-style-type: none"> • s 3F(1)(a) – entry pursuant to search warrant • s 3F(1)(c),(d) – search and seizure of evidential material
<p><i>A convicted child sex offender who is looking at child abuse material on his phone in plain sight cannot have his phone removed.</i></p>	<p>Crimes Act 1958 (Vic)</p> <ul style="list-style-type: none"> • s 51G - Possession of child abuse material (imprisonment 10 years max) • s 51H - Accessing child abuse material (imprisonment 10 years max) 	<p>Crimes Act 1958 (Vic)</p> <ul style="list-style-type: none"> • s 459A – Entry and search in relation to suspected serious indictable offence • Seizure (common law - <i>Reeves (a Pseudonym) v The Queen</i> [2017] VSCA 291)
<p><i>A detainee uploads a photo to social media of a contracted medical officer falsely accusing her of criminal acts. The comments on the post include abusive and violent messages towards the medical officer. The ABF is powerless to remove the detainee's internet enabled devices.</i></p>	<p>Criminal Code 1995 (Cth)</p> <ul style="list-style-type: none"> • s 147.1 - Causing harm to public official (imprisonment 10 years) <p>Public Order (Protection of Persons and Property) Act 1971 (Cth)</p> <ul style="list-style-type: none"> • s 12(2)(b) - Behave in a disorderly or offensive manner in Cth premises (20 penalty units) 	<p>Crimes Act 1914 (Cth)</p> <ul style="list-style-type: none"> • s 3F(1)(a) – entry pursuant to search warrant • s 3F(1)(c),(d) – search and seizure of evidential material <p>Personal Safety Intervention Orders Act 2010 (Vic)</p> <ul style="list-style-type: none"> • ss 35 and 61 – interim and final orders • Part 5 – enforcement powers including entry and search

20. In each of the above cases without exception, the ABF can contact State and Federal law enforcement authorities. The considerable surveillance in immigration detention makes this even simpler.
21. Also in its submission, the Department points to just one example of actual criminal activity. It goes no higher than arrests of four people in connection with alleged fraud and drug offences. The relevant detainees had unspecified 'white powder' and several mobile phones. Seemingly unconnected, elsewhere in the facility a 'small amount of cannabis, methylamphetamine, prescription medication and an improvised weapon' were found. The Committee should be concerned about this example. There have been no convictions, and no connexion established between the presence of those articles, the danger to people in detention and staff, and the use of mobile phones.
22. Rather, the sole example provided is of referral to law enforcement authorities working precisely as it should.
23. Such drastic interference with personal liberties as the Bill proposes must be justified with sound research and evidence, making out the deficiency of current arrangements. This burden has not been discharged. The Bill, in its extremity and lack of clarity, is not only unsupported by evidence, it is positively dangerous. The extraordinary powers sought exceed those considered necessary even in anti-terrorism legislation.⁶
24. We reiterate our strong recommendation that the Bill not be passed.

⁶ See, for example, the *Terrorism (Community Protection) Act 2003 (Vic)*.

JOINT SELECTION COMMITTEE ON AUSTRALIA'S IMMIGRATION DETENTION
NETWORK
AUSTRALIAN FEDERAL POLICE

Question No. 2

Senator Morrison asked the following question, following the hearing of 5 October 2011:

Mr MORRISON: But you were not? Has AFP been asked to appear before the Williams-Hawke review?

Cmdr Murray: We have been providing some support to the Hawke-Williams review.

CHAIR: Assistant Commissioner, do you have something to add?

Mr Jabbour: I might be able to assist. This is something that I will submit going to the point that Assistant Commissioner Mennilli raised in relation to the legal issues, particularly around the Commonwealth application of places legislation. We can provide that—

CHAIR: Is that a matter that you want to discuss in camera or are you happy to make it public?

Mr Jabbour: I do not have it with me.

CHAIR: You can provide that.

Mr Jabbour: It does not need to be in camera. It is just the interpretation of the law as it stands.

CHAIR: Can you let us know if it is able to be released publically?

Mr Jabbour: Yes.

CHAIR: That is our preference.

The answer to the honourable Senator's question is as follows:

As requested by the committee, attached is the document Immigration Detention Facilities Applicable Laws table.

The document is intended to provide some guidance to Australian Federal Police members in relation to complex legal arrangements at Immigration Detention Facilities. Each situation may provide different circumstances which may not necessarily be covered by the table.

The document is a work in progress and may evolve over time, taking into consideration new situations. Further analysis and advice may be obtained on relevant issues.

QUICK REFERENCE GUIDE

External Consult

Powers and Offences

Immigration Detention Centres (IDC's) or Alternative Places of Detention (APODs) located in Commonwealth Places

(States where COPAL arrangements are in place*)

*All State jurisdictions other than Tasmania, e.g. including Villawood NSW

Commonwealth Place are places in a State which are 'places acquired by the Commonwealth for public purposes' – ie properties owned by Cth for public purpose.

