





# **National Security Legislation Amendment Act 2010**

**No. 127, 2010**

**An Act to amend the law relating to terrorism and  
national security, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **National Security Legislation Amendment Act 2010**

**No. 127, 2010**

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## **An Act to amend the law relating to terrorism and national security, and for other purposes**

*[Assented to 24 November 2010]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *National Security Legislation  
Amendment Act 2010*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	24 November 2010
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	25 November 2010
3. Schedule 1, Part 2	The 28th day after this Act receives the Royal Assent.	22 December 2010
4. Schedule 2, items 1 to 20	The day after this Act receives the Royal Assent.	25 November 2010
5. Schedule 2, item 21	The day after this Act receives the Royal Assent.  However, if item 6 of Schedule 1 to the <i>Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2010</i> commences before that day, the provision(s) do not commence at all.	25 November 2010
6. Schedule 2, items 22 to 24	The day after this Act receives the Royal Assent.	25 November 2010
7. Schedules 3 to 7	The day after this Act receives the Royal Assent.	25 November 2010
8. Schedule 8, items 1 to 16	The 28th day after this Act receives the Royal Assent.	22 December 2010
9. Schedule 8, item 17	At the same time as the provision(s) covered by table item 11.	
10. Schedule 8, items 18 to 102	The 28th day after this Act receives the Royal Assent.	22 December 2010
11. Schedule 8,	A single day to be fixed by Proclamation.	

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
item 103	However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
12. Schedule 8, items 104 to 106	The 28th day after this Act receives the Royal Assent.	22 December 2010
13. Schedule 8, item 107	At the same time as the provision(s) covered by table item 11.	
14. Schedule 8, items 108 to 110	The 28th day after this Act receives the Royal Assent.	22 December 2010
15. Schedule 9	The day after this Act receives the Royal Assent.	25 November 2010
16. Schedule 10	The later of: (a) the day after this Act receives the Royal Assent; and (b) the commencement of the <i>Parliamentary Joint Committee on Law Enforcement Act 2010</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	25 November 2010 (paragraphs (a) and (b) are the same day)

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 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Treason and urging violence**

### **Part 1—Amendments commencing on the day after Royal Assent**

#### ***Crimes Act 1914***

##### **1 Subparagraph 24F(2)(b)(ii)**

Omit “paragraph 80.1(1)(e)”, substitute “paragraph 80.1AA(1)(b)”.

##### **2 Part IIA (heading)**

Repeal the heading, substitute:

### **Part IIA—Protection of public and other services**

##### **3 Sections 30A to 30H and 30R**

Repeal the sections.

#### ***Criminal Code Act 1995***

##### **4 Part 5.1 of the *Criminal Code* (heading)**

Repeal the heading, substitute:

### **Part 5.1—Treason and urging violence**

##### **5 Division 80 of the *Criminal Code* (heading)**

Repeal the heading, substitute:

### **Division 80—Treason and urging violence**

##### **6 Before section 80.1A of the *Criminal Code***

Insert:

#### **Subdivision A—Preliminary**

##### **7 Before section 80.1 of the *Criminal Code***

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Insert:

**Subdivision B—Treason**

**8 Subsection 80.1(1) of the *Criminal Code***

Omit “, called treason.”.

**9 Paragraphs 80.1(1)(e) and (f) of the *Criminal Code***

Repeal the paragraphs.

**10 Paragraph 80.1(1)(g) of the *Criminal Code***

Omit “Commonwealth; or”, substitute “Commonwealth.”.

**11 Paragraph 80.1(1)(h) of the *Criminal Code***

Repeal the paragraph.

**12 Subsections 80.1(1A) and (1B) of the *Criminal Code***

Repeal the subsections.

**13 Paragraphs 80.1(2)(a) and (b) of the *Criminal Code***

Omit “treason”, substitute “an offence against this Subdivision (other than this subsection)”.

**14 Subsection 80.1(5) of the *Criminal Code***

Repeal the subsection.

**15 After section 80.1 of the *Criminal Code***

Insert:

**80.1AA Treason—materially assisting enemies etc.**

*Assisting enemies at war with the Commonwealth*

- (1) A person commits an offence if:
- (a) the Commonwealth is at war with an enemy (whether or not the existence of a state of war has been declared); and
  - (b) the enemy is specified, by Proclamation made for the purpose of this paragraph, to be an enemy at war with the Commonwealth; and

**Schedule 1** Treason and urging violence

**Part 1** Amendments commencing on the day after Royal Assent

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- (c) the person engages in conduct; and
- (d) the person intends that the conduct will materially assist the enemy to engage in war with the Commonwealth; and
- (e) the conduct assists the enemy to engage in war with the Commonwealth; and
- (f) when the person engages in the conduct, the person:
  - (i) is an Australian citizen; or
  - (ii) is a resident of Australia; or
  - (iii) has voluntarily put himself or herself under the protection of the Commonwealth; or
  - (iv) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Note: If a body corporate is convicted of an offence against subsection (1), subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 10,000 penalty units.

- (2) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a Proclamation made for the purpose of paragraph (1)(b) of this section may be expressed to take effect from a day:
  - (a) before the day on which the Proclamation is registered under the *Legislative Instruments Act 2003*; but
  - (b) not before the day on which the Proclamation is made.
- (3) The fault element for paragraph (1)(f) is intention.

Note: For intention, see subsection 5.2(2).

*Assisting countries etc. engaged in armed hostilities against the ADF*

- (4) A person commits an offence if:
    - (a) a country or organisation is engaged in armed hostilities against the Australian Defence Force; and
    - (b) the person engages in conduct; and
    - (c) the person intends that the conduct will materially assist the country or organisation to engage in armed hostilities against the Australian Defence Force; and
    - (d) the conduct assists the country or organisation to engage in armed hostilities against the Australian Defence Force; and
    - (e) when the person engages in the conduct, the person:
-

- (i) is an Australian citizen; or
- (ii) is a resident of Australia; or
- (iii) has voluntarily put himself or herself under the protection of the Commonwealth; or
- (iv) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Note: If a body corporate is convicted of an offence against subsection (4), subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 10,000 penalty units.

- (5) The fault element for paragraph (4)(e) is intention.

Note: For intention, see subsection 5.2(2).

*Humanitarian aid*

- (6) Subsections (1) and (4) do not apply to engagement in conduct by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3).

Note 2: There is a defence in section 80.3 for acts done in good faith.

## **16 Saving—Proclamations**

A Proclamation in force for the purposes of paragraph 80.1(1)(e) of the *Criminal Code* just before the commencement of this item has effect, from that commencement, as if it had been made for the purposes of paragraph 80.1AA(1)(b) of that Code, as inserted by this Schedule.

## **17 Before section 80.2 of the *Criminal Code***

Insert:

## **Subdivision C—Urging violence**

## **18 Subsection 80.2(1) of the *Criminal Code***

Repeal the subsection, substitute:

**Schedule 1** Treason and urging violence

**Part 1** Amendments commencing on the day after Royal Assent

---

*Urging the overthrow of the Constitution or Government by force or violence*

- (1) A person (the **first person**) commits an offence if:
- (a) the first person intentionally urges another person to overthrow by force or violence:
    - (i) the Constitution; or
    - (ii) the Government of the Commonwealth, of a State or of a Territory; or
    - (iii) the lawful authority of the Government of the Commonwealth; and
  - (b) the first person does so intending that force or violence will occur.

Penalty: Imprisonment for 7 years.

Note: For intention, see section 5.2.

Note: The heading to section 80.2 of the *Criminal Code* is replaced by the heading “**Urging violence against the Constitution etc.**”.

**19 Subsection 80.2(2) of the *Criminal Code***

Omit “first-mentioned”, substitute “first”.

**20 Subsection 80.2(3) of the *Criminal Code***

Repeal the subsection, substitute:

*Urging interference in Parliamentary elections or constitutional referenda by force or violence*

- (3) A person (the **first person**) commits an offence if:
- (a) the first person intentionally urges another person to interfere, by force or violence, with lawful processes for:
    - (i) an election of a member or members of a House of the Parliament; or
    - (ii) a referendum; and
  - (b) the first person does so intending that force or violence will occur.

Penalty: Imprisonment for 7 years.

Note: For intention, see section 5.2.

**21 Subsection 80.2(4) of the *Criminal Code***

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Omit “that the first-mentioned”, substitute “, or for a referendum, that the first”.

**22 Subsection 80.2(6) of the *Criminal Code***

Omit “first-mentioned”, substitute “first”.

**23 At the end of subsection 80.2(6) of the *Criminal Code***

Add:

Note: There is a defence in section 80.3 for acts done in good faith.

**24 Subsections 80.2(7) to (9) of the *Criminal Code***

Repeal the subsections.

**25 Before section 80.3 of the *Criminal Code***

Insert:

**Subdivision D—Common provisions**

**26 Subsection 80.3(1) of the *Criminal Code***

Omit “Sections 80.1 and 80.2”, substitute “Subdivisions B and C”.

**27 Subparagraph 80.3(2)(b)(ii) of the *Criminal Code***

Omit “paragraph 80.1(1)(e)”, substitute “paragraph 80.1AA(1)(b)”.

**28 At the end of section 80.3 of the *Criminal Code***

Add:

- (3) Without limiting subsection (2), in considering a defence under subsection (1) in respect of an offence against Subdivision C, the Court may have regard to any relevant matter, including whether the acts were done:
- (a) in the development, performance, exhibition or distribution of an artistic work; or
  - (b) in the course of any statement, publication, discussion or debate made or held for any genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
  - (c) in the dissemination of news or current affairs.

## **29 Application**

The reference in subsection 80.3(3) of the *Criminal Code*, as added by this Schedule, to an offence against Subdivision C of Division 80 of that Code includes a reference to an offence against section 80.2 of that Code as in force before the commencement of this item.

## **30 Section 80.5 of the *Criminal Code***

Repeal the section.

## **31 Application**

The amendment of the *Criminal Code* made by item 30 of this Schedule applies in relation to offences committed after the commencement of this item.

## **32 Dictionary in the *Criminal Code***

Insert:

*referendum* has the same meaning as in the *Referendum (Machinery Provisions) Act 1984*.

## **Part 2—Amendments commencing 28 days after Royal Assent**

### *Criminal Code Act 1995*

#### **33 Subsection 80.2(5) of the *Criminal Code***

Repeal the subsection.

#### **34 Subsection 80.2(6) of the *Criminal Code***

Repeal the subsection (not including the note).

#### **35 At the end of Subdivision C of Division 80 of the *Criminal Code***

Add:

#### **80.2A Urging violence against groups**

##### *Offences*

(1) A person (the *first person*) commits an offence if:

- (a) the first person intentionally urges another person, or a group, to use force or violence against a group (the *targeted group*); and
- (b) the first person does so intending that force or violence will occur; and
- (c) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion; and
- (d) the use of the force or violence would threaten the peace, order and good government of the Commonwealth.

Penalty: Imprisonment for 7 years.

Note: For intention, see section 5.2.

(2) A person (the *first person*) commits an offence if:

- (a) the first person intentionally urges another person, or a group, to use force or violence against a group (the *targeted group*); and

**Schedule 1** Treason and urging violence

**Part 2** Amendments commencing 28 days after Royal Assent

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(b) the first person does so intending that force or violence will occur; and

(c) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion.

Penalty: Imprisonment for 5 years.

Note: For intention, see section 5.2.

(3) The fault element for paragraphs (1)(c) and (2)(c) is recklessness.

Note: For recklessness, see section 5.4.

*Alternative verdict*

(4) Subsection (5) applies if, in a prosecution for an offence (the **prosecuted offence**) against subsection (1), the trier of fact:

(a) is not satisfied that the defendant is guilty of the offence; but

(b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the **alternative offence**) against subsection (2).

(5) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Note: There is a defence in section 80.3 for acts done in good faith.

**80.2B Urging violence against members of groups**

*Offences*

(1) A person (the **first person**) commits an offence if:

(a) the first person intentionally urges another person, or a group, to use force or violence against a person (the **targeted person**); and

(b) the first person does so intending that force or violence will occur; and

(c) the first person does so because of his or her belief that the targeted person is a member of a group (the **targeted group**); and

(d) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion; and

- (e) the use of the force or violence would threaten the peace, order and good government of the Commonwealth.

Penalty: Imprisonment for 7 years.

Note: For intention, see section 5.2.

- (2) A person (the **first person**) commits an offence if:
  - (a) the first person intentionally urges another person, or a group, to use force or violence against a person (the **targeted person**); and
  - (b) the first person does so intending that force or violence will occur; and
  - (c) the first person does so because of his or her belief that the targeted person is a member of a group (the **targeted group**); and
  - (d) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion.

Penalty: Imprisonment for 5 years.

Note: For intention, see section 5.2.

