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)	**State** Crimes Acts/Criminal Codes (ie *NSW Crimes Act 1900)*. • Theft • Common assault • Sexual assault • Affray • Destroying/damaging property • Escaping lawful custody • Resisting/hindering police in execution of duty • Arson	**Bare State Powers:** • **Arrest** (**'reasonable suspicion'** based) [e.g. s128 WA *Criminal Investigation Act 2006* (CI Act WA) or s99 NSW *Law Enforcement (Powers and Responsibilities') Act 2002* (LEPR NSW)] o **Part 1C** [*Crimes Act 1914*] to **interview.**[1] • **Entry –** authorised as a result of being Cth officers safeguarding Cth interests on Cth property + state power of entry. *See also Migration Act.* • **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]. *See also Migration Act* • **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]	**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): • **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 *ie fire* [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]. *See also Migration Act* • **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]	**Theft** under s94 NSW Crimes Act 1900: • AFP cannot use CA 1914 s3W power of arrest but can 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	*Commonwealth Places (Application of Laws) Act 1970* (COPAL Act) applies local State laws to Commonwealth Places State criminal offences are **'applied'** offences and **become** Commonwealth offences.[3]

[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	Commonwealth *Crimes Act 1914* and *Criminal Code Act 1995* • Theft of Cth property • Destroying/damaging Cth property • Causing harm to Cth public official • Resisting Cth Official	**All Cth Powers:** • **Entry –** authorised as a result of being Cth officers safeguarding Cth interests on Cth property. *See also Migration Act* • **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]	**All Cth Powers to investigate Cth offence:** • **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)	**Causing harm to a Cth public official** (ie AFP member) under s147.1 *Criminal Code Act 1995:* • AFP can respond/investigate using usual Crimes Act/Criminal Code powers *because* the offence is a Cth offence • State Police must use Cth powers to respond to/investigate Cth offence	Commonwealth offences and powers apply in unmodified form: • 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)
	Migration Act 1958 ('the MA') • Escape (s197A) • Manufacture, possession, use or distribution of a weapon (s197B)	**Migration Act Powers:** • **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) ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	**Migration Act powers:** • **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) ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	**Possession of a weapon** under s197B *Migration Act 1958:* • 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	State Police and AFP granted the **same** powers under the MA to investigate **MA offences:** • 'Officer' defined as a member of AFP or of police force of a State • 'Authorised officer' authorised in writing by Minister
	Public Order (Protection of Persons and Property) Act 1971 (POPPP Act) • 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	• **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] ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	• **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] ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	Offence of **assembly involving violence or apprehension of violence** under s6 POPPP Act • 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	POPPP Act applies in Premises **occupied** by the Commonwealth or by a public authority under the Commonwealth (ie DIAC) **('Cth premises')**

[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	**State** Crimes Acts/Criminal Codes (ie *NSW Crimes Act 1900)*. • Theft • Common assault • Sexual assault • Affray • Destroying/damaging property • Escaping lawful custody • Resisting/hindering police in execution of duty • Arson	**All Cth Powers:** • **Entry –** authorised as a result of being Cth officers safeguarding Cth interests on Cth property. *See also Migration Act* • **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'**[6] including: • **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]	**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): • **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 *ie fire* [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]. *See also Migration Act* • **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]	Detainee sets fire to bed in APOD. **Property assists** in Cth's administration of APOD, therefore conduct affects interests of the Cth. • 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	State offences and powers apply in unmodified form. S3AA *Crimes Act 1914* and s4AA AFP Act provides **State offences with a federal aspect** able to be investigated by Commonwealth.[7] This includes any State offence: • sufficiently connected to a Cth offence • affecting interests 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	Commonwealth *Crimes Act 1914* and *Criminal Code Act 1995* • Theft of Cth property • Destroying/damaging Cth property • Causing harm to Cth public official • Resisting Cth Official	**All Cth Powers:** • **Entry –** authorised as a result of being Cth officers safeguarding Cth interests on Cth property. *See also Migration Act* • **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'**[8] including: • **Frisk Search** ('reasonable suspicion') and **seizure** of unlawful items [s68 CI Act WA and 21 LEPR NSW]	**Cth Powers to investigate Cth offence:** • **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)	Detainee **destroys/damages Cth property** at APOD (ie AFP car) under s29 CA 1914 • AFP can respond/investigate using usual Cth powers *because* 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	Commonwealth offences and powers apply in unmodified form: • 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)
	Migration Act 1958 ('the MA') • Escape (s197A) • Manufacture, possession, use or distribution of a weapon (s197B)	**Powers under the MA:** • **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) ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	**Powers under the MA:** • **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) ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	**Possession of a weapon** under s197B *Migration Act 1958:* • 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	State Police and AFP granted the **same** powers under the MA to investigate **MA offences:** • 'Officer' defined as a member of AFP or of police force of a State • 'Authorised officer' authorised in writing by Minister
	Public Order (Protection of Persons and Property) Act 1971 (POPPP Act) • 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	• **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] ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	• **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] ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	Offence of **assembly involving violence or apprehension of violence** under s6 POPPP Act • 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	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))

[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	**Northern Territory *Criminal Code Act 1983*** ('Criminal Code NT') • 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	**All** Police Powers under relevant NT Legislation (ie all powers available to NT Police in *Police Administration Act* 'PAA'): • **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)] *See also Migration Act* • **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]	**All** Police Powers under relevant NT Legislation (ie all powers available to NT Police in *Police Administration Act* 'PAA'): • **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)] *See also Migration Act* • **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]	**Arson** under s239 Criminal Code NT (unlawfully setting fire to a building) • 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)]	Territory offences and powers apply in unmodified form. AFP have powers in respect of Territory offences by virtue of section 9(1)(bc) of the *Australian Federal Police Act 1979* when performing functions in the Northern Territory