Part 1 – State (Applied) Offences

	Applicable Offences	Police Powers		Example	Reason for Available Powers
		AFP Officer	State Police Officer		
State (applied as Cth laws)	<p>State Crimes Acts/Criminal Codes (ie <i>NSW Crimes Act 1900</i>).</p> <ul style="list-style-type: none"> • Theft • Common assault • Sexual assault • Affray • Destroying/damaging property • Escaping lawful custody • Resisting/hindering police in execution of duty • Arson 	<p>Bare State Powers:</p> <ul style="list-style-type: none"> • Arrest ('reasonable suspicion' based) [e.g. s128 WA <i>Criminal Investigation Act 2006</i> (CI Act WA) or s99 NSW <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> (LEPR NSW)] <ul style="list-style-type: none"> ◦ Part 1C [<i>Crimes Act 1914</i>] to interview.¹ • Entry – authorised as a result of being Cth officers safeguarding Cth interests on Cth property + state power of entry. <i>See also Migration Act.</i> • Frisk Search ('reasonable suspicion') reasonable suspicion person has dangerous article/anything connected to a relevant offence [e.g. s68 CI Act WA and 21 LEPR NSW]. <i>See also Migration Act</i> • Seizure of items used in commission of offence/unlawfully obtained/possession unlawful [s68/146 CI Act WA and 21 LEPR NSW (incl. 'dangerous articles')] • Use of force – Authorised to use force reasonably necessary to exercise bare state powers [s230 LEPR NSW and s16 CI Act WA] 	<p>All Police Powers under relevant State legislation (ie all powers available to NSW police under the LEPR NSW or to WA police under the CI Act WA):</p> <ul style="list-style-type: none"> • Arrest ('reasonable suspicion' based) - Normal State Procedures [e.g. s128 CI Act WA or s99 LEPR NSW]² • Entry where lawful basis to enter - ie entry without warrant for breach of peace/violence [s9 LEPR NSW or s35 CI Act WA] or to arrest/detain or execute warrant [s10 LEPR NSW] or where there is a serious event <i>ie fire</i> [s37 CI Act WA] and/or consent of Cth (DIAC) • Interview Time – Normal State Procedures [e.g. s140 CI Act WA and Part 9 LEPR NSW] • Frisk Search – reasonable suspicion person has dangerous article/anything connected to a relevant offence [e.g. s68 CI Act WA and 21 LEPR NSW]. <i>See also Migration Act</i> • Seizure of items used in commission of offence/unlawfully obtained/possession unlawful [s68/146 CI Act WA and 21 LEPR NSW (incl. 'dangerous articles')] • Search Warrant - Normal State Procedures [e.g. s47 LEPR NSW (reasonable belief) and Division 3 CI Act WA (suspicion)] • Use of force – Authorised to use force reasonably necessary to exercise powers/functions [s230 LEPR NSW and s16 CI Act WA] 	<p>Theft under s94 NSW Crimes Act 1900:</p> <ul style="list-style-type: none"> • AFP cannot use CA 1914 s3W power of arrest but <u>can</u> use NSW LEA s99 power of arrest. If interviewing must use Part IC CA 1914 • NSW Police can use NSW LEA s99 power of arrest 	<p><i>Commonwealth Places (Application of Laws) Act 1970</i> (COPAL Act) applies local State laws to Commonwealth Places</p> <p>State criminal offences are 'applied' offences and become Commonwealth offences.³</p>

¹ Part IC not excluded by the COPAL Arrangement with States which exclude the exercise of most other Commonwealth powers under the *Crimes Act 1914* in the investigation of an applied State offence. The powers excluded are Part IAA CA 1914 (i.e. s3E search warrant, information gathering, arrest and related powers **AND** Sections 9,13, 15, 15A, 15B and 15C, and, all the provisions of Divisions 1 to 9 (inclusive) of Part IB, sections 20C, 21B and 21E and Part ID of the *Crimes Act 1914*. (These provisions primarily deal with sentencing and imprisonment of Federal Offenders and related matters).

² There are complex legal issues associated with State arrest of detainees. The significant issue is to ensure State Police bear in mind that arresting a detainee does not compromise the fact the person continues to remain detained under the Migration Act whilst in police custody. If the State Officer does this, then no issue arises (ie the detainee will be subject to two parallel frameworks, being Cth immigration detention and State arrest).

³ There are **no** 'state offences with a federal aspect' in Commonwealth Places. Due to COPAL, State offences *become* Commonwealth offences and therefore cannot be 'state offences' with a federal aspect.

QUICK REFERENCE GUIDE

External Consult

Immigration Detention Centres (IDC's) or Alternative Places of Detention (APODs) located in Commonwealth Places (States where COPAL arrangements are in place*) - CONTINUED

