



Counter-Terrorism (Temporary Exclusion Orders) Act 2019

No. 53, 2019

**An Act to protect the community from terrorism by
providing for temporary exclusion orders, and for
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 53, 2019

**An Act to protect the community from terrorism by
providing for temporary exclusion orders, and for
related purposes**

[Assented to 30 July 2019]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *Counter-Terrorism (Temporary Exclusion Orders) Act 2019*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day this Act receives the Royal Assent.	30 July 2019

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline of this Act

The Minister may make an order (called a temporary exclusion order) that prevents a person from entering Australia for a specified period, which may be up to 2 years. An order cannot be made unless certain criteria are met, and it can be revoked.

The Minister must refer the decision to make a temporary exclusion order to a reviewing authority for review. If the reviewing authority is of the opinion that the decision involved

specified errors of law, the decision is taken never to have been made.

If the person is being deported or extradited to Australia or makes an application, the Minister must issue a permit (called a return permit) that allows the person to enter Australia. The Minister may also issue a permit if the Minister considers that it is appropriate to do so.

The permit may contain conditions, such as specifying the period within which and the way in which the person must enter Australia, and requiring the person to give notice of specified things, such as the person's principal place of residence or place of employment while in Australia. Conditions cannot be imposed unless the Minister has regard to certain matters and is satisfied of specified matters.

A return permit can remain in force for a maximum period of 12 months after the person to whom it applies enters Australia.

A return permit can be varied or revoked.

It is an offence to fail to comply with any conditions imposed on a return permit, or to give false or misleading information or documents in purported compliance with such conditions.

The Minister must, each year, present a report to each House of the Parliament on the operation of this Act.

4 Definitions

In this Act:

Australian travel document has the meaning given by the *Australian Passports Act 2005*.

listed terrorist organisation has the meaning given by subsection 100.1(1) of the *Criminal Code*.

return permit means a permit issued under subsection 15(1) or (2).

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reviewing authority means a person appointed under section 23.

temporary exclusion order means an order made under subsection 10(1).

terrorist act has the meaning given by section 100.1 of the *Criminal Code*.

5 Act extends to external Territories

This Act extends to every external Territory.

6 Act extends to things outside Australia

This Act extends to acts, omissions, matters and things outside Australia.

7 Act binds the Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) However, this Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.

Part 2—Temporary exclusion orders and return permits

Division 1—Temporary exclusion orders

8 Prohibition on entering Australia if a temporary exclusion order is in force

A person commits an offence if:

- (a) a temporary exclusion order is in force in relation to the person; and
- (b) the person enters Australia.

Penalty: Imprisonment for 2 years.

9 Prohibition on permitting use of a vessel or aircraft by person in relation to whom a temporary exclusion order is in force

(1) A person commits an offence if:

- (a) the person is:
 - (i) an owner, charterer, lessee, operator, agent or master of a vessel; or
 - (ii) an owner, charterer, lessee, operator or pilot in charge of an aircraft; and
- (b) the person permits the vessel or aircraft to be used to convey another person (the *second person*) to Australia; and
- (c) the person knows that a temporary exclusion order is in force in relation to the second person.

Penalty: Imprisonment for 2 years.

(2) Subsection (1) does not apply if the second person is being deported or extradited to Australia.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

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- (3) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1) of this section.

10 Making a temporary exclusion order

- (1) Subject to subsections (2) and (3), the Minister may make an order (a **temporary exclusion order**) under this subsection in relation to a person if:
- (a) the person is located outside Australia; and
 - (b) the person is an Australian citizen; and
 - (c) the person is at least 14 years of age; and
 - (d) a return permit is not in force in relation to the person.
- (2) The Minister must not make a temporary exclusion order in relation to a person unless either:
- (a) the Minister suspects on reasonable grounds that making the order would substantially assist in one or more of the following:
 - (i) preventing a terrorist act;
 - (ii) preventing training from being provided to, received from or participated in with a listed terrorist organisation;
 - (iii) preventing the provision of support for, or the facilitation of, a terrorist act;
 - (iv) preventing the provision of support or resources to an organisation that would help the organisation engage in an activity described in paragraph (a) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*; or
 - (b) the person has been assessed by the Australian Security Intelligence Organisation to be directly or indirectly a risk to security (within the meaning of the *Australian Security Intelligence Organisation Act 1979*) for reasons related to politically motivated violence (within the meaning of that Act).