- (3) For the purposes of paragraphs (1)(c) and (2)(c), it is immaterial whether the targeted person actually is a member of the targeted group.
  - (4) The fault element for paragraphs (1)(d) and (2)(d) is recklessness.
- Note: For recklessness, see section 5.4.

*Alternative verdict*

- (5) Subsection (6) applies if, in a prosecution for an offence (the **prosecuted offence**) against subsection (1), the trier of fact:
  - (a) is not satisfied that the defendant is guilty of the offence; but
  - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the **alternative offence**) against subsection (2).
- (6) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Note: There is a defence in section 80.3 for acts done in good faith.

**36 Section 80.4 of the *Criminal Code***

Omit “Section”, substitute “(1) Subject to subsection (2), section”.

**37 At the end of section 80.4 of the *Criminal Code***

Add:

- (2) Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against subsection 80.2A(2) or 80.2B(2).

## **Schedule 2—Terrorism**

### **Part 1—Terrorism**

#### *Classification (Publications, Films and Computer Games) Act 1995*

##### **1 Paragraph 9A(2)(c)**

Before “risk”, insert “substantial”.

#### *Criminal Code Act 1995*

##### **2 Paragraph 102.1(1A)(c) of the *Criminal Code***

Before “risk”, insert “substantial”.

##### **3 Subsection 102.1(3) of the *Criminal Code***

Omit “second anniversary”, substitute “third anniversary”.

##### **4 Transitional—existing regulations specifying organisations**

The amendment of subsection 102.1(3) of the *Criminal Code* made by this Schedule:

- (a) applies to any regulation for the purposes of paragraph (b) of the definition of *terrorist organisation* in section 102.1 of the *Criminal Code* that was in force immediately before the commencement of this item; and
- (b) does not apply to such a regulation that had ceased to have effect before that commencement.

##### **5 Subsection 102.1A(1) of the *Criminal Code***

Omit “Committee on ASIO, ASIS and DSD”, substitute “Committee on Intelligence and Security”.

Note: The heading to section 102.1A of the *Criminal Code* is altered by omitting “Committee on ASIO, ASIS and DSD” and substituting “Committee on Intelligence and Security”.

##### **6 Subsection 102.1A(2) of the *Criminal Code***

Repeal the subsection.

## Part 2—Miscellaneous

### *Criminal Code Act 1995*

#### **7 At the end of section 100.5 of the *Criminal Code***

Add:

- (3) Despite subsections (1) and (2), sections 22A, 22B and 22C of the *Acts Interpretation Act 1901* apply to this Part.

#### **8 Subsection 102.1(1) of the *Criminal Code* (paragraph (a) of the definition of *close family member*)**

Omit “, de facto spouse or same-sex partner”, substitute “or de facto partner”.

#### **9 Subsection 102.1(1) of the *Criminal Code* (at the end of the definition of *close family member*)**

Add:

Note: See also subsection (19).

#### **10 At the end of section 102.1 of the *Criminal Code***

Add:

- (19) For the purposes of this Division, the close family members of a person are taken to include the following (without limitation):
- (a) a de facto partner of the person;
  - (b) someone who is the child of the person, or of whom the person is the child, because of the definition of *child* in the Dictionary;
  - (c) anyone else who would be a member of the person’s family if someone mentioned in paragraph (a) or (b) is taken to be a close family member of the person.

#### **11 Subsection 105.35(3) of the *Criminal Code* (paragraph (a) of the definition of *family member*)**

Omit “, de facto spouse or same-sex partner”, substitute “or de facto partner”.

**12 At the end of section 105.35 of the *Criminal Code***

Add:

- (4) For the purposes of this section, the family members of a person are taken to include the following (without limitation):
- (a) a de facto partner of the person;
  - (b) someone who is the child of the person, or of whom the person is the child, because of the definition of *child* in the Dictionary;
  - (c) anyone else who would be a member of the person's family if someone mentioned in paragraph (a) or (b) is taken to be a family member of the person.

**13 Subsections 272.3(2) and (3) of the *Criminal Code***

Repeal the subsections, substitute:

- (2) Without limiting who is a grandparent of a person for the purposes of this section, a person (the *first person*) is the *grandparent* of another person if the first person is a parent or step-parent of a parent or step-parent of the other person.

**14 Subsection 390.1(1) of the *Criminal Code* (definition of *child*)**

Repeal the definition.

**15 Subsection 390.1(1) of the *Criminal Code* (paragraph (c) of the definition of *close family member*)**

Omit "stepchild", substitute "step-child".

**16 Subsection 390.1(1) of the *Criminal Code* (definition of *de facto partner*)**

Repeal the definition.

**17 Subsection 390.1(1) of the *Criminal Code* (definition of *parent*)**

Repeal the definition.

**18 Subsection 390.1(1) of the *Criminal Code* (definition of *stepchild*)**

Repeal the definition.

**19 Subsection 390.1(1) of the *Criminal Code* (definition of *step-parent*)**

Repeal the definition.

**20 Dictionary in the *Criminal Code***

Insert:

*child*: without limiting who is a child of a person for the purposes of this Code, someone is the *child* of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

**21 Dictionary in the *Criminal Code***

Insert:

*de facto partner* has the meaning given by the *Acts Interpretation Act 1901*.

**22 Dictionary in the *Criminal Code***

Insert:

*parent*: without limiting who is a parent of a person for the purposes of this Code, someone is the *parent* of a person if the person is his or her child because of the definition of *child* in this Dictionary.

**23 Dictionary in the *Criminal Code***

Insert:

*step-child*: without limiting who is a step-child of a person for the purposes of this Code, someone who is a child of a de facto partner of the person is the *step-child* of the person, if he or she would be the person's step-child except that the person is not legally married to the partner.

**24 Dictionary in the *Criminal Code***

Insert:

*step-parent*: without limiting who is a step-parent of a person for the purposes of this Code, someone who is a de facto partner of a parent of the person is the *step-parent* of the person, if he or she

would be the person's step-parent except that he or she is not legally married to the person's parent.

## Schedule 3—Investigation of Commonwealth offences

### *Crimes Act 1914*

#### **1 Subsection 23B(1) (definition of *arrested*)**

Repeal the definition, substitute:

*arrested*: a person is arrested if:

- (a) the person is arrested for a Commonwealth offence; and
- (b) the person's arrest has not ceased under subsection (3) or (4);  
and
- (c) the person has not been released.

#### **2 Subsection 23B(1)**

Insert:

*authorising officer*, in relation to an investigating official, means:

- (a) if the investigating official is a member or special member of the Australian Federal Police—a person for the time being holding office or acting as:
  - (i) the Commissioner; or
  - (ii) a Deputy Commissioner; or
  - (iii) a member or special member of the Australian Federal Police who is of the rank of superintendent or higher; or
- (b) if the investigating official is a member of the police force of a State or Territory—a person for the time being holding office or acting as:
  - (i) the Commissioner or the person holding equivalent rank; or
  - (ii) an Assistant Commissioner or a person holding equivalent rank; or
  - (iii) a superintendent or a person holding equivalent rank; of the police force of that State or Territory.

#### **3 Subsection 23B(1) (definition of *investigation period*)**

Omit “or 23CA”, substitute “or 23DB”.

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**4 Subsection 23B(1)**

Insert:

*judicial officer*, in relation to a person who is arrested, means:

- (a) a magistrate; or
- (b) a justice of the peace; or
- (c) a person authorised to grant bail under the law of the State or Territory in which the person was arrested.

**5 Subsection 23B(1)**

Insert:

*serious Commonwealth offence* means a Commonwealth offence that is punishable by imprisonment for a period exceeding 12 months.

**6 Subsection 23B(1) (definition of *under arrest*)**

Repeal the definition, substitute:

*under arrest*: a person is under arrest if:

- (a) the person is arrested for a Commonwealth offence; and
- (b) the person's arrest has not ceased under subsection (3) or (4);  
and
- (c) the person has not been released.

**7 Subsection 23B(3)**

Omit all the words after "in respect of that offence by", substitute:

a judicial officer otherwise than under any of the following provisions of the *Service and Execution of Process Act 1992*:

- (a) paragraph 83(3)(b), (4)(b), (8)(a) or (8)(b);
- (b) subsection 83(12);
- (c) paragraph 83(14)(a);
- (d) subparagraph 84(4)(a)(ii) or (6)(a)(i).

**8 Before section 23C**

Insert:

### **Subdivision A—Non-terrorism offences**

Note: The heading to section 23C is replaced by the heading “**Period of investigation if arrested for a non-terrorism offence**”.

#### **9 At the end of subsection 23C(1)**

Add:

Note: A person would not be arrested for a Commonwealth offence if, for example, the person has been released under subsection 3W(2)—see the definition of *arrested* in subsection 23B(1).

#### **10 Subsections 23C(2) and (3)**

Repeal the subsections, substitute:

- (2) The person may, while arrested for the Commonwealth offence, be detained for the purpose of investigating either or both of the following:
  - (a) whether the person committed the offence;
  - (b) whether the person committed another Commonwealth offence that an investigating official reasonably suspects that the person has committed.
- (2A) Subsection (2) ceases to apply at the end of the investigation period, but that cessation does not affect any other power to detain the person.
- (3) If the person is not released within the investigation period, the person must be brought before a judicial officer within the investigation period or, if it is not practicable to do so within the investigation period, as soon as practicable after the end of the investigation period.

#### **11 Subsection 23C(4)**

Omit “section 23D”, substitute “section 23DA”.

#### **12 Paragraph 23C(6)(b)**

Omit “section 23CA”, substitute “section 23DB”.

#### **13 Subsection 23C(7)**

Repeal the subsection, substitute:

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- (7) In ascertaining any period of time for the purposes of subsection (4) or (6), disregard any reasonable time during which the questioning of the person is suspended, or delayed, for one or more of the following reasons:
- (a) to allow the person to be conveyed from the place at which the person is arrested to the nearest premises at which the investigating official has access to facilities for complying with this Part;
  - (b) to allow the person, or someone else on the person's behalf, to communicate with a legal practitioner, friend, relative, parent, guardian, interpreter or other person as provided by this Part;
  - (c) to allow such a legal practitioner, friend, relative, parent, guardian, interpreter or other person to arrive at the place where the questioning is to take place;
  - (d) to allow the person to receive medical attention;
  - (e) because of the person's intoxication;
  - (f) to allow for an identification parade to be arranged and conducted;
  - (g) to allow the making of an application under section 3ZQB or the carrying out of a prescribed procedure within the meaning of Division 4A of Part IAA;
  - (h) to allow the making and disposing of an application under section 23D, 23WU or 23XB;
  - (i) to allow a constable to inform the person of matters specified in section 23WJ;
  - (j) to allow the person to rest or recuperate;
  - (k) to allow a forensic procedure to be carried out on the person by order of a magistrate under Division 5 of Part ID;
  - (l) because section 23XGD applies and the time is to be disregarded in working out a period of time for the purposes of that section.
- (7A) To avoid doubt, subsection (7) does not prevent the person being questioned during a time covered by a paragraph of subsection (7), but if the person is questioned during such a time, the time is not to be disregarded.

Note: The following heading to subsection 23C(8) is inserted "*Evidentiary provision*".

## **14 Subsection 23C(9)**

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Repeal the subsection.

## **15 Sections 23CA to 23E**

Repeal the sections, substitute:

### **23D Application may be made for extension of investigation period**

- (1) If a person is arrested for a serious Commonwealth offence (other than a terrorism offence), an investigating official may, at or before the end of the investigation period, apply to a magistrate for an extension of the investigation period.
- (2) The application must be made before the magistrate, by telephone or in writing.
- (3) Subject to subsection (4), the application must include statements of all of the following:
  - (a) whether it appears to the investigating official that the person is under 18;
  - (b) whether it appears to the investigating official that the person is an Aboriginal person or a Torres Strait Islander;
  - (c) the outcome of any previous application under this section in relation to the person and the investigation period;
  - (d) the period (if any) by which the investigation period has been reduced under subsection 23C(6);
  - (e) the total amount of time (if any) that has been disregarded under subsection 23C(7) in ascertaining the investigation period under subsection 23C(4);
  - (f) the maximum amount of time by which the investigation period could be extended;
  - (g) the reasons why the investigating official believes the investigation period should be extended;
  - (h) the period by which the investigating official believes the investigation period should be extended.
- (4) Subsection (3) does not require any information to be included in the application if disclosure of that information is likely:
  - (a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or
  - (b) to be protected by public interest immunity; or

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- (c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or
  - (d) to put at risk the safety of the community, law enforcement officers or intelligence officers.
- (5) Before the application is considered by the magistrate, the investigating official:
- (a) must:
    - (i) if the application is to be made in writing—provide a copy of the application to the person, or to his or her legal representative; or
    - (ii) otherwise—inform the person, or his or her legal representative, of all matters or information in the application (other than information of a kind mentioned in subsection (4)); and
  - (b) must inform the person that he or she, or his or her legal representative, may make representations to the magistrate about the application.
- (6) If the application contains any information of a kind mentioned in subsection (4), the investigating official may remove it from any copy of the application that is provided to the person or to his or her legal representative.
- (7) The person, or his or her legal representative, may make representations to the magistrate about the application.