Part 2 – Commonwealth Offences

Applicable Offences		Police Powers		Example	Reason for Available Powers
		AFP Officer	State Police Officer		
Commonwealth	<p>Commonwealth <i>Crimes Act 1914</i> and <i>Criminal Code Act 1995</i></p> <ul style="list-style-type: none"> Theft of Cth property Destroying/damaging Cth property Causing harm to Cth public official Resisting Cth Official 	<p>All Cth Powers:</p> <ul style="list-style-type: none"> Entry – authorised as a result of being Cth officers safeguarding Cth interests on Cth property. See also <i>Migration Act</i> Arrest ('belief on reasonable grounds') [s3W Crimes Act 1914] Interview Time - Part 1C [CA 1914] Search Powers – where under arrest [s3ZE/3ZF] or suspected of carrying/having in custody or control a terrorism related item [s3UD] Search Warrant – Division 2 Part IAA [CA 1914] Use of force – necessary and reasonable force to execute warrant (s3G), search under s3UD, execute arrest (s3ZC) and State 'Bare Powers'⁴ including: Frisk Search ('reasonable suspicion') and seizure of unlawful items [s68 CI Act WA and 21 LEPR NSW] 	<p>All Cth Powers to investigate Cth offence:</p> <ul style="list-style-type: none"> Entry – Enforcement of Commonwealth law and/or consent of Cth (DIAC). Also see <i>Migration Act</i> Arrest ('belief on reasonable grounds') [s3W Crimes Act 1914 – power conferred on 'constable' includes State police (s3)] Interview Time - Part 1C [CA 1914 – power conferred on 'investigating official' includes State police (s23B)] Search Powers – where under arrest [s3ZE/3ZF – 'constable'] or suspected of carrying/having in custody or control a terrorism related item [s3UD – 'police officer'] Search Warrant – Division 2 Part IAA [CA 1914 – 'person' may apply for warrant] Use of force – necessary and reasonable force to execute warrant (s3G), search under s3UD, execute arrest (s3ZC) 	<p>Causing harm to a Cth public official (ie AFP member) under s147.1 <i>Criminal Code Act 1995</i>:</p> <ul style="list-style-type: none"> AFP can respond/investigate using usual Crimes Act/Criminal Code powers <i>because</i> the offence is a <u>Cth</u> offence State Police must use Cth powers to respond to/investigate Cth offence 	<p>Commonwealth offences and powers apply in unmodified form:</p> <ul style="list-style-type: none"> CA applies through whole of Cth and Territories and beyond Cth and Territories (s3A) Criminal Code codifies offences against laws of the Commonwealth (s1.1)
	<p><i>Migration Act 1958</i> ('the MA')</p> <ul style="list-style-type: none"> Escape (s197A) Manufacture, possession, use or distribution of a weapon (s197B) 	<p>Migration Act Powers:</p> <ul style="list-style-type: none"> Power of entry for purposes of performing functions under Act. Officer has power to detain (keep or cause to be kept in immigration detention) unlawful non-citizens (s189). This power includes using such action and using such force as is reasonable necessary to detain a person (s5). Whether this power may be used to relocate detainees elsewhere within the detention centre is subject to ongoing consideration Authorised officer has power to search detainees if suspected of carrying weapons and seize weapons (s252) Authorised officer has power to search persons entering a detention centre (s252G) <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<p>Migration Act powers:</p> <ul style="list-style-type: none"> Power of entry for purposes of performing functions under Act. Officer has power to detain (keep or cause to be kept in immigration detention) unlawful non-citizens (s189). This power includes using such action and using such force as is reasonable necessary to detain a person (s5). Whether this power may be used to relocate detainees elsewhere within the detention centre is subject to ongoing consideration Authorised officer has power to search detainees if suspected of carrying weapons and seize weapons (s252).⁵ Authorised officer has power to search persons entering a detention centre (s252G) <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<p>Possession of a weapon under s197B <i>Migration Act 1958</i>:</p> <ul style="list-style-type: none"> If authorised, AFP or State police may search person without warrant to find out whether there is hidden on the person a weapon May also detain a person (incl using reasonable force) for purpose of search 	<p>State Police and AFP granted the same powers under the MA to investigate MA offences:</p> <ul style="list-style-type: none"> 'Officer' defined as a member of AFP or of police force of a State 'Authorised officer' authorised in writing by Minister
	<p><i>Public Order (Protection of Persons and Property) Act 1971</i> (POPPP Act)</p> <ul style="list-style-type: none"> Holding of violent/potentially violent assemblies on Cth premises Causing harm/damage while taking part in assembly Unreasonable obstruction Uses weapon in assembly Behaves in disorderly/offensive manner on Cth premises 	<ul style="list-style-type: none"> Arrest ('belief on reasonable grounds') for offence against POPPP Act and arrest necessary to prevent repetition or continuation of offence or commission of another offence [s22] <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<ul style="list-style-type: none"> Arrest ('belief on reasonable grounds') for offence against POPPP Act and arrest necessary to prevent repetition or continuation of offence or commission of another offence [s22] <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<p>Offence of assembly involving violence or apprehension of violence under s6 POPPP Act</p> <ul style="list-style-type: none"> Where a person participates in an assembly involving unlawful physical violence/unlawful damage to property on a Cth premises, AFP or State police may arrest that person without warrant, where arrest is necessary to stop the assembly continuing 	<p>POPPP Act applies in Premises occupied by the Commonwealth or by a public authority under the Commonwealth (ie DIAC) ('Cth premises')</p>

⁴ Section 9 of AFP Act 1979

⁵ Whether State police are 'authorised officers' is subject to confirmation with Immigration.

QUICK REFERENCE GUIDE

External Consult

Powers and Offences

Alternative Places of Detention (APODs) and Immigration Residential Housing (IRHs) NOT located in Commonwealth Places*

*All other Immigration detention located in State jurisdictions, in premises that are **NOT** a Commonwealth Place (ie **not acquired by the Cth**) e.g the Leonora Alternative Place of Detention Western Australia