- (3) If the person is 14 to 17 years of age, the Minister must, before making a temporary exclusion order in relation to the person, have regard to:
- (a) the protection of the community as the paramount consideration; and
 - (b) the best interests of the person as a primary consideration.
- (4) In determining what is in the best interests of a person for the purposes of paragraph (3)(b), the Minister must take into account the following matters:
- (a) the age, maturity, sex and background (including lifestyle, culture and traditions) of the person;
 - (b) the physical and mental health of the person;
 - (c) the benefit to the person of having a meaningful relationship with his or her family and friends;
 - (d) the right of the person to receive an education;
 - (e) the right of the person to practise his or her religion;
 - (f) any other matter the Minister considers relevant.
- (5) The Minister must take into account the matters in subsection (4):
- (a) only to the extent that the matters are known to the Minister; and
 - (b) only to the extent that the matters are relevant.
- (6) If the Minister makes a temporary exclusion order, the order must:
- (a) be in writing; and
 - (b) specify the name of the person to whom the order relates; and
 - (c) state that the criteria in subsection (2) for the making of the order have been met; and
 - (d) specify the period during which the order is to be in force, which must not end more than 2 years after the day on which the order is made; and
 - (e) if the person to whom the order relates has an Australian travel document—specify whether the person must surrender the document to a specified person or body; and
 - (f) specify whether the person to whom the order relates is permitted to apply for an Australian travel document; and

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- (g) specify whether the person to whom the order relates is permitted to obtain an Australian travel document; and
 - (h) set out the effect of the following sections:
 - (i) section 8 (offence to enter Australia if temporary exclusion order is in force);
 - (ii) sections 11 and 12 (about revoking a temporary exclusion order);
 - (iii) sections 15 and 18 (about return permits); and
 - (i) state that the person may have review rights in relation to the decision to make the order.
- (7) Paragraph (6)(d) does not prevent the making of another temporary exclusion order in relation to the same person.
- (8) As soon as practicable after a temporary exclusion order comes into force, the Minister must cause such steps to be taken as are, in the opinion of the Minister, reasonable and practicable:
- (a) to bring to the attention of the person the content of the order; and
 - (b) if the person to whom the order relates is 14 to 17 years of age—to bring to the attention of a parent or guardian of the person the content of the order.
- (9) A temporary exclusion order is not a legislative instrument.

11 Revoking a temporary exclusion order

- (1) The Minister may revoke a temporary exclusion order.
- (2) A temporary exclusion order may be revoked under subsection (1):
 - (a) on the Minister's own initiative; or
 - (b) on application by, or on behalf of, the person to whom the order relates.

Note: See section 12 for how an application to revoke a temporary exclusion order can be made.

- (3) As soon as practicable after revoking a temporary exclusion order under subsection (1), the Minister must cause such steps to be

taken as are, in the opinion of the Minister, reasonable and practicable:

- (a) to bring to the attention of the person the revocation of the order; and
 - (b) if the person to whom the order relates is 14 to 17 years of age—to bring to the attention of a parent or guardian of the person the revocation of the order.
- (4) A revocation of a temporary exclusion order under subsection (1) takes effect when the Minister revokes the order.
- (5) A temporary exclusion order in relation to a person is taken to be revoked if a return permit is issued to the person. The revocation takes effect immediately after the return permit is issued.
- (6) This section does not prevent the making of another temporary exclusion order in relation to the same person.