### **23DA Magistrate may extend investigation period**

- (1) This section applies if:
  - (a) a person is arrested for a serious Commonwealth offence (other than a terrorism offence); and
  - (b) an application has been made under subsection 23D(1) to a magistrate in respect of the person.

#### *Extension of investigation period*

- (2) Subject to subsection (3), the magistrate may extend the investigation period, by signed written instrument, if satisfied that:
  - (a) the offence is a serious Commonwealth offence (other than a terrorism offence); and

- (b) further detention of the person is necessary to preserve or obtain evidence or to complete the investigation into the offence or into another serious Commonwealth offence; and
  - (c) the investigation into the offence is being conducted properly and without delay; and
  - (d) the person, or his or her legal representative, has been given the opportunity to make representations about the application.
- (3) Subject to subsection (4), the instrument must set out:
- (a) the day and time when the extension was granted; and
  - (b) the reasons for granting the extension; and
  - (c) the terms of the extension.
- (4) Subsection (3) does not require any information to be included in the instrument if disclosure of that information is likely:
- (a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or
  - (b) to be protected by public interest immunity; or
  - (c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or
  - (d) to put at risk the safety of the community, law enforcement officers or intelligence officers.
- (5) The magistrate must:
- (a) give the investigating official a copy of the instrument as soon as practicable after signing it; and
  - (b) if the instrument was made as a result of an application made by telephone, telex, fax or other electronic means—inform the investigating official of the matters included in the instrument.
- Note: See section 23E.
- (6) The investigating official must:
- (a) as soon as practicable after receiving a copy of the instrument under paragraph (5)(a), give the person, or his or her legal representative, a copy of it; and
  - (b) if the instrument was made as a result of an application made by telephone, telex, fax or other electronic means—inform the person, or his or her legal representative, of the matters

included in the instrument as soon as practicable after being informed of them under paragraph (5)(b).

- (7) The investigation period may be extended for a period not exceeding 8 hours, and must not be extended more than once.

## **16 At the end of Division 2 of Part IC**

Add:

### **Subdivision B—Terrorism offences**

#### **23DB Period of investigation if arrested for a terrorism offence**

- (1) If a person is arrested for a terrorism offence, the following provisions apply.

Note: A person would not be arrested for a terrorism offence if, for example, the person has been released under subsection 3W(2)—see the definition of *arrested* in subsection 23B(1).

- (2) The person may, while arrested for the terrorism offence, be detained for the purpose of investigating either or both of the following:
- (a) whether the person committed the offence;
  - (b) whether the person committed another Commonwealth offence that an investigating official reasonably suspects that the person has committed.
- (3) Subsection (2) ceases to apply at the end of the investigation period, but that cessation does not affect any other power to detain the person.
- (4) If the person is not released within the investigation period, the person must be brought before a judicial officer within the investigation period or, if it is not practicable to do so within the investigation period, as soon as practicable after the end of the investigation period.
- (5) For the purposes of this section, but subject to subsections (7) and (9), the investigation period begins when the person is arrested, and ends at a later time that is reasonable, having regard to all the circumstances, but does not extend beyond:
- (a) if the person is or appears to be under 18, an Aboriginal person or a Torres Strait Islander—2 hours; or

- (b) in any other case—4 hours;  
after the arrest, unless the period is extended under section 23DF.
- (6) In ascertaining any period of time for the purposes of this section, regard shall be had to the number and complexity of matters being investigated.
- (7) If the person has been arrested more than once within any period of 48 hours, the investigation period for each arrest other than the first is reduced by so much of any of the following periods as occurred within that 48 hours:
  - (a) any earlier investigation period or periods under this section;
  - (b) any earlier investigation period or periods under section 23C.
- (8) However, in relation to each first arrest, disregard subsection (7) for any later arrest if:
  - (a) the later arrest is for a Commonwealth offence:
    - (i) that was committed after the end of the person's period of detention under this Part for the first arrest; or
    - (ii) that arose in different circumstances to those in which any Commonwealth offence to which the first arrest relates arose, and for which new evidence has been found since the first arrest; and
  - (b) the person's questioning associated with the later arrest does not relate to:
    - (i) a Commonwealth offence to which the first arrest relates; or
    - (ii) the circumstances in which such an offence was committed.
- (9) In ascertaining any period of time for the purposes of subsection (5) or (7), disregard any reasonable time during which the questioning of the person is suspended, or delayed, for one or more of the following reasons:
  - (a) to allow the person to be conveyed from the place at which the person is arrested to the nearest premises at which the investigating official has access to facilities for complying with this Part;
  - (b) to allow the person, or someone else on the person's behalf, to communicate with a legal practitioner, friend, relative,

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parent, guardian, interpreter or other person as provided by this Part;

- (c) to allow such a legal practitioner, friend, relative, parent, guardian, interpreter or other person to arrive at the place where the questioning is to take place;
  - (d) to allow the person to receive medical attention;
  - (e) because of the person's intoxication;
  - (f) to allow for an identification parade to be arranged and conducted;
  - (g) to allow the making of an application under section 3ZQB or the carrying out of a prescribed procedure within the meaning of Division 4A of Part IAA;
  - (h) to allow the making and disposing of an application under section 23DC, 23DE, 23WU or 23XB;
  - (i) to allow a constable to inform the person of matters specified in section 23WJ;
  - (j) to allow the person to rest or recuperate;
  - (k) to allow a forensic procedure to be carried out on the person by order of a magistrate under Division 5 of Part ID;
  - (l) because section 23XGD applies and the time is to be disregarded in working out a period of time for the purposes of that section;
  - (m) subject to subsection (11), because the time is within a period specified under section 23DD, so long as the suspension or delay in the questioning of the person is reasonable.
- (10) To avoid doubt:
- (a) subsection (9) does not prevent the person being questioned during a time covered by a paragraph of subsection (9), but if the person is questioned during such a time, the time is not to be disregarded; and
  - (b) a period specified under section 23DD is not extended by any time covered by a paragraph of subsection (9).

*Limit on time that may be disregarded under paragraph (9)(m)*

- (11) No more than 7 days may be disregarded under paragraph (9)(m) in relation to an arrest. However:
- (a) if the person has been arrested more than once within any period of 48 hours, the 7 day period for each arrest other than

- the first arrest is reduced by any period or periods specified under section 23DD in relation to any earlier arrest; and
- (b) subsection (8) applies as if the reference in that subsection to subsection (7) were a reference to this subsection.

*Evidentiary provision*

- (12) In any proceedings, the burden lies on the prosecution to prove that:
  - (a) the person was brought before a judicial officer as soon as practicable; or
  - (b) any particular time was covered by a provision of subsection (9).

**23DC Time during which suspension or delay of questioning may be disregarded—application**

- (1) This section applies if:
  - (a) a person is arrested for a terrorism offence; and
  - (b) an investigation is being conducted into whether the person committed that terrorism offence or another terrorism offence.

*Application for specification of period*

- (2) At or before the end of the investigation period, an investigating official (within the meaning of paragraph (a) or (b) of the definition of that expression) may apply, in writing, to a magistrate for a period to be specified for the purpose of paragraph 23DB(9)(m).
- (3) The application must not be made unless the application is authorised, in writing, by an authorising officer.
- (4) Subject to subsection (5), the application must include statements of all of the following:
  - (a) whether it appears to the investigating official that the person is under 18;
  - (b) whether it appears to the investigating official that the person is an Aboriginal person or a Torres Strait Islander;
  - (c) the outcome of any previous application under this section in relation to:

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- (i) the person and the arrest; and
  - (ii) if the person was arrested at any time during the period of 48 hours before the arrest—the person and the earlier arrest or arrests;
- (d) the total amount of time that has been disregarded under subsection 23DB(9) in ascertaining the investigation period in relation to:
- (i) the person and the arrest; and
  - (ii) if the person was arrested at any time during the period of 48 hours before the arrest—the person and the earlier arrest or arrests;
- (e) the reasons why the investigating official believes the period should be specified, which may, for example, be or include one or more of the following:
- (i) the need to collate and analyse information relevant to the investigation from sources other than the questioning of the person (including, for example, information obtained from a place outside Australia);
  - (ii) the need to allow authorities in or outside Australia (other than authorities in an organisation of which the investigating official is part) time to collect information relevant to the investigation on the request of the investigating official;
  - (iii) the fact that the investigating official has requested the collection of information relevant to the investigation from a place outside Australia that is in a time zone different from the investigating official's time zone;
  - (iv) the fact that translation is necessary to allow the investigating official to seek information from a place outside Australia and/or be provided with such information in a language that the official can readily understand;
- (f) the period that the investigating official believes should be specified.
- (5) Subsection (4) does not require any information to be included in the application if disclosure of that information is likely:
- (a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or

- (b) to be protected by public interest immunity; or
  - (c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or
  - (d) to put at risk the safety of the community, law enforcement officers or intelligence officers.
- (6) Before the application is considered by the magistrate, the investigating official must:
- (a) provide a copy of the application to the person or to his or her legal representative; and
  - (b) inform the person that he or she, or his or her legal representative, may make representations to the magistrate about the application.
- (7) If the application contains any information of a kind mentioned in subsection (5), the investigating official may remove it from the copy of the application that is provided to the person or to his or her legal representative.
- (8) The person, or his or her legal representative, may make representations to the magistrate about the application.

**23DD Time during which suspension or delay of questioning may be disregarded—time specified by magistrate**

- (1) This section applies if:
- (a) a person is arrested for a terrorism offence; and
  - (b) an application has been made under subsection 23DC(2) to a magistrate in respect of the person.

*Specification of period*

- (2) The magistrate may, by signed instrument, specify a period starting at the time the instrument is signed, if satisfied that:
- (a) it is appropriate to do so, having regard to:
    - (i) the application; and
    - (ii) the representations (if any) made by the person, or his or her legal representative, about the application; and
    - (iii) any other relevant matters; and
  - (b) the offence is a terrorism offence; and

- (c) detention of the person is necessary to preserve or obtain evidence or to complete the investigation into the offence or into another terrorism offence; and
- (d) the investigation into the offence is being conducted properly and without delay; and
- (e) the application has been authorised by an authorising officer; and
- (f) the person, or his or her legal representative, has been given the opportunity to make representations about the application.

*Instrument specifying period*

- (3) Subject to subsection (4), the instrument must:
  - (a) specify the period as a number (which may be less than one) of hours; and
  - (b) set out the day and time when it was signed; and
  - (c) set out the reasons for specifying the period.
- (4) Subsection (3) does not require any information to be included in the instrument if disclosure of that information is likely:
  - (a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or
  - (b) to be protected by public interest immunity; or
  - (c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or
  - (d) to put at risk the safety of the community, law enforcement officers or intelligence officers.
- (5) The magistrate must:
  - (a) give the investigating official a copy of the instrument as soon as practicable after signing it; and
  - (b) if the instrument was made as a result of an application made by telex, fax or other electronic means—inform the investigating official of the matters included in the instrument.

Note: See section 23E.

- (6) The investigating official must:

- (a) as soon as practicable after receiving a copy of the instrument under paragraph (5)(a), give the person, or his or her legal representative, a copy of it; and
- (b) if the instrument was made as a result of an application made by telex, fax or other electronic means—inform the person, or his or her legal representative, of the matters included in the instrument as soon as practicable after being informed of them under paragraph (5)(b).

**23DE Application may be made for extension of investigation period**

- (1) If a person is arrested for a terrorism offence, an investigating official (within the meaning of paragraph (a) or (b) of the definition of that expression) may, at or before the end of the investigation period, apply, in writing, to a magistrate for an extension of the investigation period.
- (2) The application must not be made unless the application is authorised, in writing, by an authorising officer.
- (3) Subject to subsection (4), the application must include statements of all of the following:
  - (a) whether it appears to the investigating official that the person is under 18;
  - (b) whether it appears to the investigating official that the person is an Aboriginal person or a Torres Strait Islander;
  - (c) the outcome of any previous application under this section in relation to the person and the investigation period;
  - (d) the period (if any) by which the investigation period has been reduced under subsection 23DB(7);
  - (e) the total amount of time (if any) that has been disregarded under subsection 23DB(9) in ascertaining the investigation period;
  - (f) the maximum amount of time by which the investigation period could be extended;
  - (g) the reasons why the investigating official believes the investigation period should be extended;
  - (h) the period by which the investigating official believes the investigation period should be extended.