Part 1 – State Offences

	Applicable Offences	Police Powers		Example	Reason for Available Powers
		AFP Officer	State Police Officer		
State	<p>State Crimes Acts/Criminal Codes (ie <i>NSW Crimes Act 1900</i>).</p> <ul style="list-style-type: none"> • Theft • Common assault • Sexual assault • Affray • Destroying/damaging property • Escaping lawful custody • Resisting/hindering police in execution of duty • Arson 	<p>All Cth Powers:</p> <ul style="list-style-type: none"> • Entry – authorised as a result of being Cth officers safeguarding Cth interests on Cth property. <i>See also Migration Act</i> • Arrest ('belief on reasonable grounds') [s3W Crimes Act 1914] • Interview Time - Part 1C [CA 1914] • Search Powers – where under arrest [s3ZE/3ZF] or suspected of carrying/having in custody or control a terrorism related item [s3UD] • Search Warrant – Division 2 Part IAA [CA 1914] • Use of force – necessary and reasonable force to execute warrant (s3G), search under s3UD, execute arrest (s3ZC) <p>and State 'Bare Powers'⁶ including:</p> <ul style="list-style-type: none"> • Frisk Search ('reasonable suspicion') and seizure of unlawful items [s68 CI Act WA and 21 LEPR NSW] • Entry – entry without warrant for breach of peace/violence [eg s9 LEPR NSW or s35 CI Act WA] 	<p>All Police Powers under relevant State legislation (ie all powers available to NSW police under the LEPR NSW or to WA police under the CI Act WA):</p> <ul style="list-style-type: none"> • Arrest ('reasonable suspicion' based) - Normal State Procedures [e.g. s128 CI Act WA or s99 LEPR NSW] • Entry where lawful basis to enter - ie entry without warrant for breach of peace/violence [eg s9 LEPR NSW or s35 CI Act WA] or to arrest/detain or execute warrant [s10 LEPR NSW] or where there is a serious event <i>ie fire</i> [s37 CI Act WA] and/or consent of Cth (DIAC) • Interview Time – Normal State Procedures [e.g. s140 CI Act WA and Part 9 LEPR NSW] • Frisk Search – reasonable suspicion person has dangerous article/anything connected to a relevant offence [e.g. s68 CI Act WA and 21 LEPR NSW]. <i>See also Migration Act</i> • Seizure of items used in commission of offence/unlawfully obtained/possession unlawful [s68/146 CI Act WA and 21 LEPR NSW (incl. 'dangerous articles')] • Search Warrant - Normal State Procedures [e.g. s47 LEPR NSW (reasonable belief) and Division 3 CI Act WA (suspicion)] • Use of force – Authorised to use force reasonably necessary to exercise powers/functions [s230 LEPR NSW and s16 CI Act WA] 	<p>Detainee sets fire to bed in APOD. Property assists in Cth's administration of APOD, therefore conduct affects interests of the Cth.</p> <ul style="list-style-type: none"> • AFP can arrest using Cth 3W arrest power because offence is a State offence with a federal aspect • NSW/WA can respond using available state powers because offence is also a State offence of destroying/damaging property 	<p>State offences and powers apply in unmodified form. S3AA <i>Crimes Act 1914</i> and s4AA AFP Act provides State offences with a federal aspect able to be investigated by Commonwealth.⁷ This includes any State offence:</p> <ul style="list-style-type: none"> • sufficiently connected to a <u>Cth offence</u> • <u>affecting interests</u> of the Cth

⁶ Section 9(1)(c) of AFP Act 1979

⁷ COPAL does not apply. Therefore State offences do not *become* Cth offences (as is position under COPAL). However, state offence likely to be a 'state offences' with a federal aspect.

QUICK REFERENCE GUIDE

External Consult

Alternative Places of Detention (APODs) and Immigration Residential Housing (IRHs) NOT located in Commonwealth Places* - CONTINUED