QUICK REFERENCE GUIDE

External Consult

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	Commonwealth *Crimes Act 1914* and *Criminal Code Act 1995* • Theft of Cth property • Destroying/damaging Cth property • Causing harm to Cth public official • Resisting Cth Official	**All Cth Powers:** • **Entry –** authorised as a result of being Cth officers safeguarding Cth interests on Cth property. *See also Migration Act* • **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* Bare Territory Powers** including: • **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)]	**Cth Powers to investigate Cth offence:** • **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)	Detainee **destroys/damages Cth property** at APOD (ie AFP car) under s29 CA 1914 • AFP can respond/investigate using usual Cth powers *because* the offence is a Cth offence • Territory Police must use Cth powers to respond/investigate to a Cth offence • **Nb** if detainee destroyed **personal** property then NOT a Cth offence	Commonwealth offences and powers apply in unmodified form: • 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)
	Migration Act 1958 ('the MA') • Escape (s197A) • Manufacture, possession, use or distribution of a weapon (s197B)	**Powers under the MA:** • **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) ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	**Powers under the MA:** • **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) ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	**Possession of a weapon** under s197B *Migration Act 1958* • 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	Territory Police and AFP granted the **same** powers under the MA to investigate **MA offences:** • 'Officer' defined as a member of AFP or of police force of a Territory. • 'Authorised officer' authorised in writing by Minister
	Public Order (Protection of Persons and Property) Act 1971 (POPPP Act) • 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	• **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]. ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	• **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]. ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	Offence of **assembly involving violence or apprehension of violence** under s6 POPPP Act • 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.	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**)

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

QUICK REFERENCE GUIDE

External Consult

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)	*Criminal Code Act 1924*: • Stealing • Common assault • Indecent assault • Rape • Affray • Escaping lawful custody • Arson *Police Offences Act 1935* • Resisting/obstructing police officer in execution of duty • Assault/aggravated assault • Offences relating to property • Offences relating to computers	**All Cth Powers:** • **Entry –** authorised as a result of being Cth officers safeguarding Cth interests on Cth property + state power of entry. *See also Migration Act* • **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'**[11] including: • **Use of force –** to assist lawful arrest (s26 Crim Code) and prevent commission of crime involving injury to person/property (s39 Crime Code)	**A police officer** has the powers, privileges and duties of a constable at common law or under any other Act or law (s83 *Police Service Act 2003* (PSA)): • **Arrest ('belief on reasonable grounds')** - person committing crime, or has committed certain crimes (see Appendix A) [s27 *Criminal Code Act 1924*] [12] or offending against *Police Offences Act 1935* • **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 *Emergency Management Act 2006]* and/or consent of Cth (DIAC) • **Interview Time** – 'reasonable time' [s4 *Criminal Law (Detention and Interrogation) Act 1995* • **Search** and **Seizure** of items *only* as incident to power of lawful arrest, where items relevant to offence or would interfere with safety (*common law power)* • **Search Warrant** (suspicion on reasonable grounds) [s5(1) *Search Warrants Act 1997*] • **Use of force –** to assist lawful arrest (s26 Crim Code) and prevent commission of crime involving injury to person/property (s39 Crime Code)	**Indecent Assault** under s127 *Criminal Code Act 1924*: • 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.	*Commonwealth Places (Application of Laws) Act 1970* (COPAL Act) applies local State laws to Commonwealth Places. State criminal offences are **'applied'** offences and **become** Commonwealth offences.[13] NOTE no separate admin arrangement under COPAL excluding Cth officers from exercising Cth powers. All normal Cth powers available to AFP officers.

[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.

QUICK REFERENCE GUIDE

External Consult

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	Commonwealth *Crimes Act 1914* and *Criminal Code Act 1995* • Theft of Cth property • Destroying/damaging Cth property • Causing harm to Cth public official • Resisting Cth Official	**All Cth Powers:** • **Entry –** authorised as a result of being Cth officers safeguarding Cth interests on Cth property. *See also Migration Act* • **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'**[14] including: • **Use of force –** to assist lawful arrest (s26 Crim Code) and prevent commission of crime involving injury to person/property (s39 Crime Code)	**All Cth Powers to investigate Cth offence:** • **Entry –** Enforcement of Commonwealth law and/or consent of Cth (DIAC). *See also 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)	**Causing harm to a Cth public official** (ie AFP member) under s147.1 *Criminal Code Act 1995:* • AFP can respond/investigate using usual Crimes Act/Criminal Code powers *because* the offence is a Cth offence • State Police must use Cth powers to respond to/investigate Cth offence	Commonwealth offences and powers apply in unmodified form: • 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)
	Migration Act 1958 ('the MA') • Escape (s197A) • Manufacture, possession, use or distribution of a weapon (s197B)	**Migration Act Powers:** • **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) ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	**Migration Act powers:** • **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) ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	**Possession of a weapon** under s197B *Migration Act 1958:* • 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	State Police and AFP granted the **same** powers under the MA to investigate **MA offences:** • 'Officer' defined as a member of AFP or of police force of a State • 'Authorised officer' authorised in writing by Minister
	Public Order (Protection of Persons and Property) Act 1971 (POPPP Act) • 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	• **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] ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	• **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] ***and* all other Cth Powers** (eg *Crimes Act 1914* powers)	Offence of **assembly involving violence or apprehension of violence** under s6 POPPP Act • 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	POPPP Act applies in Premises **occupied** by the Commonwealth or by a public authority under the Commonwealth (ie DIAC) **('Cth premises')**

[14] Section 9 of AFP Act 1979
[15] Whether State police are 'authorised officers' is subject to confirmation with Immigration.