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- (4) Subsection (3) does not require any information to be included in the application if disclosure of that information is likely:
- (a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or
  - (b) to be protected by public interest immunity; or
  - (c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or
  - (d) to put at risk the safety of the community, law enforcement officers or intelligence officers.
- (5) Before the application is considered by the magistrate, the investigating official must:
- (a) provide a copy of the application to the person or to his or her legal representative; and
  - (b) inform the person that he or she, or his or her legal representative, may make representations to the magistrate about the application.
- (6) If the application contains any information of a kind mentioned in subsection (4), the investigating official may remove it from the copy of the application that is provided to the person or to his or her legal representative.
- (7) The person, or his or her legal representative, may make representations to the magistrate about the application.

### **23DF Magistrate may extend investigation period**

- (1) This section applies if:
- (a) a person is arrested for a terrorism offence; and
  - (b) an application has been made under subsection 23DE(1) to a magistrate in respect of the person.

#### *Extension of investigation period*

- (2) Subject to subsection (3), the magistrate may extend the investigation period, by signed written instrument, if satisfied that:
- (a) the offence is a terrorism offence; and
  - (b) further detention of the person is necessary to:

- (i) preserve or obtain evidence related to the offence or to another terrorism offence; or
  - (ii) complete the investigation into the offence or into another terrorism offence; and
  - (c) the investigation into the offence is being conducted properly and without delay; and
  - (d) the application has been authorised by an authorising officer; and
  - (e) the person, or his or her legal representative, has been given the opportunity to make representations about the application.
- (3) Subject to subsection (4), the instrument must set out:
- (a) the day and time when the extension was granted; and
  - (b) the reasons for granting the extension; and
  - (c) the terms of the extension.
- (4) Subsection (3) does not require any information to be included in the instrument if disclosure of that information is likely:
- (a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or
  - (b) to be protected by public interest immunity; or
  - (c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or
  - (d) to put at risk the safety of the community, law enforcement officers or intelligence officers.
- (5) The magistrate must:
- (a) give the investigating official a copy of the instrument as soon as practicable after signing it; and
  - (b) if the instrument was made as a result of an application made by telex, fax or other electronic means—inform the investigating official of the matters included in the instrument.
- Note: See section 23E.
- (6) The investigating official must:
- (a) as soon as practicable after receiving a copy of the instrument under paragraph (5)(a), give the person, or his or her legal representative, a copy of it; and

- (b) if the instrument was made as a result of an application made by telex, fax or other electronic means—inform the person, or his or her legal representative, of the matters included in the instrument as soon as practicable after being informed of them under paragraph (5)(b).
- (7) The investigation period may be extended any number of times, but the total of the periods of extension cannot be more than 20 hours.

### **Subdivision C—Miscellaneous**

#### **23E Evidentiary provisions if application made by electronic means**

- (1) This section applies if a magistrate has, under paragraph 23DA(5)(b), 23DD(5)(b) or 23DF(5)(b), informed an investigating official of matters included in an instrument.
- (2) As soon as practicable after being informed of those matters, the investigating official must:
  - (a) complete a form of the instrument and write on it the name of the magistrate and the particulars given by him or her; and
  - (b) forward it to the magistrate.
- (3) If the form of the instrument completed by the investigating official does not, in all material respects, accord with the terms of the instrument signed by the magistrate, the instrument is taken to have had no effect.
- (4) In any proceedings, if the instrument signed by the magistrate is not produced in evidence, the burden lies on the prosecution to prove that the instrument was made.

#### **17 Paragraph 23XGD(2)(h)**

Omit “or 23CA(8)”, substitute “or 23DB(9)”.

#### **18 Application**

- (1) Subject to subitem (2), the amendments made by this Schedule apply in relation to a person who is arrested after the commencement of this item.
  - (2) If:
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- (a) a person has been arrested more than once within any period of 48 hours; and
- (b) the first of those arrests was made before the commencement of this item;

the amendments made by this Schedule do not apply in relation to the person for any later arrest that is made within that 48 hour period.

- (3) However, in relation to a first arrest, disregard subitem (2) for a later arrest if:
  - (a) the later arrest is for a Commonwealth offence:
    - (i) that was committed after the end of the person's period of detention under Part IC of the *Crimes Act 1914* for the first arrest; or
    - (ii) that arose in different circumstances to those in which any Commonwealth offence to which the first arrest relates arose, and for which new evidence has been found since the first arrest; and
  - (b) the person's questioning associated with the later arrest does not relate to:
    - (i) a Commonwealth offence to which the first arrest relates; or
    - (ii) the circumstances in which such an offence was committed.

- (4) In this item:  
***Commonwealth offence*** has the same meaning as in Part IC of the *Crimes Act 1914*.

## **Schedule 4—Powers to search premises in relation to terrorism offences**

### *Crimes Act 1914*

#### **1 Division 3A of Part IAA (heading)**

Repeal the heading, substitute:

#### **Division 3A—Powers in relation to terrorist acts and terrorism offences**

#### **2 Section 3UB**

Before “A police officer”, insert “(1)”.

#### **3 At the end of section 3UB**

Add:

(2) This section does not limit the operation of section 3UEA.

#### **4 After section 3UE**

Insert:

#### **3UEA Emergency entry to premises without warrant**

- (1) A police officer may enter premises in accordance with this section if the police officer suspects, on reasonable grounds, that:
  - (a) it is necessary to exercise a power under subsection (2) in order to prevent a thing that is on the premises from being used in connection with a terrorism offence; and
  - (b) it is necessary to exercise the power without the authority of a search warrant because there is a serious and imminent threat to a person’s life, health or safety.
- (2) The police officer may:
  - (a) search the premises for the thing; and
  - (b) seize the thing if he or she finds it there.

- (3) If, in the course of searching for the thing, the police officer finds another thing that the police officer suspects, on reasonable grounds, to be relevant to an indictable offence or a summary offence, the police officer may secure the premises pending the obtaining of a warrant under Part IAA in relation to the premises.
- (4) Premises must not be secured under subsection (3) for longer than is reasonably necessary to obtain the warrant.
- (5) In the course of searching for the thing, the police officer may also seize any other thing, or do anything to make the premises safe, if the police officer suspects, on reasonable grounds, that it is necessary to do so:
  - (a) in order to protect a person's life, health or safety; and
  - (b) without the authority of a search warrant because the circumstances are serious and urgent.
- (6) In exercising powers under this section:
  - (a) the police officer may use such assistance; and
  - (b) the police officer, or a person who is also a police officer and who is assisting the police officer, may use such force against persons and things; and
  - (c) a person (other than a police officer) who is authorised by the police officer to assist the police officer may use such force against things;as is necessary and reasonable in the circumstances.

*Notification*

- (7) If one or more police officers have entered premises in accordance with this section, a police officer must, within 24 hours after the entry:
  - (a) notify the occupier of the premises that the entry has taken place; or
  - (b) if it is not practicable so to notify the occupier—leave a written notice of the entry at the premises.

**5 Subsection 3UF(1)**

After “section 3UE”, insert “or 3UEA”.

## **Schedule 5—Re-entry of premises in emergency situation**

### ***Crimes Act 1914***

#### **1 Subsection 3C(1)**

Insert:

*emergency situation*, in relation to the execution of a warrant in relation to premises, means a situation that the executing officer or a constable assisting believes, on reasonable grounds, involves a serious and imminent threat to a person's life, health or safety that requires the executing officer and constables assisting to leave the premises.

#### **2 Subsections 3E(1) and (2)**

Omit "by information on oath", insert ", by information on oath or affirmation,".

#### **3 After paragraph 3J(2)(a)**

Insert:

- (aa) if there is an emergency situation, for not more than 12 hours or such longer period as allowed by an issuing officer under section 3JA; or

#### **4 After section 3J**

Insert:

#### **3JA Extension of time to re-enter premises in emergency situations**

(1) If:

- (a) a warrant in relation to premises is being executed; and
- (b) there is an emergency situation; and
- (c) the executing officer or a constable assisting believes on reasonable grounds that the executing officer and the constables assisting will not be able to return to the premises within the 12 hour period mentioned in paragraph 3J(2)(aa);

he or she may apply to an issuing officer for an extension of that period.

- (2) Before making the application, the executing officer or a constable assisting must, if it is practicable to do so, give notice to the occupier of the premises of his or her intention to apply for an extension.
- (3) If an application mentioned in subsection (1) has been made, an issuing officer may extend the period during which the executing officer and constables assisting may be away from the premises if:
  - (a) the issuing officer is satisfied, by information on oath or affirmation, that there are exceptional circumstances that justify the extension; and
  - (b) the extension would not result in the period ending after the expiry of the warrant.

**5 Subsection 3L(7)**

Omit “the issuing officer”, substitute “an issuing officer”.

## **Schedule 6—Amendments relating to bail**

### *Crimes Act 1914*

#### **1 After subsection 15AA(3)**

Insert:

- (3A) Despite any law of the Commonwealth, the Director of Public Prosecutions or the defendant may appeal against a decision of a bail authority:
- (a) to grant bail to a person charged with or convicted of an offence covered by subsection (2) on the basis that the bail authority is satisfied that exceptional circumstances exist; or
  - (b) to refuse to grant bail to a person charged with or convicted of an offence covered by subsection (2) on the basis that the bail authority is not satisfied that exceptional circumstances exist.
- (3B) An appeal under subsection (3A):
- (a) may be made to a court that would ordinarily have jurisdiction to hear and determine appeals (however described) from directions, orders or judgments of the bail authority referred to in subsection (3A), whether the jurisdiction is in respect of appeals relating to bail or appeals relating to other matters; and
  - (b) is to be made in accordance with the rules or procedures (if any) applicable under a law of the Commonwealth, a State or a Territory in relation to the exercise of such jurisdiction.
- (3C) If:
- (a) a bail authority decides to grant bail to a person charged with or convicted of an offence covered by subsection (2); and
  - (b) immediately after the decision is made, the Director of Public Prosecutions notifies the bail authority that he or she intends to appeal against the decision under subsection (3A);
- the decision to grant bail is stayed with effect from the time of the notification.
- (3D) A stay under subsection (3C) ends:

- (a) when a decision on the appeal is made; or
  - (b) when the Director of Public Prosecutions notifies:
    - (i) the bail authority; or
    - (ii) if an appeal has already been instituted in a court—the court;  
that he or she does not intend to proceed with the appeal; or
  - (c) 72 hours after the stay comes into effect;
- whichever occurs first.

## **2 Subsection 15AA(4)**

Omit “subsection (1)”, substitute “subsections (1), (3A), (3B), (3C) and (3D)”.

## **3 Subsection 15AA(4) (note)**

Omit “Subsection (1) indirectly affects laws of the States and Territories because it affects”, substitute “These provisions indirectly affect laws of the States and Territories because they affect”.

## **4 Application**

The amendments made by this Schedule apply on and after the commencement of this Schedule to:

- (a) a proceeding relating to bail initiated on or after that commencement; and
- (b) a proceeding relating to bail initiated before commencement, but only to the parts of the proceeding that occur after that commencement.

## **Schedule 7—Listings under the Charter of the United Nations Act 1945**

### *Charter of the United Nations Act 1945*

#### **1 Subsections 15(1) and (3)**

After “satisfied”, insert “on reasonable grounds”.

#### **2 After section 15**

Insert:

#### **15A Duration of listing**

- (1) A listing under section 15 ceases to have effect on:
  - (a) if no declaration under subsection (2) has been made in relation to the listing—the third anniversary of the day on which the listing took effect; or
  - (b) otherwise—the third anniversary of the making of the most recent declaration under subsection (2) in relation to the listing.
- (2) The Minister may declare, in writing, that a specified listing under section 15 continues to have effect.
- (3) The Minister must not:
  - (a) make a declaration under subsection (2) specifying the listing of a person or entity unless the Minister is satisfied on reasonable grounds of the matters prescribed for the purposes of subsection 15(2); or
  - (b) make a declaration under subsection (2) specifying the listing of an asset, or class of asset, unless the Minister is satisfied on reasonable grounds of the matters prescribed for the purposes of subsection 15(4).
- (4) The regulations may prescribe a form for a declaration under subsection (2).
- (5) A declaration made under subsection (2) is not a legislative instrument.

- (6) To avoid doubt, subsection (1) does not prevent:
- (a) the revocation, under section 16, of a listing; or
  - (b) the revocation of a listing by operation of section 19; or
  - (c) the making of a new listing that is the same in substance as another listing (whether the new listing is made or takes effect before or after the other listing ceases to have effect because of subsection (1)).

### **3 Before paragraph 19(3)(a)**

Insert:

- (aa) a listing ceasing to have effect under section 15A; or

### **4 Transitional—listings under section 15 of the *Charter of the United Nations Act 1945***

A listing that was made under subsection 15(1) or (3) of the *Charter of the United Nations Act 1945* and that was in force immediately before the commencement of this item has effect, after that commencement, as if:

- (a) it had been made under that subsection as amended by this Act; and
- (b) for the purposes only of section 15A of that Act, it had been made immediately after that commencement.