12 Application to revoke a temporary exclusion order

- (1) An application for revocation of a temporary exclusion order may be made orally or in writing to:
- (a) the Minister; or
 - (b) the Department.
- (2) The Minister may, in writing, authorise any person (whether in or outside Australia) to receive applications on behalf of the Minister or Department for the purposes of subsection (1).
- (3) The application must include:
- (a) the following information about the person to whom the temporary exclusion order relates:
 - (i) the person's full name;
 - (ii) the person's date and place of birth;
 - (iii) the person's contact details; and
 - (b) a statement specifying the reasons why the person seeks to have the temporary exclusion order revoked.

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- (4) However, if the person making the application does not have information required by subsection (3), the person must explain why in the application.
- (5) If the application is made on behalf of someone else, the person making the application must provide the following in the application:
 - (a) the person's full name;
 - (b) the person's contact details;
 - (c) the person's relationship to the person to whom the application relates;
 - (d) a statement that the person to whom the application relates has consented to the person making the application on their behalf.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

13 Period for which a temporary exclusion order is in force

- (1) A temporary exclusion order in relation to a person comes into force:
 - (a) if subsection (2) does not apply—immediately after a reviewing authority makes a decision under section 14 that none of subparagraphs 14(4)(b)(i) to (iii) apply to the decision to make the temporary exclusion order; or
 - (b) if subsection (2) applies—immediately after the Minister makes the temporary exclusion order in relation to the person.

Note: If subsection (2) does not apply and a reviewing authority makes a decision under section 14 that one or more of subparagraphs 14(4)(b)(i) to (iii) apply to the decision to make the temporary exclusion order in relation to the person, the temporary exclusion order is taken never to have been made and so never comes into force.

- (2) This subsection applies if the Minister is satisfied that, because of urgent circumstances, it is necessary that a temporary exclusion order in relation to a person comes into force immediately after it is made.

- (3) A temporary exclusion order in relation to a person remains in force until the earlier of the following occurs:
- (a) the period specified for the purposes of paragraph 10(6)(d) ends;
 - (b) the order is revoked under section 11.

14 Reviewing authority must review the making of a temporary exclusion order

Referral of TEO decision

- (1) Immediately after making a temporary exclusion order in relation to a person, the Minister must refer the decision (the **TEO decision**) to make the order to a reviewing authority.
- (2) The referral must include:
- (a) a written statement of reasons for the TEO decision; and
 - (b) all of the material relating to the TEO decision that was before the Minister at the time the TEO decision was made.
- (3) Paragraph (2)(b) does not apply to material that, in the Minister's opinion, would be contrary to the public interest to disclose.

Review of TEO decision

- (4) The reviewing authority must, as soon as is reasonably practicable:
- (a) review the TEO decision; and
 - (b) decide whether, in the opinion of the reviewing authority, one or more of the following subparagraphs apply to the TEO decision:
 - (i) the making of the decision was an improper exercise of the power to make the decision;
 - (ii) the decision was induced or affected by fraud;
 - (iii) if the temporary exclusion order was made on the basis of paragraph 10(2)(a)—there was no material before the Minister from which the Minister could form the state of mind required by that paragraph.

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- (5) For the purposes of subparagraph (4)(b)(i), the making of the decision is an *improper exercise of the power to make the decision* if:
- (a) the Minister took an irrelevant consideration into account; or
 - (b) the Minister failed to take a relevant consideration into account; or
 - (c) the decision was made for a purpose other than a purpose for which the power to make the decision was conferred; or
 - (d) the decision was made in bad faith; or
 - (e) the decision was made at the direction or behest of another person; or
 - (f) the decision was made in accordance with a rule or policy without regard to the merits of the particular case; or
 - (g) the decision was so unreasonable that no reasonable person could have made it; or
 - (h) the decision was made in such a way that the result of the decision is uncertain; or
 - (i) the decision was otherwise an abuse of the power to make the decision.
- (6) The reviewing authority must conduct a review of a TEO decision:
- (a) in the absence of the person (the *affected person*) to whom the temporary exclusion order relates; and
 - (b) without the affected person having been notified of the review; and
 - (c) without the affected person having been given an opportunity to make any representations to the reviewing authority.