Part 2 – Commonwealth Offences

	Applicable Offences	Police Powers		Example	Reason for Available Powers
		AFP Officer	State Police Officer		
Commonwealth	<p>Commonwealth <i>Crimes Act 1914</i> and <i>Criminal Code Act 1995</i></p> <ul style="list-style-type: none"> Theft of Cth property Destroying/damaging Cth property Causing harm to Cth public official Resisting Cth Official 	<p>All Cth Powers:</p> <ul style="list-style-type: none"> Entry – authorised as a result of being Cth officers safeguarding Cth interests on Cth property. <i>See also Migration Act</i> Arrest ('belief on reasonable grounds') [s3W Crimes Act 1914] Interview Time - Part 1C [CA 1914] Search Powers – where under arrest [s3ZE/3ZF] or suspected of carrying/having in custody or control a terrorism related item [s3UD] Search Warrant – Division 2 Part IAA [CA 1914] Use of force – necessary and reasonable force to execute warrant (s3G), search under s3UD, execute arrest (s3ZC) <p>and State 'Bare Powers'⁸ including:</p> <ul style="list-style-type: none"> Frisk Search ('reasonable suspicion') and seizure of unlawful items [s68 CI Act WA and 21 LEPR NSW] 	<p>Cth Powers to investigate Cth offence:</p> <ul style="list-style-type: none"> Entry – Enforcement of Commonwealth law and/or consent of Cth (DIAC). Also see Migration Act Arrest ('belief on reasonable grounds') [s3W Crimes Act 1914 – power conferred on 'constable' includes State police (s3)] Interview Time - Part 1C [CA 1914 – power conferred on 'investigating official' includes State police (s23B)] Search Powers – where under arrest [s3ZE/3ZF – 'constable'] or suspected of carrying/having in custody or control a terrorism related item [s3UD – 'police officer'] Search Warrant – Division 2 Part IAA [CA 1914 – 'person' may apply for warrant] Use of force – necessary and reasonable force to execute warrant (s3G), search under s3UD, execute arrest (s3ZC) 	<p>Detainee destroys/damages Cth property at APOD (ie AFP car) under s29 CA 1914</p> <ul style="list-style-type: none"> AFP can respond/investigate using usual Cth powers <i>because</i> the offence is a Cth offence State Police must use Cth powers to respond/investigate Cth offence Nb if detainee destroyed personal property then NOT a Cth offence 	<p>Commonwealth offences and powers apply in unmodified form:</p> <ul style="list-style-type: none"> CA applies through whole of Cth and Territories and beyond Cth and Territories (s3A) Criminal Code codifies offences against laws of the Commonwealth (s1.1)
	<p><i>Migration Act 1958</i> ('the MA')</p> <ul style="list-style-type: none"> Escape (s197A) Manufacture, possession, use or distribution of a weapon (s197B) 	<p>Powers under the MA:</p> <ul style="list-style-type: none"> Power of entry for purposes of performing functions under Act. Officer has power to detain (keep or cause to be kept in immigration detention) unlawful non-citizens (s189). This power includes using such action and using such force as is reasonable necessary to detain a person (s5). Whether this power may be used to relocate detainees elsewhere within the detention centre is subject to ongoing consideration Authorised officer has power to search detainees if suspected of carrying weapons and seize weapons (s252) Authorised officer has power to search persons entering a detention centre (s252G) <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<p>Powers under the MA:</p> <ul style="list-style-type: none"> Power of entry for purposes of performing functions under Act. Officer has power to detain (keep or cause to be kept in immigration detention) unlawful non-citizens (s189). This power includes using such action and using such force as is reasonable necessary to detain a person (s5). Whether this power may be used to relocate detainees elsewhere within the detention centre is subject to ongoing consideration Authorised officer has power to search detainees if suspected of carrying weapons and seize weapons (s252).⁹ Authorised officer has power to search persons entering a detention centre (s252G) <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<p>Possession of a weapon under s197B <i>Migration Act 1958</i>:</p> <ul style="list-style-type: none"> If authorised, AFP or State police may search person without warrant to find out whether there is hidden on the person a weapon May also detain a person (incl using reasonable force) for purpose of search 	<p>State Police and AFP granted the same powers under the MA to investigate MA offences:</p> <ul style="list-style-type: none"> 'Officer' defined as a member of AFP or of police force of a State 'Authorised officer' authorised in writing by Minister
	<p><i>Public Order (Protection of Persons and Property) Act 1971</i> (POPPP Act)</p> <ul style="list-style-type: none"> Holding of violent/potentially violent assemblies on Cth premises Causing harm/damage while taking part in assembly Unreasonable obstruction Uses weapon in assembly Behaves in disorderly/offensive manner on Cth premises 	<ul style="list-style-type: none"> Arrest ('belief on reasonable grounds') for offence against POPPP Act and arrest necessary to prevent repetition or continuation of offence or commission of another offence [s22] <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<ul style="list-style-type: none"> Arrest ('belief on reasonable grounds') for offence against POPPP Act and arrest necessary to prevent repetition or continuation of offence or commission of another offence [s22] <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<p>Offence of assembly involving violence or apprehension of violence under s6 POPPP Act</p> <ul style="list-style-type: none"> Where a person participates in an assembly involving unlawful physical violence/unlawful damage to property on a Cth premises, AFP or State police may arrest that person without warrant, where arrest is necessary to stop the assembly continuing 	<p>POPPP Act applies in Premises occupied by Cth or by a public authority under the Cth (ie DIAC) ('Cth premises') in States, even if not a Cth Place (s25(3)(a))</p>

⁸ Section 9(1)(c) of AFP Act 1979

⁹ Whether State police are 'authorised officers' is subject to confirmation with Immigration.

QUICK REFERENCE GUIDE

External Consult

Powers and Offences

Immigration Detention Centres (IDC's) or Alternative Places of Detention (APODs) in the NORTHERN TERRITORY*

- There are no Commonwealth Places in the Territories. COPAL provisions do not apply, and Commonwealth and Territory laws apply in unmodified form.

Part 1 – Territory Offences

	Applicable Offences	Police Powers		Example	Reason for Available Powers
		AFP Officer	Territory Police Officer		
Territory	<p>Northern Territory Criminal Code Act 1983 ('Criminal Code NT')</p> <ul style="list-style-type: none"> • Arson • Stealing • Threats to cause injury • Common assault • Assaults on police • Causing serious harm to another • Recklessly endangering life • Obstructing/resisting any public officer in discharge of duties 	<p>All Police Powers under relevant NT Legislation (ie all powers available to NT Police in <i>Police Administration Act</i> 'PAA'):</p> <ul style="list-style-type: none"> • Arrest ('belief on reasonable grounds') person committing, about to commit, has committed an offence [s123 PAA] • Interview/Investigation Time ('reasonable period' s137 PAA). • Search and seizure of offensive weapons where belief on reasonable grounds that on a person [s119(2) PAA] or of anything connected to an offence in serious and urgent circumstances [s119(1)] <i>See also Migration Act</i> • Entry – authorised as a result of being Cth officers safeguarding Cth interests on Cth property + territory power of entry. Also see Migration Act. • Search Warrant (belief on reasonable grounds) - Normal Territory Procedures [e.g. s117 PAA] • Use of force – Authorised to use reasonable force to execute person search or search warrant [s119A PAA] 	<p>All Police Powers under relevant NT Legislation (ie all powers available to NT Police in <i>Police Administration Act</i> 'PAA'):</p> <ul style="list-style-type: none"> • Arrest ('belief on reasonable grounds') person committing, about to commit, has committed an offence [s123 PAA] • Interview/Investigation Time – person in lawful custody may be detained for a reasonable period [s137 PAA] • Search and seizure of offensive weapons where belief on reasonable grounds that on a person [s119(2) PAA] or of anything connected to an offence in serious and urgent circumstances [s119(1)] <i>See also Migration Act</i> • Entry where lawful basis to enter - ie using reasonable force where belief on reasonable grounds that person has suffered/is suffering or in imminent danger of suffering personal injury [s126(2A) PAA]. May then search and seize weapons [s126(2AA)]. And/or consent of Cth (DIAC) • Search Warrant (belief on reasonable grounds) - Normal Territory Procedures [e.g. s117 PAA] • Use of force – Authorised to use reasonable force to execute person search or search warrant [s119A PAA] 	<p>Arson under s239 Criminal Code NT (unlawfully setting fire to a building)</p> <ul style="list-style-type: none"> • Both AFP and NT Police may arrest person who they believe on reasonable grounds to have committed, or about to commit arson • NT may hold person in custody for 'reasonable period' for interviewing and investigation. • May enter any place using reasonable force to make this arrest [s126(2)] 	<p>Territory offences and powers apply in unmodified form.</p> <p>AFP have powers in respect of Territory offences by virtue of section 9(1)(bc) of the <i>Australian Federal Police Act 1979</i> when performing functions in the Northern Territory</p>