## **Schedule 8—Amendments relating to the disclosure of national security information in criminal and civil proceedings**

### **Part 1—Amendments**

#### *National Security Information (Criminal and Civil Proceedings) Act 2004*

##### **1 Subsection 6(1)**

After “defendant”, insert “, the defendant’s legal representative”.

##### **2 Subsection 6(2)**

Omit “take place after the notice is given”, substitute “occur after the notice is given (whether or not those parts began before that time)”.

##### **3 Paragraphs 6A(1)(b) and (2)(b)**

After “parties to the proceeding”, insert “, the legal representatives of the parties to the proceeding”.

##### **4 Paragraph 6A(2)(d)**

After “Divisions”, insert “1A, 1,”.

##### **5 Subparagraph 6A(2)(e)(ii)**

After “Divisions”, insert “1A, 1,”.

##### **6 Subsection 6A(5)**

Omit “take place after the notice is given”, substitute “occur after the notice is given (whether or not those parts began before that time)”.

##### **7 Section 7**

Insert:

*court official* means an individual who:

**Schedule 8** Amendments relating to the disclosure of national security information in criminal and civil proceedings

**Part 1** Amendments

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- (a) is employed or engaged by a court to perform services in the court in relation to a proceeding in the court; or
- (b) in relation to a federal criminal proceeding in a court—supervises the defendant in the court.

**8 Section 7**

Insert:

*national security information* means information:

- (a) that relates to national security; or
- (b) the disclosure of which may affect national security.

**9 Paragraph 13(2)(c)**

Omit “documents and reports of persons intended to be called by a party to give evidence”, substitute “documents or reports”.

**10 At the end of section 13**

Add:

- (3) To avoid doubt, a re-trial, and proceedings relating to the re-trial (including those mentioned in subsection (2)), are part of the same criminal proceeding as the trial.

**11 Section 14**

Repeal the section, substitute:

**14 Meaning of *federal criminal proceeding***

In this Act, *federal criminal proceeding* means a criminal proceeding in any court exercising federal jurisdiction, where the offence or any of the offences concerned are against a law of the Commonwealth.

**12 Subsection 15(1)**

Repeal the subsection, substitute:

- (1) In this Act, *defendant*, in relation to a federal criminal proceeding, means a person charged with the offence or offences concerned (even if the proceeding occurs after any conviction of the person).

**13 Paragraph 15A(2)(b)**

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Omit “documents and reports of persons intended to be called by a party to give evidence”, substitute “documents or reports”.

#### **14 At the end of section 15A**

Add:

- (3) To avoid doubt, a re-hearing, and proceedings relating to the re-hearing (including those mentioned in subsection (2)), are part of the same civil proceeding as the hearing.

#### **15 Paragraphs 16(aa), (ab), (ac), (ad) and (b)**

Repeal the paragraphs, substitute:

- (b) the person discloses the information in circumstances specified by the Attorney-General in a certificate or advice given under section 26, 28, 38F or 38H.

#### **16 Section 17**

Omit “national security information”, substitute “information”.

#### **17 Section 17**

Repeal the section, substitute:

#### **17 Meaning of *likely to prejudice national security***

- (1) A disclosure of information is *likely to prejudice national security* if there is a real, and not merely a remote, possibility that the disclosure will prejudice national security.
- (2) The contravention of a requirement is *likely to prejudice national security* if there is a real, and not merely a remote, possibility that the contravention will prejudice national security.

#### **18 After subsection 19(1)**

Insert:

- (1A) In addition to the powers of a court under this Act in a federal criminal proceeding, the court may make such orders as the court considers appropriate in relation to the disclosure, protection, storage, handling or destruction, in the proceeding, of national security information if:

**Schedule 8** Amendments relating to the disclosure of national security information in criminal and civil proceedings

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- (a) the court is satisfied that it is in the interest of national security to make such orders; and
- (b) the orders are not inconsistent with this Act or regulations made under this Act.

**19 After subsection 19(3)**

Insert:

- (3A) In addition to the powers of a court under this Act in a civil proceeding, the court may make such orders as the court considers appropriate in relation to the disclosure, protection, storage, handling or destruction, in the proceeding, of national security information if:
  - (a) the court is satisfied that it is in the interest of national security to make such orders; and
  - (b) the orders are not inconsistent with this Act or regulations made under this Act.

**20 Before Division 1 of Part 3**

Insert:

**Division 1A—Attorney-General etc. may attend and be heard at federal criminal proceedings**

**20A Attorney-General etc. may attend and be heard at federal criminal proceedings**

If, in a federal criminal proceeding, an issue arises relating to the disclosure, protection, storage, handling or destruction, in the proceeding, of national security information, then any or all of the following may attend and be heard at the proceeding:

- (a) the Attorney-General;
- (b) the Attorney-General's legal representative;
- (c) any other representative of the Attorney-General.

## **Division 1B—Court to consider hearing in camera etc.**

### **20B Court to consider hearing in camera etc.**

- (1) If, during a hearing in a federal criminal proceeding, an issue arises relating to the disclosure, protection, storage, handling or destruction, in the proceeding, of national security information, then before hearing the issue, the court must consider making an order under either or both of the following:
  - (a) subsection 19(1A);
  - (b) section 93.2 of the *Criminal Code*.
- (2) Subsection (1) does not apply if the issue is the subject of an order that is in force under section 22.

### **21 Subsection 21(1)**

Repeal the subsection, substitute:

- (1) At any time during a federal criminal proceeding, the Attorney-General, the Attorney-General's legal representative, the prosecutor, the defendant or the defendant's legal representative may apply to the court for the court to hold a hearing to consider issues relating to the disclosure, protection, storage, handling or destruction, in the proceeding, of national security information, including:
  - (a) the making of an arrangement of the kind mentioned in section 22; and
  - (b) the giving of a notice under section 24.
- (1A) As soon as possible after making the application, the applicant must notify each of the following that the application has been made:
  - (a) if the applicant is the Attorney-General or the Attorney-General's legal representative—the prosecutor, the defendant and the defendant's legal representative;
  - (b) if the applicant is the prosecutor—the Attorney-General, the defendant and the defendant's legal representative;
  - (c) if the applicant is the defendant or the defendant's legal representative—the Attorney-General and the prosecutor.

Note: The heading to section 21 is replaced by the heading "**National security information hearings**".

**22 Subsection 21(2)**

Omit “conference”, substitute “hearing”.

**23 Subsection 22(1)**

Repeal the subsection, substitute:

- (1) At any time during a federal criminal proceeding:
  - (a) the Attorney-General, on the Commonwealth’s behalf; and
  - (b) the prosecutor; and
  - (c) the defendant, or the defendant’s legal representative on the defendant’s behalf;may agree to an arrangement about the disclosure, protection, storage, handling or destruction, in the proceeding, of national security information.

Note: The heading to section 22 is altered by omitting “**relating to or affecting national security**” and substituting “**etc. of national security information**”.

**24 Paragraph 23(1)(a)**

Omit “information that is disclosed, or to be disclosed, to the court”, substitute “national security information that is disclosed, or to be disclosed.”.

Note: The heading to section 23 is altered by omitting “**certain**” and substituting “**national security**”.

**25 Subsections 23(2) and (3)**

Repeal the subsections (including the note), substitute:

- (2) This section does not apply to information that is the subject of an order that is in force under section 22.

**26 Subsection 24(1)**

Repeal the subsection, substitute:

- (1) If the prosecutor, the defendant or the defendant’s legal representative knows or believes that:
  - (a) he or she will disclose national security information in a federal criminal proceeding; or
  - (b) a person whom he or she intends to call as a witness in a federal criminal proceeding will disclose national security

information in giving evidence or by the person's mere presence; or

- (c) on his or her application, the court has issued a subpoena to, or made another order in relation to, another person who, because of that subpoena or order, is required (other than as a witness) to disclose national security information in a federal criminal proceeding;

then he or she must, as soon as practicable, give the Attorney-General notice in writing of that knowledge or belief.

Note 1: Failure to give notice as required by this subsection is an offence in certain circumstances: see section 42.

Note 2: Section 25 deals with the situation where the prosecutor, the defendant or the defendant's legal representative knows or believes that information that will be disclosed in a witness's answer is national security information.

*When not required to give notice*

- (1A) However, a person need not give notice about the disclosure of information under subsection (1) if:
- (a) another person has already given notice about the disclosure of the information under that subsection; or
  - (b) the disclosure of the information:
    - (i) is the subject of a certificate given to the person under section 26 and the certificate still has effect; or
    - (ii) is the subject of an order that is in force under section 22 or 31; or
  - (c) the disclosure of the information by the witness to be called:
    - (i) is the subject of a certificate given to the person under section 28 and the certificate still has effect; or
    - (ii) is the subject of an order that is in force under section 22 or 31; or
  - (d) the Attorney-General has given the person advice about the disclosure of the information under subsection 26(7) or 28(10).

Note: The heading to section 24 is replaced by the heading "**Notification of expected disclosure of national security information**".

## **27 Subsections 24(3) and (4)**

Repeal the subsections, substitute:

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**Schedule 8** Amendments relating to the disclosure of national security information in criminal and civil proceedings

**Part 1** Amendments

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*Informing the court etc. of an expected disclosure*

- (3) A person who gives notice under subsection (1) must also advise the following, in writing, that notice has been given to the Attorney-General:
- (a) if the person is the prosecutor:
    - (i) the court; and
    - (ii) the defendant; and
    - (iii) the defendant's legal representative; and
    - (iv) any other person mentioned in paragraph (1)(b) or (c); and
  - (b) if the person is the defendant or the defendant's legal representative:
    - (i) the court; and
    - (ii) the prosecutor; and
    - (iii) any other person mentioned in paragraph (1)(b) or (c).

Note: Failure to give advice as required by this subsection is an offence in certain circumstances: see section 42.

- (4) The advice must include a description of the information, unless the advice is being given by the defendant or the defendant's legal representative to the prosecutor.

Note: A contravention of this subsection is an offence in certain circumstances: see section 42.

*Adjournment to allow sufficient time for Attorney-General to act on the notice*

- (5) On receiving the advice, the court must adjourn so much of the proceeding as is necessary to ensure that the information is not disclosed. The court must continue the adjournment until the Attorney-General:
- (a) gives a copy of a certificate to the court under subsection 26(4) or 28(3); or
  - (b) gives advice to the court under subsection 26(7) or 28(10) (which applies if a decision is made not to give a certificate).

**28 Paragraph 25(1)(b)**

Repeal the paragraph, substitute:

- (b) the prosecutor, the defendant or the defendant's legal representative knows or believes that information that will be
-

disclosed in the witness's answer is national security  
information.

**29 Subsection 25(2)**

Omit "or defendant", substitute ", the defendant or the defendant's legal  
representative".

**30 After subsection 25(2)**

Insert:

- (2A) However, a person need not advise the court under subsection (2)  
about the disclosure of information if:
- (a) another person has already advised the court about the  
disclosure of the information under that subsection; or
  - (b) a notice has been given to the Attorney-General under  
subsection 24(1) about the disclosure of the information; or
  - (c) the disclosure of the information:
    - (i) is the subject of a certificate given to the person under  
section 26 and the certificate still has effect; or
    - (ii) is the subject of an order that is in force under  
section 22 or 31; or
  - (d) the Attorney-General has given the person advice about the  
disclosure of the information under subsection 26(7).

**31 Subsections 25(3) to (7)**

Repeal the subsections, substitute:

*Witness to give written answer*

- (3) If the court is advised under subsection (2) and the witness would,  
apart from this section, be required to answer the question, the  
court must order that the witness give the court a written answer to  
the question.
- (4) The court must show the written answer to the prosecutor and, if  
present, the Attorney-General, the Attorney-General's legal  
representative and any other representative of the  
Attorney-General.
- (5) If:

**Schedule 8** Amendments relating to the disclosure of national security information in criminal and civil proceedings

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- (a) under subsection (4), the Attorney-General's representative (other than the Attorney-General's legal representative) is shown the written answer; and
- (b) he or she knows or believes that, if the written answer were to be given in evidence in the proceeding, the information that would be disclosed in the witness's answer is national security information;

then he or she must advise the prosecutor of that knowledge or belief.

*Prosecutor must give notice to Attorney-General etc.*

- (6) If the prosecutor knows, believes, or is advised under subsection (5), that, if the written answer were to be given in evidence in the proceeding, the information that would be disclosed in the witness's answer is national security information, then the prosecutor must:
  - (a) advise the court of that knowledge, belief or advice; and
  - (b) as soon as practicable, give the Attorney-General notice in writing of that knowledge, belief or advice.

Note: Failure to advise the court or to notify the Attorney-General is an offence in certain circumstances: see section 42.