Effect of reviewing authority decision

- (7) If, in the opinion of the reviewing authority, one or more of subparagraphs (4)(b)(i) to (iii) apply to the TEO decision:
- (a) the TEO decision is taken never to have been made; and
 - (b) if the person to whom the TEO decision relates has been notified of the making of the order—the Minister must cause such steps to be taken as are, in the opinion of the Minister, reasonable and practicable:

- (i) to bring to the attention of the person the reviewing authority's decision; and
- (ii) if the person is 14 to 17 years of age—to bring to the attention of a parent or guardian of the person the reviewing authority's decision.

Note:

If:

- (a) the reviewing authority decides that none of subparagraphs (4)(b)(i) to (iii) apply to the decision to make a temporary exclusion order; and
- (b) the order has not already come into force under paragraph 13(1)(b);

the temporary exclusion order comes into force immediately after the reviewing authority's decision is made (see paragraph 13(1)(a)).

- (8) If:
 - (a) a return permit has been issued to a person in relation to whom a temporary exclusion order applies; and
 - (b) the order is taken never to have been made because of the operation of paragraph (7)(a);the return permit is taken never to have been issued.

TEO decision material must be returned to the Minister

- (9) As soon as reasonably practicable after completing a review of a TEO decision, the reviewing authority must return the material referred to in paragraph (2)(b) to the Minister.

Further temporary exclusion orders may be made

- (10) Nothing in this section prevents the making of another temporary exclusion order in relation to the same person.

Division 2—Return permits

15 Issuing a return permit

When a return permit must be issued

- (1) If a temporary exclusion order is in force in relation to a person, the Minister must issue a permit (a **return permit**) under this subsection to the person:
 - (a) on application by, or on behalf of, the person; or
 - (b) if the person is to be, or is being, deported or extradited to Australia.

Note: See section 18 for how an application for a return permit can be made.

When a return permit may be issued

- (2) If a temporary exclusion order is in force in relation to a person, the Minister may issue a permit (a **return permit**) under this subsection to the person if the Minister considers it is appropriate to do so.

Time for issuing a return permit

- (3) The return permit must be issued:
 - (a) if the person applied for the permit under paragraph (1)(a)—within a reasonable period after the Minister received the application; or
 - (b) if the person is to be, or is being, deported or extradited to Australia—within a reasonable period after the Minister becomes aware of that fact; or
 - (c) if the Minister decides, under subsection (2), to issue a return permit to the person—within a reasonable period after the Minister makes the decision.

Form and contents of permit

- (4) A return permit must:
 - (a) be in writing; and

- (b) specify the name of the person to whom the permit relates; and
- (c) specify the day the permit comes into force and the period it remains in force, which must not end more than 12 months after the person enters Australia; and
- (d) specify the conditions (if any) imposed on the permit; and
- (e) if one or more conditions are imposed on the permit—specify, for each condition, the period during which the condition is in force, which must not end after the permit ceases to be in force; and
- (f) set out the effect of the following sections:
 - (i) sections 17 and 18 (about varying and revoking a return permit);
 - (ii) section 20 (offence for failing to comply with conditions of permit);
 - (iii) section 22 (offence for providing false or misleading information or documents); and
- (g) state that the person may have review rights in relation to the decision to issue the permit.

Return permit to be served personally

- (5) The Minister must cause a copy of the return permit to be served personally:
 - (a) on the person to whom it relates; and
 - (b) if the person to whom the permit relates is 14 to 17 years of age—on a parent or guardian of the person.
- (6) The Minister must comply with paragraph (5)(b) only if it is reasonably practicable to do so.