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Immigration Detention Centres (IDC's) or Alternative Places of Detention (APODs) in the NORTHERN TERRITORY* - CONTINUED

Part 2 – Commonwealth Offences

	Applicable Offences	Police Powers		Example	Reason for Available Powers
		AFP Officer	Territory Police Officer		
Commonwealth	<p>Commonwealth <i>Crimes Act 1914</i> and <i>Criminal Code Act 1995</i></p> <ul style="list-style-type: none"> Theft of Cth property Destroying/damaging Cth property Causing harm to Cth public official Resisting Cth Official 	<p>All Cth Powers:</p> <ul style="list-style-type: none"> Entry – authorised as a result of being Cth officers safeguarding Cth interests on Cth property. <i>See also Migration Act</i> Arrest ('belief on reasonable grounds') [s3W Crimes Act 1914] Interview Time - Part 1C [CA 1914] Search Powers – where under arrest [s3ZE/3ZF] or suspected of carrying/having in custody or control a terrorism related item [s3UD] Search Warrant – Division 2 Part IAA [CA 1914] Use of force – necessary and reasonable force to execute warrant (s3G), search under s3UD, execute arrest (s3ZC) <p>And Bare Territory Powers including:</p> <ul style="list-style-type: none"> Search and seizure of offensive weapons where belief on reasonable grounds that on a person [s119(2) PAA] or of anything connected to an offence in serious and urgent circumstances [s119(1)] 	<p>Cth Powers to investigate Cth offence:</p> <ul style="list-style-type: none"> Entry – Enforcement of Commonwealth law and/or consent of Cth (DIAC). Also see Migration Act Arrest ('belief on reasonable grounds') [s3W Crimes Act 1914 – power conferred on 'constable' includes Territory police (s3)] Interview Time - Part 1C [CA 1914 – power conferred on 'investigating official' includes Territory police (s23B)] Search Powers – where under arrest [s3ZE/3ZF – 'constable'] or suspected of carrying/having in custody or control a terrorism related item [s3UD – 'police officer'] Search Warrant – Division 2 Part IAA [CA 1914 – 'person' may apply for warrant] Use of force – necessary and reasonable force to execute warrant (s3G), search under s3UD, execute arrest (s3ZC) 	<p>Detainee destroys/damages Cth property at APOD (ie AFP car) under s29 CA 1914</p> <ul style="list-style-type: none"> AFP can respond/investigate using usual Cth powers <i>because</i> the offence is a <u>Cth</u> offence Territory Police must use Cth powers to respond/investigate to a Cth offence Nb if detainee destroyed personal property then NOT a <u>Cth</u> offence 	<p>Commonwealth offences and powers apply in unmodified form:</p> <ul style="list-style-type: none"> CA applies through whole of Cth and Territories and beyond Cth and Territories (s3A) Criminal Code codifies offences against laws of the Commonwealth (s1.1)
	<p><i>Migration Act 1958</i> ('the MA')</p> <ul style="list-style-type: none"> Escape (s197A) Manufacture, possession, use or distribution of a weapon (s197B) 	<p>Powers under the MA:</p> <ul style="list-style-type: none"> Power of entry for purposes of performing functions under Act. Officer has power to detain (keep or cause to be kept in immigration detention) unlawful non-citizens (s189). This power includes using such action and using such force as is reasonable necessary to detain a person (s5). Whether this power may be used to relocate detainees elsewhere within the detention centre is subject to ongoing consideration Authorised officer has power to search detainees if suspected of carrying weapons and seize weapons (s252). Authorised officer has power to search persons entering a detention centre (s252G) <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<p>Powers under the MA:</p> <ul style="list-style-type: none"> Power of entry for purposes of performing functions under Act. Officer has power to detain (keep or cause to be kept in immigration detention) unlawful non-citizens (s189). This power includes using such action and using such force as is reasonable necessary to detain a person (s5). Whether this power may be used to relocate detainees elsewhere within the detention centre is subject to ongoing consideration Authorised officer has power to search detainees if suspected of carrying weapons and seize weapons (s252).¹⁰ Authorised officer has power to search persons entering a detention centre (s252G) <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<p>Possession of a weapon under s197B <i>Migration Act 1958</i></p> <ul style="list-style-type: none"> If authorised, AFP or Territory police may search person without warrant to find out whether there is hidden on the person a weapon May also detain a person (incl using reasonable force) for purpose of search 	<p>Territory Police and AFP granted the same powers under the MA to investigate MA offences:</p> <ul style="list-style-type: none"> 'Officer' defined as a member of AFP or of police force of a Territory. 'Authorised officer' authorised in writing by Minister
	<p><i>Public Order (Protection of Persons and Property) Act 1971</i> (POPPP Act)</p> <ul style="list-style-type: none"> Holding of violent/potentially violent assemblies on Cth premises Causing harm/damage while taking part in assembly Unreasonable obstruction Uses weapon in assembly Behaves in disorderly/offensive manner on Cth premises 	<ul style="list-style-type: none"> Arrest ('belief on reasonable grounds') for offence against POPPP Act and arrest necessary to prevent repetition or continuation of offence or commission of another offence [s22]. <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<ul style="list-style-type: none"> Arrest ('belief on reasonable grounds') for offence against POPPP Act and arrest necessary to prevent repetition or continuation of offence or commission of another offence [s22]. <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<p>Offence of assembly involving violence or apprehension of violence under s6 POPPP Act</p> <ul style="list-style-type: none"> Where a person participates in an assembly involving unlawful physical violence/unlawful damage to property on a Cth premises, AFP or Territory police may arrest that person without warrant, where arrest is necessary to stop the assembly continuing. 	<p>POPPP Act also applies in Premises occupied by Cth or by a public authority under the Cth (ie DIAC) ('Cth premises') (ie where premises is in Northern Territory)</p>