- (7) However, the prosecutor need not advise the court or give the Attorney-General notice about the written answer under subsection (6) if the information disclosed by the written answer:
  - (a) is the subject of a certificate or advice given to the prosecutor under section 26 and the certificate still has effect; or
  - (b) is the subject of an order that is in force under section 22 or 31.

*Adjournment to allow sufficient time for Attorney-General to act on the notice*

- (8) If the court is advised under subsection (6), it must adjourn so much of the proceeding as is necessary to ensure that the information is not disclosed. The court must continue the adjournment until the Attorney-General:
    - (a) gives a copy of a certificate to the court under subsection 26(4); or
    - (b) gives advice to the court under subsection 26(7) (which applies if a decision is made not to give a certificate).
-

**32 Subparagraph 26(1)(a)(i)**

Omit “or defendant knows or believes that the prosecutor or defendant or another person”, substitute “, the defendant or the defendant’s legal representative knows or believes that he or she, or another person,”.

**33 Subparagraph 26(1)(a)(ii)**

Omit “or defendant”, substitute “, the defendant, the defendant’s legal representative”.

**34 Subparagraph 26(1)(a)(iii)**

Omit “considers”, substitute “knows, believes or is advised”.

**35 Subsection 26(8)**

Repeal the subsection, substitute:

*Definition of potential discloser*

- (8) Each of the following persons is a *potential discloser* of the information in the proceeding:
- (a) in all cases—the prosecutor, the defendant and the defendant’s legal representative;
  - (b) if subparagraph (1)(a)(i) or (ii) applies and the disclosure is by a person other than the prosecutor, the defendant or the defendant’s legal representative—the other person;
  - (c) if subparagraph (1)(a)(iii) applies—the witness mentioned in that subparagraph.

**36 Subsections 27(1) and (2)**

Repeal the subsections, substitute:

*Consequences of certificate for pre-trial proceedings*

- (1) If, in a federal criminal proceeding, the Attorney-General gives a potential discloser a certificate under section 26 at any time during a part of the proceeding that occurs before the trial begins, then the certificate is conclusive evidence, during that part of the proceeding and any later part that occurs before the hearing mentioned in paragraph (3)(a) begins, that disclosure of the information in the proceeding is likely to prejudice national security.

**37 Subsection 27(3)**

Omit “If a proceeding is covered by paragraph 14(a) (about a proceeding involving a trial) and, under section 26, the Attorney-General gives a potential discloser a certificate”, substitute “If, in a federal criminal proceeding, the Attorney-General gives a potential discloser a certificate under section 26”.

**38 Paragraph 27(3)(b)**

Omit “24(4) or 25(7)”, substitute “24(5) or 25(8)”.

**39 Subparagraph 28(1)(a)(i)**

Repeal the subparagraph, substitute:

- (i) the Attorney-General is notified under section 24 that the prosecutor, the defendant or the defendant’s legal representative knows or believes that a person whom he or she intends to call as a witness in a federal criminal proceeding will disclose information by the person’s mere presence; or

**40 Subparagraph 28(1)(a)(ii)**

Omit “or defendant”, substitute “, the defendant or the defendant’s legal representative”.

**41 Subsection 28(2)**

Omit “or defendant” (wherever occurring), substitute “, the defendant or the defendant’s legal representative”.

**42 Subsection 28(5)**

Omit “If the proceeding is covered by paragraph 14(a) (about a proceeding involving a trial), the”, substitute “The”.

**43 Subsection 28(6)**

Repeal the subsection.

**44 Subsections 28(9) and (10)**

Omit “or defendant”, substitute “, the defendant or the defendant’s legal representative”.

**45 Subsection 29(1)**

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Omit “25(3),”.

**46 Paragraph 29(2)(f)**

Repeal the paragraph, substitute:

- (f) the Attorney-General, the Attorney-General’s legal representative and any other representative of the Attorney-General; and

**47 Subparagraph 29(5)(c)(iii)**

Omit “if section 30 applies—”.

**48 Subsection 29(6)**

Omit “, if section 30 applies,”.

**49 Subsection 29(7)**

Omit “national security information”, substitute “information”.

**50 Section 30**

Repeal the section.

**51 Paragraphs 31(6)(a) and (b)**

Omit “or defendant”, substitute “, the defendant or the defendant’s legal representative”.

**52 Paragraph 32(1)(e)**

Omit “if section 30 applies—”.

**53 Subsection 32(2)**

Omit “, if section 30 applies,”.

**54 Subsection 32(3)**

Omit “national security information”, substitute “information”.

**55 Subsection 37(1)**

Omit “, if the Attorney-General is an intervener under section 30,”.

**56 Before Division 1 of Part 3A**

Insert:

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**Division 1A—Attorney-General etc. may attend and be heard at civil proceedings**

**38AA Attorney-General etc. may attend and be heard at civil proceedings**

If, in a civil proceeding, an issue arises relating to the disclosure, protection, storage, handling or destruction, in the proceeding, of national security information, then any or all of the following may attend and be heard at the proceeding:

- (a) the Attorney-General;
- (b) the Attorney-General's legal representative;
- (c) any other representative of the Attorney-General.

**Division 1B—Court to consider hearing in camera etc.**

**38AB Court to consider hearing in camera etc.**

- (1) If, during a hearing in a civil proceeding, an issue arises relating to the disclosure, protection, storage, handling or destruction, in the proceeding, of national security information, then before hearing the issue, the court must consider making an order under either or both of the following:
  - (a) subsection 19(3A);
  - (b) section 93.2 of the *Criminal Code*.
- (2) Subsection (1) does not apply if the issue is the subject of an order that is in force under section 38B.

**57 Subsections 38A(1), (2) and (3)**

Repeal the subsections, substitute:

- (1) At any time during a civil proceeding, the Attorney General, the Attorney-General's legal representative, a party to the proceeding or a party's legal representative may apply to the court for the court to hold a hearing to consider issues relating to the disclosure, protection, storage, handling or destruction, in the proceeding, of national security information, including:
    - (a) the making of an arrangement of the kind mentioned in section 38B; and
-

- (b) the giving of a notice under section 38D.
- (2) As soon as possible after making the application, the applicant must notify each of the following that the application has been made:
- (a) if the applicant is the Attorney-General or the Attorney-General's legal representative—the parties and the parties' legal representatives;
  - (b) if the applicant is a party or a party's legal representative—the Attorney-General, the other parties and the other parties' legal representatives.

Note: The heading to section 38A is replaced by the heading “**National security information hearings**”.

### **58 Subsection 38A(4)**

Omit “conference”, substitute “hearing”.

### **59 Subsection 38B(1)**

Repeal the subsection, substitute:

- (1) At any time during a civil proceeding:
- (a) the Attorney-General, on the Commonwealth's behalf; and
  - (b) the parties to the proceeding, or their legal representatives on their behalf;
- may agree to an arrangement about the disclosure, protection, storage, handling or destruction, in the proceeding, of national security information.

Note: The heading to section 38B is altered by omitting “**relating to or affecting national security**” and substituting “**etc. of national security information**”.

### **60 Paragraph 38C(1)(a)**

Omit “information that is disclosed, or to be disclosed, to the court”, substitute “national security information that is disclosed, or to be disclosed,”.

Note: The heading to section 38C is altered by omitting “**certain**” and substituting “**national security**”.

### **61 Subsections 38C(2) and (3)**

Repeal the subsections (including the note), substitute:

- (2) This section does not apply to information that is the subject of an order that is in force under section 38B.

## **62 Subsection 38D(1)**

Repeal the subsection, substitute:

- (1) If a party, or the legal representative of a party, to a civil proceeding knows or believes that:
- (a) he or she will disclose national security information in the proceeding; or
  - (b) a person whom he or she intends to call as a witness in the proceeding will disclose national security information in giving evidence or by the person's mere presence; or
  - (c) on his or her application, the court has issued a subpoena to, or made another order in relation to, another person who, because of that subpoena or order, is required (other than as a witness) to disclose national security information in the proceeding;

then he or she must, as soon as practicable, give the Attorney-General notice in writing of that knowledge or belief.

Note 1: Failure to give notice as required by this section is an offence in certain circumstances: see section 46C.

Note 2: Section 38E deals with the situation where a party, or a party's legal representative, knows or believes that information that will be disclosed in a witness's answer is national security information.

Note: The heading to section 38D is replaced by the heading "**Notification of expected disclosure of national security information**".

## **63 Subsection 38D(2)**

Omit "Despite subsection (1), a party need not give the Attorney-General notice", substitute "However, a party or a party's legal representative need not give the Attorney-General notice about the disclosure of the information under subsection (1)".

## **64 Before paragraph 38D(2)(a)**

Insert:

- (aa) another person has already given notice about the disclosure of the information under that subsection; or

## **65 Subparagraphs 38D(2)(a)(i) and (b)(i)**

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After “party”, insert “or the legal representative”.

## **66 At the end of subsection 38D(2)**

Add:

- ; or (c) the Attorney-General has given the party or the legal representative advice about the disclosure of the information under subsection 38F(7) or 38H(9).

## **67 Subsections 38D(4) and (5)**

Repeal the subsections, substitute:

*Informing the court etc. of an expected disclosure*

- (4) A person who gives notice under subsection (1) must also advise, in writing:
  - (a) the court; and
  - (b) the other parties; and
  - (c) the other parties’ legal representatives; and
  - (d) any other person mentioned in paragraph (1)(b) or (c);that notice has been given to the Attorney-General. The advice must include a description of the information.

Note: Failure to give advice as required by this section is an offence in certain circumstances: see section 46C.

*Adjournment to allow sufficient time for Attorney-General to act on the notice*

- (5) On receiving the advice, the court must adjourn so much of the proceeding as is necessary to ensure that the information is not disclosed. The court must continue the adjournment until the Attorney-General:
  - (a) gives a copy of a certificate to the court under subsection 38F(5) or 38H(4); or
  - (b) gives advice to the court under subsection 38F(7) or 38H(9) (which applies if a decision is made not to give a certificate).

## **68 Paragraph 38E(1)(b)**

Repeal the paragraph, substitute:

- (b) a party, or the legal representative of a party, to the proceeding knows or believes that information that will be

disclosed in the witness's answer is national security information.

**69 Subsection 38E(2)**

After "party", insert "or legal representative".

**70 After subsection 38E(2)**

Insert:

- (2A) However, a person need not advise the court under subsection (2) about the disclosure of information if:
- (a) another person has already advised the court about the disclosure of the information under that subsection; or
  - (b) a notice has been given to the Attorney-General under subsection 38D(1) about the disclosure of the information; or
  - (c) the disclosure of the information:
    - (i) is the subject of a certificate given to the person under section 38F and the certificate still has effect; or
    - (ii) is the subject of an order that is in force under section 38B or 38L; or
  - (d) the Attorney-General has given the person advice about the disclosure of the information under subsection 38F(7).

**71 Subsection 38E(4)**

Omit "The court must adjourn the proceeding on receiving the written answer. However, the court need not adjourn the proceeding", substitute "On receiving the written answer, the court must adjourn so much of the proceeding as is necessary to ensure that the information is not disclosed. However, the court need not do so".

**72 Subsection 38E(5)**

Omit "adjourns the proceeding", substitute "adjourns a part of the proceeding under subsection (4)".

**73 Subsection 38E(6)**

Omit "of the proceeding".

**74 Subparagraph 38F(1)(a)(i)**

After "a party", insert ", or the legal representative of a party,".

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**75 Subparagraph 38F(1)(a)(ii)**

After “a party”, insert “, the legal representative of a party”.

**76 Subsection 38F(9)**

Repeal the subsection, substitute:

*Definition of potential discloser*

- (9) Each of the following persons is a *potential discloser* of the information in the proceeding:
- (a) in all cases—the parties and the parties’ legal representatives;
  - (b) if subparagraph (1)(a)(i) or (ii) applies and the disclosure is by a person other than a party or a party’s legal representative—the other person;
  - (c) if subparagraph (1)(a)(iii) applies—the witness mentioned in that subparagraph.

**77 Subparagraph 38H(1)(a)(i)**

Omit “to a civil proceeding knows or believes that a person whom the party”, substitute “, or the legal representative of a party, to a civil proceeding knows or believes that a person whom the party or legal representative”.

**78 Subparagraph 38H(1)(a)(ii)**

After “party”, insert “, or the legal representative of a party,”.

**79 Subsection 38H(2)**

Repeal the subsection, substitute:

*Attorney-General may give a certificate*

- (2) The Attorney-General may give a certificate to the relevant party or legal representative that states that he or she must not call the person as a witness in the proceeding.

**80 Subsection 38H(9)**

Omit all the words after “writing,”, substitute:

advise:

- (a) the relevant party or legal representative; and

(b) the court;  
of his or her decision.