16 Conditions on a return permit

- (1) The Minister may impose one or more conditions mentioned in either or both of subsections (9) and (10) on a return permit.
- (2) A condition may be imposed at the time the return permit is issued, or at a later time.

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Requirements relating to imposing conditions

- (3) Before the Minister imposes a condition mentioned in subsection (9) or (10) on a return permit, the Minister must be satisfied that the imposition of the condition and (if more than one condition is imposed) the conditions taken together are reasonably necessary, and reasonably appropriate and adapted, for the purpose of one or more of the following:
 - (a) preventing a terrorist act;
 - (b) preventing training from being provided to, received from or participated in with a listed terrorist organisation;
 - (c) preventing the provision of support for, or the facilitation of, a terrorist act;
 - (d) preventing the provision of support or resources to an organisation that would help the organisation engage in an activity described in paragraph (a) of the definition of **terrorist organisation** in subsection 102.1(1) of the *Criminal Code*.
- (4) Before the Minister imposes a condition mentioned in subsection (9) or (10) on a return permit, the Minister must have regard to the impact of imposing the condition (including the impact of all of the conditions that will be imposed on the permit taken together if the condition were imposed) on the person's personal circumstances, particularly the impact on any dependants of the person who are aged under 18 years.
- (5) If the person to whom the return permit relates is 14 to 17 years of age, the Minister must have regard to the following matters before the Minister imposes a condition mentioned in subsection (9) or (10) on the permit:
 - (a) the protection of the community as the paramount consideration;
 - (b) the best interests of the person as a primary consideration.
- (6) In determining what is in the best interests of a person for the purposes of paragraph (5)(b), the Minister must take into account the following matters:
 - (a) the age, maturity, sex and background (including lifestyle, culture and traditions) of the person;

- (b) the physical and mental health of the person;
 - (c) the benefit to the person of having a meaningful relationship with his or her family and friends;
 - (d) the right of the person to receive an education;
 - (e) the right of the person to practise his or her religion;
 - (f) any other matter the Minister considers relevant.
- (7) The Minister must take into account the matters in subsection (6):
- (a) only to the extent that the matters are known to the Minister; and
 - (b) only to the extent that the matters are relevant.
- (8) Before imposing a condition mentioned in subsection (9) on a return permit that would prevent a person from entering Australia for a period of time, the Minister must consider the following matters (to the extent known to the Minister):
- (a) whether the person has a lawful right to remain, or to enter and remain, in a country other than Australia during that period;
 - (b) if the person has no lawful right to remain, or to enter and remain, in a country other than Australia during that period—the likelihood of the person being detained, mistreated or harmed if the person cannot enter Australia until the end of that period.

Pre-entry conditions

- (9) The conditions in this subsection are as follows:
- (a) that the person must not enter Australia during a specified period, which must end no later than the earlier of:
 - (i) the end of the period reasonably necessary to assess the risk posed by the entry of the person to Australia and to make appropriate arrangements for that entry; and
 - (ii) 12 months after the permit is issued to the person;
 - (b) that the person must enter Australia within a specified period, which must not end more than 3 months after the permit is issued to the person;

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- (c) that the person must enter Australia on a specified date, which must not be later than 3 months after the permit is issued to the person;
- (d) that the person enter Australia in a specified manner.