¹⁰ Whether Territory police are 'authorised officers' is subject to confirmation with Immigration.

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Powers and Offences

Pontville Immigration Detention Centre, Tasmania*

- Pontville is located in a Defence facility. It is a place 'acquired' by the Commonwealth for public purposes' and COPAL therefore applies.

Part 1 – State (Applied) Offences

	Applicable Offences	Police Powers		Example	Reason for Available Powers
		AFP Officer	State Police Officer		
State (applied as Cth laws)	<p><i>Criminal Code Act 1924:</i></p> <ul style="list-style-type: none"> • Stealing • Common assault • Indecent assault • Rape • Affray • Escaping lawful custody • Arson <p><i>Police Offences Act 1935</i></p> <ul style="list-style-type: none"> • Resisting/obstructing police officer in execution of duty • Assault/aggravated assault • Offences relating to property • Offences relating to computers 	<p>All Cth Powers:</p> <ul style="list-style-type: none"> • Entry – authorised as a result of being Cth officers safeguarding Cth interests on Cth property + state power of entry. <i>See also Migration Act</i> • Arrest ('belief on reasonable grounds') [s3W Crimes Act 1914] • Interview Time - Part 1C [CA 1914] • Search Powers – where under arrest [s3ZE/3ZF] or suspected of carrying/having in custody or control a terrorism related item [s3UD] • Search Warrant – Division 2 Part IAA [CA 1914] • Use of force – necessary and reasonable force to execute warrant (s3G), search under s3UD, execute arrest (s3ZC) <p>and State 'Bare Powers'¹¹ including:</p> <ul style="list-style-type: none"> • Use of force – to assist lawful arrest (s26 Crim Code) and prevent commission of crime involving injury to person/property (s39 Crime Code) 	<p>A police officer has the powers, privileges and duties of a constable at common law or under any other Act or law (s83 <i>Police Service Act 2003</i> (PSA)):</p> <ul style="list-style-type: none"> • Arrest ('belief on reasonable grounds') - person committing crime, or has committed certain crimes (see Appendix A) [s27 <i>Criminal Code Act 1924</i>]¹² or offending against <i>Police Offences Act 1935</i> • Entry where lawful basis to enter - ie Commissioner of Police may authorise officers to enter a place in an emergency (danger to human life, property or the environment) [see <i>Emergency Management Act 2006</i>] and/or consent of Cth (DIAC) • Interview Time – 'reasonable time' [s4 <i>Criminal Law (Detention and Interrogation) Act 1995</i> • Search and Seizure of items <i>only</i> as incident to power of lawful arrest, where items relevant to offence or would interfere with safety (<i>common law power</i>) • Search Warrant (suspicion on reasonable grounds) [s5(1) <i>Search Warrants Act 1997</i>] • Use of force – to assist lawful arrest (s26 Crim Code) and prevent commission of crime involving injury to person/property (s39 Crime Code) 	<p>Indecent Assault under s127 <i>Criminal Code Act 1924:</i></p> <ul style="list-style-type: none"> • AFP can respond to/investigate offence using usual Commonwealth powers as offence is an 'applied' Commonwealth offence, and there are no COPAL arrangements limiting the exercise of these powers. • Tasmanian police can respond/investigate using all available State powers. 	<p><i>Commonwealth Places (Application of Laws) Act 1970</i> (COPAL Act) applies local State laws to Commonwealth Places. State criminal offences are 'applied' offences and become Commonwealth offences.¹³</p> <p>NOTE no separate admin arrangement under COPAL excluding Cth officers from exercising Cth powers. <u>All</u> normal Cth powers available to AFP officers.</p>

¹¹ Section 9 of AFP Act 1979

¹² There are complex legal issues associated with State arrest of detainees. The significant issue is to ensure State Police bear in mind that arresting a detainee does not compromise the fact the person continues to remain detained under the Migration Act whilst in police custody. If the State Officer does this, then no issue arises (ie the detainee will be subject to two parallel frameworks, being Cth immigration detention and State arrest).

¹³ There are **no** 'state offences with a federal aspect' in Commonwealth Places. Due to COPAL, State offences *become* Commonwealth offences and therefore cannot be 'state offences' with a federal aspect.