**81 Paragraph 38I(2)(e)**

Repeal the paragraph, substitute:

(e) the Attorney-General, the Attorney-General's legal representative and any other representative of the Attorney-General; and

**82 Subsection 38I(7)**

Omit "national security information", substitute "information".

**83 Section 38K**

Repeal the section.

**84 Paragraphs 38L(6)(a) and (b)**

After "party", insert "or legal representative".

**85 Paragraph 38M(1)(d)**

Omit "if section 38K applies—".

**86 Subsection 38M(2)**

Omit "If section 38K applies, before", substitute "Before".

**87 Subsection 38M(3)**

Omit "national security information", substitute "information".

**88 Subsection 38R(1)**

Omit ", or if the Attorney-General is an intervener under section 38K,", substitute "or".

**89 After subsection 39(1)**

Insert:

(1A) When considering, for the purposes of subsection (1), whether a disclosure of the information would be likely to prejudice national security, the Secretary is to consider the nature of the information itself, and not the character of the person to whom it is to be disclosed.

**90 Subsection 39(2)**

Omit “by the Department”.

**91 Subsection 39(3)**

After “defendant”, insert “, or the defendant’s legal representative (on the defendant’s behalf)”.

**92 Paragraph 39(3)(a)**

Omit “by the Department”.

**93 Subparagraph 39(5)(b)(i)**

Omit “by the Department”.

**94 After subsection 39A(1)**

Insert:

(1A) When considering, for the purposes of subsection (1), whether a disclosure of the information would be likely to prejudice national security, the Secretary is to consider the nature of the information itself, and not the character of the person to whom it is to be disclosed.

**95 Subsection 39A(2)**

Omit “by the Department”.

**96 Subsection 39A(3)**

After “to the proceeding”, insert “, or the party’s legal representative (on the party’s behalf)”.

**97 Paragraphs 39A(3)(a) and (5)(d)**

Omit “by the Department”.

**98 Subparagraph 39A(6)(d)(i)**

Omit “by the Department”.

**99 Subsection 40(1)**

Repeal the subsection, substitute:

**Schedule 8** Amendments relating to the disclosure of national security information in criminal and civil proceedings

**Part 1** Amendments

---

*Disclosure where notice given to Attorney-General under subsection 24(1)*

- (1) A person commits an offence if:
- (a) the person is the prosecutor, the defendant or the defendant's legal representative in a federal criminal proceeding; and
  - (b) the person gives notice to the Attorney-General under subsection 24(1) about the disclosure of information in the proceeding; and
  - (c) section 41 does not apply; and
  - (d) after giving the notice, the person discloses the information (whether in the proceeding or otherwise) at any time before the Attorney-General gives the person a certificate under subsection 26(2) or (3) or advice under subsection 26(7) in relation to the disclosure of the information; and
  - (e) the disclosure does not take place in permitted circumstances; and
  - (f) the disclosure is likely to prejudice national security.

Penalty: Imprisonment for 2 years.

*Disclosure where advice given under subsection 24(3)*

- (1A) A person commits an offence if:
- (a) the person is advised under subsection 24(3) that a notice about the disclosure of information in a federal criminal proceeding has been given to the Attorney-General; and
  - (b) the advice includes a description of the information; and
  - (c) section 41 does not apply; and
  - (d) after being advised, the person discloses the information (whether in the proceeding or otherwise) at any time before the Attorney-General gives the person a certificate under subsection 26(2) or (3) or advice under subsection 26(7) in relation to the disclosure of the information; and
  - (e) the disclosure does not take place in permitted circumstances; and
  - (f) the disclosure is likely to prejudice national security.

Penalty: Imprisonment for 2 years.

**100 Paragraph 40(2)(a)**

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Omit “or believes”, substitute “, believes or is advised”.

### **101 Section 41**

Repeal the section, substitute:

#### **41 Offence to disclose information before Attorney-General gives criminal witness exclusion certificate etc. under section 28**

A person commits an offence if:

- (a) the person is the prosecutor, the defendant or the defendant’s legal representative in a federal criminal proceeding; and
- (b) the person notifies the Attorney-General under subsection 24(1) that he or she knows or believes that a person (the *second person*) whom he or she intends to call as a witness in a federal criminal proceeding will disclose information by the second person’s mere presence; and
- (c) after giving the notice, the person calls the second person as a witness in the proceeding at any time before the Attorney-General gives the person a certificate under subsection 28(2) or advice under subsection 28(10) in relation to the calling of the second person as a witness; and
- (d) the disclosure of the information by the mere presence of the second person is likely to prejudice national security.

Penalty: Imprisonment for 2 years.

### **102 Paragraph 42(a)**

Omit “or (3)”, substitute “, (3) or (4)”.

### **103 After section 45**

Insert:

#### **45A Offence to contravene regulations**

- (1) A person commits an offence if:
  - (a) regulations made under section 23 require the person to comply with a requirement relating to the storage, handling or destruction of national security information; and
  - (b) the person engages in conduct; and
  - (c) the conduct results in the requirement being contravened; and

**Schedule 8** Amendments relating to the disclosure of national security information in criminal and civil proceedings

**Part 1** Amendments

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- (d) the contravention of the requirement is likely to prejudice national security.

Penalty: 6 months imprisonment.

- (2) In this section:

*engage in conduct* means:

- (a) do an act; or  
(b) omit to perform an act.

**104 Subparagraph 46(c)(i)**

Omit “the Attorney-General’s Department has given the legal representative or person mentioned in subparagraph (a)(ii)”, substitute “the legal representative or person mentioned in subparagraph (a)(ii) has”.

**105 Subsection 46A(1)**

Repeal the subsection, substitute:

*Disclosure where notice given to Attorney-General under subsection 38D(1)*

- (1) A person commits an offence if:
- (a) the person is a party, or a legal representative of a party, to a civil proceeding; and
  - (b) the person gives notice to the Attorney-General under subsection 38D(1) about the disclosure of information in the proceeding; and
  - (c) section 46B does not apply; and
  - (d) after giving the notice, the person discloses the information (whether in the proceeding or otherwise) at any time before the Attorney-General gives the person a certificate under subsection 38F(2) or (3) or advice under subsection 38F(7) in relation to the disclosure of the information; and
  - (e) the disclosure does not take place in permitted circumstances; and
  - (f) the disclosure is likely to prejudice national security.

Penalty: Imprisonment for 2 years.

*Disclosure where advice given under subsection 38D(4)*

- (1A) A person commits an offence if:
- (a) the person is advised under subsection 38D(4) that a notice about the disclosure of information in a civil proceeding has been given to the Attorney-General; and
  - (b) the advice includes a description of the information; and
  - (c) section 46B does not apply; and
  - (d) after being advised, the person discloses the information (whether in the proceeding or otherwise) at any time before the Attorney-General gives the person a certificate under subsection 38F(2) or (3) or advice under subsection 38F(7) in relation to the disclosure of the information; and
  - (e) the disclosure does not take place in permitted circumstances; and
  - (f) the disclosure is likely to prejudice national security.

Penalty: Imprisonment for 2 years.

**106 Sections 46B and 46C**

Repeal the sections, substitute:

**46B Offence to disclose information before Attorney-General gives civil witness exclusion certificate etc. under section 38H**

A person commits an offence if:

- (a) the person is a party, or the legal representative of a party, to a civil proceeding; and
- (b) the person notifies the Attorney-General under subsection 38D(1) that he or she knows or believes that a person (the *second person*) whom he or she intends to call as a witness in the proceeding will disclose information by the second person's mere presence; and
- (c) after giving the notice, the person calls the second person as a witness in the proceeding at any time before the Attorney-General gives the person a certificate under subsection 38H(2) or advice under subsection 38H(9) in relation to the calling of the second person as a witness; and
- (d) the disclosure of the information by the mere presence of the second person is likely to prejudice national security.

Penalty: Imprisonment for 2 years.

**46C Offence to contravene requirement to notify Attorney-General etc. under sections 38D and 38E**

A person commits an offence if:

- (a) the person is a party, or the legal representative of a party, to a civil proceeding; and
- (b) the person contravenes subsection 38D(1), (3) or (4) or 38E(2); and
- (c) the disclosure of information mentioned in that subsection is likely to prejudice national security.

Penalty: Imprisonment for 2 years.

**107 After section 46F**

Insert:

**46FA Offence to contravene regulations**

(1) A person commits an offence if:

- (a) regulations made under section 38C require the person to comply with a requirement relating to the storage, handling or destruction of national security information; and
- (b) the person engages in conduct; and
- (c) the conduct results in the requirement being contravened; and
- (d) the contravention of the requirement is likely to prejudice national security.

Penalty: 6 months imprisonment.

(2) In this section:

*engage in conduct* means:

- (a) do an act; or
- (b) omit to perform an act.

**108 Subparagraph 46G(c)(i)**

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Omit “the Attorney-General’s Department has given the party to the proceeding, the legal representative or the person mentioned in subparagraph (a)(iii)”, substitute “the party to the proceeding, the legal representative or the person mentioned in subparagraph (a)(iii) has”.

## **Part 2—Application of amendments and saving**

### **109 Application of amendments**

#### *Notice given after commencement*

- (1) The amendments made by this Schedule (other than items 17, 103 and 107) apply on and after the commencement of this item to:
- (a) a federal criminal proceeding in relation to which a notice is given under section 6 of the *National Security Information (Criminal and Civil Proceedings) Act 2004* on or after that commencement; and
  - (b) a civil proceeding in relation to which a notice is given under section 6A of that Act on or after that commencement;

whether or not the proceeding begins before or after that commencement.

- (2) The amendments made by items 17, 103 and 107 of this Schedule apply on and after the commencement of those items to:
- (a) a federal criminal proceeding in relation to which a notice is given under section 6 of the *National Security Information (Criminal and Civil Proceedings) Act 2004* on or after that commencement; and
  - (b) a civil proceeding in relation to which a notice is given under section 6A of that Act on or after that commencement;

whether or not the proceeding begins before or after that commencement.

#### *Notice given before commencement*

- (3) The amendments made by this Schedule (other than items 17, 103 and 107) apply on and after the commencement of this item to:
- (a) a federal criminal proceeding in relation to which a notice was given under section 6 of the *National Security Information (Criminal and Civil Proceedings) Act 2004* before that commencement; and
  - (b) a civil proceeding in relation to which a notice was given under section 6A of that Act before that commencement;

but only to the parts of the proceeding that occur after that commencement (whether or not those parts began before that commencement).

- (4) The amendments made by items 17, 103 and 107 of this Schedule apply on and after the commencement of those items to:
- (a) a federal criminal proceeding in relation to which a notice was given under section 6 of the *National Security Information (Criminal and Civil Proceedings) Act 2004* before that commencement; and
  - (b) a civil proceeding in relation to which a notice was given under section 6A of that Act before that commencement;

but only to the parts of the proceeding that occur after that commencement (whether or not those parts began before that commencement).

- (5) If, under section 6 or 6A of the *National Security Information (Criminal and Civil Proceedings) Act 2004*, a notice was given before the commencement of this item, then:
- (a) any orders that were made; and
  - (b) any certificates, advices or notices that were given;
- before that commencement under a provision of that Act continue in force (and may be dealt with) as if they were made or given under:
- (c) in the case of an order made under subsection 23(2) of that Act—subsection 19(1A) of that Act as amended by this Schedule; and
  - (d) in the case of an order made under subsection 38C(2) of that Act—subsection 19(3A) of that Act as amended by this Schedule; and
  - (e) in any other case—the provision of that Act as amended by this Schedule.

## 110 Saving

Despite the amendments made to sections 23 and 38C of the *National Security Information (Criminal and Civil Proceedings) Act 2004* by this Schedule, regulations made under those sections and that are in force immediately before the commencement of this item continue in force (and may be dealt with) after that commencement, as if they were made under those sections as amended by this Schedule.

## Schedule 9—Functions of Inspector-General of Intelligence and Security

### *Inspector-General of Intelligence and Security Act 1986*

#### **1 Subsection 3(1) (definition of *agency*)**

Repeal the definition.

#### **2 Subsection 3(1) (definition of *Commonwealth agency*)**

Repeal the definition, substitute:

*Commonwealth agency* means the following:

- (a) a Department of State, or an Agency within the meaning of the *Public Service Act 1999*;
- (b) the Australian Defence Force;
- (c) an intelligence agency;
- (d) a body, whether incorporated or not, established for public purposes by or under a law of the Commonwealth;
- (e) the holder of an office established for public purposes by or under a law of the Commonwealth;
- (f) a body, whether incorporated or not, declared to be a Commonwealth agency by a legislative instrument made under subsection (4).

#### **3 Subsection 3(1) (definition of *employee*)**

Omit “an agency”, substitute “a Commonwealth agency”.