Post-entry conditions

- (10) The conditions in this subsection are as follows:
 - (a) that the person notify a specified person or body of the person's principal place of residence in Australia;
 - (b) that the person notify a specified person or body of any change to the person's principal place of residence in Australia within 24 hours of the change occurring;
 - (c) that the person notify a specified person or body of the person's place of employment in Australia;
 - (d) that the person notify a specified person or body of any change to the person's place of employment in Australia within 24 hours of the change occurring;
 - (e) that the person notify a specified person or body of the person's place of education in Australia;
 - (f) that the person notify a specified person or body of any change to the person's place of education in Australia within 24 hours of the change occurring;
 - (g) that the person notify a specified person or body of any contact with specified individuals (whether within or outside Australia) within 24 hours of the contact occurring;
 - (h) that the person notify a specified person or body, within a specified period, if the person intends to enter, or enters, a State or Territory that is not the State or Territory in which the person's principal place of residence is located;
 - (i) that the person notify a specified person or body, within a specified period, if the person intends to leave, or leaves, Australia;
 - (j) that, if the person accesses or uses, or intends to access or use, specified forms of telecommunication or other technology in Australia, the person do either or both of the following within a specified period of the access or use, or intended access or use, occurring:

- (i) notify a specified person or body of the use or access, or intended use or access;
 - (ii) provide a specified person or body with sufficient information to enable the specific telecommunications service, account or device to be identified;
 - (k) that the person notify a specified person or body, within a specified period, if the person intends to apply for an Australian travel document;
 - (l) if the person has an Australian travel document—that the person must surrender the document to a specified person or body;
 - (m) that the person is not permitted to apply for an Australian travel document;
 - (n) that the person is not permitted to obtain an Australian travel document.
- (11) If a condition is imposed that requires the person to notify a specified person or body of a particular matter, the return permit may specify either or both of the following:
- (a) the manner in which the person or body is to be notified;
 - (b) any documents or information that must be provided to the person or body to substantiate the relevant matter.

17 Varying and revoking a return permit

- (1) The Minister may:
- (a) vary a return permit to do one or more of the following:
 - (i) vary the period during which the permit is in force, which must not end more than 12 months after the person enters Australia;
 - (ii) remove a condition imposed on the permit;
 - (iii) impose a new condition under section 16 on the permit;or
 - (b) revoke a return permit.
- (2) The Minister may vary or revoke a return permit under subsection (1):
- (a) on the Minister's own initiative; or

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(b) on application by, or on behalf of, the person to whom the return permit relates.

Note: See section 18 for how an application to vary or revoke a return permit can be made.

- (3) A variation or revocation of a return permit takes effect when the Minister varies or revokes the permit.
- (4) If the Minister varies a return permit to vary the period during which the permit is in force or to impose a new condition on the permit, the Minister must cause a copy of the return permit as varied to be served personally:
- (a) on the person to whom it relates; and
 - (b) if the person to whom the permit relates is 14 to 17 years of age—on a parent or guardian of the person.
- (5) The Minister must comply with paragraph (4)(b) only if it is reasonably practicable to do so.
- (6) If the Minister revokes a return permit, or a condition on a return permit, the Minister must, as soon as practicable after revoking the permit or the condition, cause such steps to be taken as are, in the opinion of the Minister, reasonable and practicable:
- (a) to bring to the attention of the person the revocation of the permit or condition; and
 - (b) if the person to whom the permit relates is 14 to 17 years of age—to bring to the attention of a parent or guardian of the person the revocation of the permit or condition.

18 Applications in relation to a return permit

- (1) An application for a return permit, or for a variation or revocation of a return permit, may be made orally or in writing to:
- (a) the Minister; or
 - (b) the Department.
- (2) The Minister may, in writing, authorise any person (whether in or outside Australia) to receive applications on behalf of the Minister or Department for the purposes of subsection (1).

- (3) If the person to whom the application relates is located outside Australia at the time the application is made, the application must include the following information:
- (a) the person's full name;
 - (b) the person's date and place of birth;
 - (c) the person's contact details;
 - (d) if the application is for the issue of a return permit—the following information in relation to each child (if any) of the person:
 - (i) whether the child is deceased or alive;
 - (ii) the full name of the child;
 - (iii) the date and place of birth of the child;
 - (iv) if the child is alive—the location of the child.
- (4) If the person to whom the application relates is in Australia at the time the application is made, the application must include the following information:
- (a) the person's full name;
 - (b) the person's date and place of birth;
 - (c) the person's current residential address in Australia;
 - (d) the person's contact details.
- (5) However, if the person making the application does not have information required by subsection (3) or (4), the person must explain why in the application.
- (6) If the application is for a variation of a return permit, the application must be accompanied by a statement that specifies:
- (a) the variation requested to be made; and
 - (b) the reasons why the person to whom the application relates seeks to have the permit varied in the manner requested.
- (7) If the application is for a revocation of a return permit, the application must be accompanied by a statement that specifies the reasons why the person to whom the application relates seeks to have the permit revoked.