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Pontville Immigration Detention Centre, Tasmania* - CONTINUED

Part 2 – Commonwealth Offences

	Applicable Offences	Police Powers		Example	Reason for Available Powers
		AFP Officer	State Police Officer		
Commonwealth	<p>Commonwealth <i>Crimes Act 1914</i> and <i>Criminal Code Act 1995</i></p> <ul style="list-style-type: none"> Theft of Cth property Destroying/damaging Cth property Causing harm to Cth public official Resisting Cth Official 	<p>All Cth Powers:</p> <ul style="list-style-type: none"> Entry – authorised as a result of being Cth officers safeguarding Cth interests on Cth property. <i>See also Migration Act</i> Arrest ('belief on reasonable grounds') [s3W Crimes Act 1914] Interview Time - Part 1C [CA 1914] Search Powers – where under arrest [s3ZE/3ZF] or suspected of carrying/having in custody or control a terrorism related item [s3UD] Search Warrant – Division 2 Part IAA [CA 1914] Use of force – necessary and reasonable force to execute warrant (s3G), search under s3UD, execute arrest (s3ZC) <p>and State 'Bare Powers'¹⁴ including:</p> <ul style="list-style-type: none"> Use of force – to assist lawful arrest (s26 Crim Code) and prevent commission of crime involving injury to person/property (s39 Crime Code) 	<p>All Cth Powers to investigate Cth offence:</p> <ul style="list-style-type: none"> Entry – Enforcement of Commonwealth law and/or consent of Cth (DIAC). <i>See also Migration Act</i> Arrest ('belief on reasonable grounds') [s3W Crimes Act 1914 – power conferred on 'constable' includes State police (s3)] Interview Time - Part 1C [CA 1914 – power conferred on 'investigating official' includes State police (s23B)] Search Powers – where under arrest [s3ZE/3ZF – 'constable'] or suspected of carrying/having in custody or control a terrorism related item [s3UD – 'police officer'] Search Warrant – Division 2 Part IAA [CA 1914 – 'person' may apply for warrant] Use of force – necessary and reasonable force to execute warrant (s3G), search under s3UD, execute arrest (s3ZC) 	<p>Causing harm to a Cth public official (ie AFP member) under s147.1 <i>Criminal Code Act 1995</i>:</p> <ul style="list-style-type: none"> AFP can respond/investigate using usual Crimes Act/Criminal Code powers <i>because</i> the offence is a Cth offence State Police must use Cth powers to respond to/investigate Cth offence 	<p>Commonwealth offences and powers apply in unmodified form:</p> <ul style="list-style-type: none"> CA applies through whole of Cth and Territories and beyond Cth and Territories (s3A) Criminal Code codifies offences against laws of the Commonwealth (s1.1)
	<p><i>Migration Act 1958</i> ('the MA')</p> <ul style="list-style-type: none"> Escape (s197A) Manufacture, possession, use or distribution of a weapon (s197B) 	<p>Migration Act Powers:</p> <ul style="list-style-type: none"> Power of entry for purposes of performing functions under Act. Officer has power to detain (keep or cause to be kept in immigration detention) unlawful non-citizens (s189). This power includes using such action and using such force as is reasonable necessary to detain a person (s5). Whether this power may be used to relocate detainees elsewhere within the detention centre is subject to ongoing consideration Authorised officer has power to search detainees if suspected of carrying weapons and seize weapons (s252) Authorised officer has power to search persons entering a detention centre (s252G) <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<p>Migration Act powers:</p> <ul style="list-style-type: none"> Power of entry for purposes of performing functions under Act. Officer has power to detain (keep or cause to be kept in immigration detention) unlawful non-citizens (s189). This power includes using such action and using such force as is reasonable necessary to detain a person (s5). Whether this power may be used to relocate detainees elsewhere within the detention centre is subject to ongoing consideration Authorised officer has power to search detainees if suspected of carrying weapons and seize weapons (s252).¹⁵ Authorised officer has power to search persons entering a detention centre (s252G) <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<p>Possession of a weapon under s197B <i>Migration Act 1958</i>:</p> <ul style="list-style-type: none"> If authorised, AFP or State police may search person without warrant to find out whether there is hidden on the person a weapon May also detain a person (incl using reasonable force) for purpose of search 	<p>State Police and AFP granted the same powers under the MA to investigate MA offences:</p> <ul style="list-style-type: none"> 'Officer' defined as a member of AFP or of police force of a State 'Authorised officer' authorised in writing by Minister
	<p><i>Public Order (Protection of Persons and Property) Act 1971</i> (POPPP Act)</p> <ul style="list-style-type: none"> Holding of violent/potentially violent assemblies on Cth premises Causing harm/damage while taking part in assembly Unreasonable obstruction Uses weapon in assembly Behaves in disorderly/offensive manner on Cth premises 	<ul style="list-style-type: none"> Arrest ('belief on reasonable grounds') for offence against POPPP Act and arrest necessary to prevent repetition or continuation of offence or commission of another offence [s22] <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<ul style="list-style-type: none"> Arrest ('belief on reasonable grounds') for offence against POPPP Act and arrest necessary to prevent repetition or continuation of offence or commission of another offence [s22] <p>and all other Cth Powers (eg <i>Crimes Act 1914</i> powers)</p>	<p>Offence of assembly involving violence or apprehension of violence under s6 POPPP Act</p> <ul style="list-style-type: none"> Where a person participates in an assembly involving unlawful physical violence/unlawful damage to property on a Cth premises, AFP or State police may arrest that person without warrant, where arrest is necessary to stop the assembly continuing 	<p>POPPP Act applies in Premises occupied by the Commonwealth or by a public authority under the Commonwealth (ie DIAC) ('Cth premises')</p>

¹⁴ Section 9 of AFP Act 1979

¹⁵ Whether State police are 'authorised officers' is subject to confirmation with Immigration.