#### **4 Subsection 3(1) (definition of *head*)**

Repeal the definition, substitute:

*head* means:

- (a) in relation to ASIO—the Director-General of Security; or
- (b) in relation to ASIS—the Director-General of ASIS; or
- (c) in relation to DIGO—the Director of DIGO; or
- (d) in relation to DIO—the Director of DIO; or
- (e) in relation to DSD—the Director of DSD; or
- (f) in relation to ONA—the Director-General of ONA; or

- (g) in relation to any other Commonwealth agency:
  - (i) in the case of a Department of State—the Secretary of the Department; or
  - (ii) otherwise—the person holding, or performing the duties of, the principal office in respect of the agency.

**5 Subsection 3(1)**

Insert:

*intelligence agency* means ASIO, ASIS, DIGO, DIO, DSD or ONA.

**6 Subsection 3(1) (definition of *member*)**

Omit “an agency”, substitute “a Commonwealth agency”.

**7 Subsection 3(1) (definition of *responsible Minister*)**

Omit “an agency”, substitute “a Commonwealth agency”.

**8 Subsection 3(3)**

Omit “an agency shall be”, substitute “a Commonwealth agency is”.

**9 At the end of section 3**

Add:

- (4) The Minister may, by legislative instrument, declare a body to be a Commonwealth agency for the purposes of paragraph (f) of the definition of that expression in subsection (1).

**10 Subparagraph 4(a)(i)**

Omit “or security”.

**11 At the end of subparagraphs 4(a)(i) and (iii)**

Add “and”.

**12 After paragraph 4(b)**

Insert:

- (ba) to assist Ministers in investigating intelligence or security matters relating to Commonwealth agencies, including agencies other than intelligence agencies; and

**13 Subparagraph 8(1)(c)(i)**

After “Commonwealth agency”, insert “(within the meaning of Part IV of the *Australian Security Intelligence Organisation Act 1979*)”.

Note: The heading to section 8 is altered by omitting “**Inquiry**” and substituting “**Intelligence agency inquiry**”.

**14 Subparagraph 8(1)(c)(ii)**

After “Security Appeals”, insert “Division of the Administrative Appeals”.

**15 Subsection 8(5)**

After “an employee of an”, insert “intelligence”.

**16 Subsection 8(8)**

Repeal the subsection.

**17 Section 9**

Repeal the section, substitute:

**9 Additional inquiry functions of Inspector-General**

*Intelligence agencies*

- (1) The Prime Minister may request the Inspector-General to inquire into a matter relating to an intelligence agency.
- (2) The Inspector-General must comply with a request under subsection (1) if inquiring into the matter is within the functions of the Inspector-General referred to in section 8 (whether those functions may be performed following a request by a Minister or otherwise).

*Commonwealth agencies*

- (3) The Prime Minister may request the Inspector-General to inquire into an intelligence or security matter relating to a Commonwealth agency.
- (4) The Inspector-General must comply with a request under subsection (3).

### **9AA Limits on the Inspector-General's functions**

The Inspector-General must not, in the performance of his or her functions under section 8 or 9:

- (a) inquire into a matter relating to a Commonwealth agency that occurred outside Australia, or before the commencement of this Act, without the approval of:
  - (i) if the inquiry started as the result of a request under section 9—the Prime Minister; or
  - (ii) otherwise—the responsible Minister; or
- (b) inquire into action taken by a Minister except to the extent necessary to perform the functions of the Inspector-General referred to in subparagraphs 8(1)(a)(ii) and 8(2)(a)(ii) and paragraph 8(1)(d); or
- (c) inquire into a matter, other than a matter that is referred to the Inspector-General under subsection 65(1A) of the *Australian Security Intelligence Organisation Act 1979*, that is, or could be, the subject of a review by the Security Appeals Division of the Administrative Appeals Tribunal.

### **18 Section 9A**

After “Inspector-General” (first occurring), insert “in relation to an intelligence agency”.

### **19 Section 9A**

Omit “relevant”.

### **20 Paragraph 11(1)(a)**

Omit “an agency”, substitute “an intelligence agency”.

### **21 Subsections 11(2) and (5)**

Omit “an agency”, substitute “an intelligence agency”.

### **22 Sections 12 and 14**

Omit “an agency”, substitute “an intelligence agency”.

### **23 Subsections 15(1), (2) and (3)**

Omit “an agency”, substitute “a Commonwealth agency”.

### **24 At the end of subsection 15(3)**

Add:

; or (c) otherwise—the responsible Minister for the agency.

**25 Section 16**

Omit “an agency”, substitute “a Commonwealth agency”.

**26 Subsections 17(4), (6), (7), (8), (9) and (10)**

Omit “an agency”, substitute “a Commonwealth agency”.

**27 Paragraph 18(6)(b)**

Omit “, an Agency (within the meaning of the *Public Service Act 1999*) or an authority of the Commonwealth”, substitute “or a Commonwealth agency”.

**28 Section 19**

Omit “an agency”, substitute “a Commonwealth agency”.

Note: The heading to section 19 is altered by omitting “an agency” and substituting “a Commonwealth agency”.

**29 Paragraph 20(a)**

Omit “an agency”, substitute “a Commonwealth agency”.

Note: The heading to section 20 is altered by inserting “Commonwealth” after “Security of”.

**30 Paragraph 20(b)**

After “national security”, insert “or other protective security”.

**31 Subsection 21(1)**

Repeal the subsection, substitute:

- (1) If the Inspector-General completes an inquiry under this Act into a matter relating to a Commonwealth agency, the Inspector-General must:
  - (a) prepare a draft report setting out the Inspector-General’s conclusions and recommendations as a result of the inquiry; and
  - (b) subject to subsections (1A) and (1B), give a copy (the *draft agency copy*) of the draft report to the head of the agency.

(1AA) The Inspector-General may remove from a draft agency copy any matters that do not relate to the Commonwealth agency concerned.

**32 Subsections 21(1A) and (1B)**

Omit “an agency a copy of a draft report”, substitute “a Commonwealth agency a draft agency copy”.

**33 Subsection 21(1B)**

Omit “a copy of that report”, substitute “the draft agency copy”.

**34 At the end of subsection 21(1B)**

Add:

; or (c) otherwise—the responsible Minister for the agency.

**35 Paragraph 21(2)(a)**

Omit “a copy of a draft report to the head of an agency”, substitute “a draft agency copy to the head of a Commonwealth agency”.

**36 Paragraph 21(2)(b)**

Omit “a copy of the draft report”, substitute “the draft agency copy”.

**37 Subsection 22(1)**

Repeal the subsection, substitute:

- (1) If the Inspector-General completes an inquiry under this Act into a matter relating to a Commonwealth agency, the Inspector-General must:
  - (a) prepare a report setting out the Inspector-General’s conclusions and recommendations as a result of the inquiry; and
  - (b) give a copy (the *final agency copy*) of the report:
    - (i) if a draft agency copy was given to the head of the Commonwealth agency under subsection 21(1)—to the head of the Commonwealth agency; or
    - (ii) otherwise—to the person to whom a draft agency copy was given under subsection 21(1B).

- (1A) The Inspector-General may remove from a final agency copy any matters that do not relate to the Commonwealth agency concerned.

Note: The heading to section 22 is altered by omitting “**agency head**” and substituting “**Commonwealth agency head etc.**”.

**38 Paragraph 22(2)(b)**

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Omit “an agency”, substitute “a Commonwealth agency”.

**39 Subsection 22(3)**

After “If the report”, insert “, or a final agency copy of the report,”.

**40 Subsection 22(3)**

After “of the report”, insert “, or the final agency copy,”.

**41 Subsection 22(4)**

Repeal the subsection, substitute:

- (4) The Inspector-General must give the responsible Minister a copy of:
  - (a) the final agency copy; or
  - (b) if subsection (3) applies—the version of the final agency copy mentioned in that subsection.
- (5) In addition, if the inquiry was conducted as a result of a request made by the Prime Minister under section 9, the Inspector-General must give the Prime Minister a copy of:
  - (a) the report mentioned in subsection (1) of this section; or
  - (b) if subsection (3) of this section applies—the version of the report mentioned in that subsection.

**42 Subsection 23(1)**

After “a complaint”, insert “in respect of action taken by an intelligence agency”.

**43 Subsection 24(1)**

Omit “an agency and has given a copy”, substitute “a Commonwealth agency and has, under section 22, given a final agency copy”.

**44 Subsection 24(2)**

Omit “an agency”, substitute “a Commonwealth agency”.

**45 Paragraph 24A(1)(a)**

Omit “an agency”, substitute “a Commonwealth agency”.

**46 Paragraph 24A(1)(b)**

Repeal the paragraph, substitute:

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(b) has given a final agency copy in relation to the inquiry to the responsible Minister in relation to the agency, or to the Secretary of the Department of Defence, under subparagraph 22(1)(b)(ii).

**47 Section 25A**

Omit “an agency”, substitute “an intelligence agency”.

**48 Subsection 32A(2)**

Omit “an agency”, substitute “an intelligence agency”.

**49 Subsection 32B(2)**

Omit “the agency”, substitute “that agency”.

**50 Subsection 35(5)**

After “other countries”, insert “, law enforcement operations”.

## **Schedule 10—Consequential amendments relating to the establishment of the Parliamentary Joint Committee on Law Enforcement**

### ***Administrative Decisions (Judicial Review) Act 1977***

#### **1 After paragraph (db) of Schedule 2**

Insert:

(dc) decisions under subsection 8(4) or 9(4) of the *Parliamentary Joint Committee on Law Enforcement Act 2010*;

### ***Anti-Money Laundering and Counter-Terrorism Financing Act 2006***

#### **2 Paragraph 128(14)(c)**

Omit “the Chair of the Board”, substitute “the Chief Executive Officer”.

#### **3 Paragraph 128(14)(c)**

Omit “the Australian Crime Commission under subsection 59(6A) of the *Australian Crime Commission Act 2002*”, substitute “Law Enforcement under subsection 8(1) of the *Parliamentary Joint Committee on Law Enforcement Act 2010*”.

### ***Australian Crime Commission Act 2002***

#### **4 Subsection 51(4) (at the end of the definition of *relevant Act*)**

Add:

; or (d) the *Parliamentary Joint Committee on Law Enforcement Act 2010* or regulations under that Act.

#### **5 Part III**

Repeal the Part.

## **6 Subsections 59(6A), (6B), (6C) and (6D)**

Repeal the subsections.

## **7 Transitional—Committee on the Australian Crime Commission**

- (1) This item applies to the Parliamentary Joint Committee on the Australian Crime Commission (the *Committee*) that was in existence under the *Australian Crime Commission Act 2002* immediately before the commencement of this item.
- (2) The Committee continues in existence by force of this item, after the commencement of this item, as the Parliamentary Joint Committee on Law Enforcement under the *Parliamentary Joint Committee on Law Enforcement Act 2010*.
- (3) A person who held office as a member of the Committee immediately before the commencement of this item is taken to have been appointed, immediately after that commencement, as a member of the Parliamentary Joint Committee on Law Enforcement.
- (4) The person who held office as Chair of the Committee immediately before the commencement of this item is taken to have been elected, immediately after that commencement, as Chair of the Parliamentary Joint Committee on Law Enforcement.
- (5) If the Committee was conducting a review immediately before commencement:
  - (a) the Parliamentary Joint Committee on Law Enforcement may continue the review after that commencement; and
  - (b) anything done for the purposes of the review before commencement is taken to have been done for the purposes of the review as continued in accordance with this item.
- (6) Section 10 of the *Parliamentary Joint Committee on Law Enforcement Act 2010* does not apply in relation to the year ending on 31 December 2010 if, in that year, the Ombudsman has provided to the Committee a briefing under subsection 55AA(1) of the *Australian Crime Commission Act 2002* as in force immediately before the commencement of this item.
- (7) For the avoidance of doubt, subitem (6) does not prevent the Ombudsman from providing a briefing to the Parliamentary Joint

**Schedule 10** Consequential amendments relating to the establishment of the  
Parliamentary Joint Committee on Law Enforcement

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Committee on Law Enforcement about the involvement of the  
Australian Crime Commission or the Australian Federal Police in  
controlled operations under Part IAB of the *Crimes Act 1914* during the  
year ending on 31 December 2010.

***Australian Federal Police Act 1979***

**8 After paragraph 60A(2)(e)**

Insert:

(ea) the purposes of the *Parliamentary Joint Committee on Law  
Enforcement Act 2010* or regulations under that Act; or

**9 Paragraph 60A(2)(f)**

Omit “(d) and (e)”, substitute “(d), (e) and (ea)”.

***Proceeds of Crime Act 2002***

**10 Subsection 179U(1)**

Omit “the Australian Crime Commission”, substitute “Law  
Enforcement”.

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[*Minister’s second reading speech made in—  
House of Representatives on 30 September 2010  
Senate on 25 October 2010*]