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- (8) If the application is made on behalf of someone else, the person making the application must provide the following in the application:
- (a) the person's full name;
 - (b) the person's contact details;
 - (c) the person's relationship to the person to whom the application relates;
 - (d) a statement that the person to whom the application relates has consented to the person making the application on their behalf.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

19 Period for which a return permit is in force

A return permit:

- (a) comes into force on the day specified for the purposes of paragraph 15(4)(c); and
- (b) remains in force until the earliest of the following occurs:
 - (i) the period specified for the purposes of paragraph 15(4)(c) ends;
 - (ii) if the period is varied under subparagraph 17(1)(a)(i)—the end of that period as varied;
 - (iii) the permit is revoked under paragraph 17(1)(b).

20 Consequences for failing to comply with return permit conditions

- (1) A person commits an offence if:
- (a) a return permit is in force in relation to the person; and
 - (b) a condition mentioned in subsection 16(9) or (10) is imposed on the return permit; and
 - (c) the person fails to comply with the condition.

Penalty: Imprisonment for 2 years.

- (2) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1) of this section.

21 Permitting use of a vessel or aircraft by person in contravention of return permit conditions

- (1) A person commits an offence if:
- (a) the person is:
 - (i) an owner, charterer, lessee, operator, agent or master of a vessel; or
 - (ii) an owner, charterer, lessee, operator or pilot in charge of an aircraft; and
 - (b) the person permits the vessel or aircraft to be used to convey another person (the *second person*) to Australia; and
 - (c) the person does so knowing that the second person is entering Australia in contravention of a condition imposed on a return permit that is in force in relation to the second person.

Penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply if the second person is being deported or extradited to Australia.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (3) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1) of this section.

22 Consequences for providing false or misleading information or documents

- (1) A person commits an offence if:
- (a) the person gives information or produces a document to a person or body; and
 - (b) the person does so in response to a condition imposed on a return permit given to the person; and
 - (c) the person does so knowing that the information or document is false or misleading.

Penalty: Imprisonment for 2 years.

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

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Part 3—Other matters

23 Reviewing authority

Appointment

- (1) The Attorney-General may, in writing, appoint as a reviewing authority:
 - (a) a former Justice of the High Court; or
 - (b) a former judge or justice of a court created by the Parliament; or
 - (c) a former judge of the Supreme Court of a State or Territory; or
 - (d) a person who:
 - (i) holds an appointment to the Administrative Appeals Tribunal as Deputy President or senior member (of any level); and
 - (ii) is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or a Territory; and
 - (iii) has been enrolled for at least 5 years.
- (2) A person who is currently a judge or justice of any court is not eligible for appointment under subsection (1).
- (3) A person's appointment under subsection (1) ceases to have effect if:
 - (a) the person ceases to be a person whom the Attorney-General could appoint under that subsection; or
 - (b) the Attorney-General, in writing, revokes the appointment.
- (4) The Attorney-General must not appoint a person as a reviewing authority unless:
 - (a) the person has, by writing, consented to being appointed; and
 - (b) the consent is in force.

Section 24

Powers conferred personally

- (5) A power conferred on a reviewing authority by this Act is conferred on the reviewing authority:
- (a) in a personal capacity; and
 - (b) if the reviewing authority is a member of the Administrative Appeals Tribunal—not as a member of the Tribunal.

Powers need not be accepted

- (6) The reviewing authority need not accept the power conferred.

Protection and immunity

- (7) A reviewing authority has, in relation to performing functions or exercising powers under this Act, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

24 Protection of information provided to a reviewing authority

- (1) A person commits an offence if:
- (a) the person is, or has been, a reviewing authority; and
 - (b) the person obtains information under subsection 14(2); and
 - (c) the person discloses the information.

Penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply if the disclosure of the information is for the purposes of giving effect to this Act.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (3) For the purposes of subsection (2) (and without limiting that subsection), if the disclosure of the information is in civil proceedings for judicial review of a decision made under this Act, then the disclosure is for the purposes of giving effect to this Act.

25 Delegation

- (1) The Minister may, in writing, delegate all or any of the Minister's functions or powers under this Act to:
- (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.

Note 1: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

Note 2: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) Subsection (1) does not apply to the Minister's functions or powers under the following provisions:
- (a) subsection 10(1) (making a temporary exclusion order);
 - (b) subsection 11(1) (revoking a temporary exclusion order);
 - (c) subsection 15(1) (mandatory issue of a return permit);
 - (d) subsection 15(2) (discretion to issue a return permit);
 - (e) subsection 16(1) (imposing conditions on a return permit);
 - (f) subsection 17(1) (varying or revoking a return permit).
- (3) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Minister.

26 Exclusion of procedural fairness

The Minister is not required to observe any requirements of procedural fairness in exercising a power or performing a function under this Act.

27 The *Administrative Decisions (Judicial Review) Act 1977* does not apply to certain decisions under this Act

The *Administrative Decisions (Judicial Review) Act 1977* does not apply to decisions made under this Act.

Section 28

28 Interaction with the *Australian Security Intelligence Organisation Act 1979*

- (1) Neither a temporary exclusion order nor a return permit constitutes prescribed administrative action for the purposes of the *Australian Security Intelligence Organisation Act 1979*.
- (2) This section is enacted for the avoidance of doubt.

29 Interaction with the *Australian Passports Act 2005*

- (1) If a temporary exclusion order specifies one or more of the following:
 - (a) that the person must surrender an Australian travel document to a specified person or body;
 - (b) that the person is not permitted to apply for an Australian travel document;
 - (c) that the person is not permitted to obtain an Australian travel document;the person is taken, for the purposes of section 12 of the *Australian Passports Act 2005*, to be prevented from travelling internationally.
- (2) If a condition mentioned in paragraph 16(10)(l), (m) or (n) is imposed on a return permit, the person in relation to whom the permit applies is taken, for the purposes of section 12 of the *Australian Passports Act 2005*, to be prevented from travelling internationally while the condition is in force.
- (3) This section is enacted for the avoidance of doubt.

30 Severability

If section 14 is not a valid law of the Commonwealth:

- (a) it is Parliament's intention that this Act operate as if that section had never been enacted; and
- (b) this Act applies as if subsections 13(1) and (2) were omitted and replaced with the following:

“(1) A temporary exclusion order in relation to a person comes into force immediately after the Minister makes the temporary exclusion order in relation to the person.”

31 Annual report on operation of Act

- (1) The Minister must, as soon as practicable after the end of each financial year, cause to be prepared a report about the operation of this Act, during that year.
- (2) The report must include information about the following matters in relation to the financial year:
 - (a) the number of temporary exclusion orders made;
 - (b) the number of temporary exclusion orders revoked;
 - (c) the number of temporary exclusion orders taken never to 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.
- (3) Despite subsection (2), if the Minister is satisfied that disclosure of information mentioned in that subsection is likely to prejudice national security:
 - (a) the information must not be included in the report; and
 - (b) the information must instead be provided to the Parliamentary Joint Committee on Intelligence and Security.

Section 31

- (4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives it.

*[Minister's second reading speech made in—
House of Representatives on 4 July 2019
Senate on 24 July 2019]*

(119/19)
