





**Crimes Legislation Amendment (Law  
Enforcement Integrity, Vulnerable  
Witness Protection and Other Measures)  
Act 2013**

**No. 74, 2013**

**An Act to amend various Acts relating to criminal  
law and law enforcement, and for other purposes**

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



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# **Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013**

**No. 74, 2013**

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**An Act to amend various Acts relating to criminal law and law enforcement, and for other purposes**

*[Assented to 28 June 2013]*

The Parliament of Australia enacts:

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## 1 Short title

This Act may be cited as the *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Act 2013*.

## 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.

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<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.	28 June 2013
2. Schedules 1 and 2	The day after this Act receives the Royal Assent.	29 June 2013
3. Schedule 3, Part 1	The day after this Act receives the Royal Assent.	29 June 2013
4. Schedule 3, Part 2	The later of: (a) immediately after the start of the day after this Act receives the Royal Assent; and (b) the start of the day Schedule 4 to the <i>Maritime Powers (Consequential Amendments) Act 2013</i> commences.	
5. Schedule 4, Part 1	The day after this Act receives the Royal Assent.	29 June 2013
6. Schedule 4, Part 2	12 March 2014.	12 March 2014
7. Schedules 5 and 6	The day after this Act receives the Royal Assent.	29 June 2013

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Note: This table relates only to the provisions of this Act as originally enacted.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—Assisting the Australian Commission for Law Enforcement Integrity**

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

#### **1 After paragraph 121(3)(d)**

Insert:

- (da) the disclosure is for the purposes of, or in connection with, the performance of the Integrity Commissioner’s functions relating to a corruption issue (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*) relating to any law enforcement agency (within the meaning of that Act);

#### **2 Before paragraph 127(4)(a)**

Insert:

- (aa) paragraph 121(3)(da);

#### **3 Application of amendments**

The amendments made by items 1 and 2 apply in relation to corruption issues, whether the related corrupt conduct (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*):

- (a) was or may have been engaged in before the commencement of those items; or
- (b) will or may be engaged in after that commencement.

### ***Law Enforcement Integrity Commissioner Act 2006***

#### **4 Subsection 89(1)**

Omit “if the evidence”, substitute “if giving the evidence”.

#### **5 Subparagraph 89(1)(b)(ii)**

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

**6 After paragraph 89(1)(b)**

Insert:

- (c) would disclose AUSTRAC information (within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*).

**7 Subsection 199(1) (heading)**

Repeal the heading, substitute:

*Police personnel*

**8 Subsection 199(1)**

After “members”, insert “or employees”.

## **Schedule 2—Supporting victims and witnesses in criminal proceedings**

### **Part 1—Vulnerable witness protections**

#### *Crimes Act 1914*

##### **1 Part IAD (heading)**

Repeal the heading, substitute:

#### **Part IAD—Protecting vulnerable persons**

##### **2 Before subsection 15Y(1)**

Insert:

*Proceedings involving children*

##### **3 Subsection 15Y(1)**

Omit “This Part applies to any proceedings for:”, substitute “This Part contains special rules for children involved in proceedings to which this subsection applies. This subsection applies to proceedings for any of the following offences:”.

##### **4 Paragraph 15Y(1)(b)**

Omit “(Sexual assault of United Nations and associated personnel); or”, substitute “(sexual assault of United Nations and associated personnel);”.

##### **5 Paragraph 15Y(1)(c)**

Omit “(Slavery and slavery-like conditions); or”, substitute “(slavery and slavery-like conditions);”.

##### **6 Paragraph 15Y(1)(caa)**

Omit “(trafficking in persons, trafficking in children, debt bondage); or”, substitute “(trafficking in persons and debt bondage);”.

**7 Paragraphs 15Y(1)(cab), (cac), (ca) and (cba)**

Omit “); or”, substitute “);”.

**8 Paragraph 15Y(1)(cb)**

Omit “1958.”, substitute “1958;”.

**9 Paragraph 15Y(1)(d)**

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

**10 Paragraph 15Y(1)(e)**

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

**11 Subsection 15Y(2)**

Repeal the subsection, substitute:

*Proceedings involving adult complainants*

- (2) This Part contains special rules for adult complainants involved in proceedings to which this subsection applies. This subsection applies to proceedings for any of the following offences:
- (a) an offence against Division 270 of the *Criminal Code* (slavery and slavery-like conditions);
  - (b) an offence against Division 271 of the *Criminal Code* (trafficking in persons and debt bondage);
  - (c) an offence that includes the commission of, or the intention to commit, an offence of a kind referred to in paragraph (a) or (b);
  - (d) an offence of:
    - (i) attempting to commit; or
    - (ii) conspiring to commit; or
    - (iii) inciting the commission of;an offence of a kind referred to in paragraph (a), (b) or (c).

*Proceedings involving special witnesses*

- (3) This Part contains special rules that can apply for special witnesses involved in proceedings for any Commonwealth offence.

*Related proceedings included*

- (4) Each of subsections (1), (2) and (3) also applies to any proceedings connected with a proceeding referred to in that subsection.

Example: Committal proceedings.

- (5) Similarly, subsection 15YAB(1) (about special witnesses) also applies to any proceedings connected with a proceeding for a Commonwealth offence.

**12 Section 15YA**

Insert:

*adult* means a person who is 18 or over.

**13 Section 15YA (definition of *child complainant*)**

Omit “a proceeding”, substitute “a child proceeding”.

**14 Section 15YA**

Insert:

*child proceeding* means a proceeding to which subsection 15Y(1) applies.

**15 Section 15YA (definition of *child witness*)**

Omit “a proceeding”, substitute “a child proceeding”.

**16 Section 15YA**

Insert:

*party* to a proceeding includes the prosecutor, each defendant and each person named in evidence given in the proceeding.

**17 Section 15YA (definition of *proceeding*)**

Repeal the definition, substitute:

*proceeding* means a proceeding to which one or more of subsections 15Y(1), (2) and (3) apply.

**18 Section 15YA**

Insert:

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*special witness* has the meaning given by subsection 15YAB(1).

*special witness proceeding* means a proceeding to which subsection 15Y(3) applies.

*vulnerable adult complainant* has the meaning given by section 15YAA.

*vulnerable adult proceeding* means a proceeding to which subsection 15Y(2) applies.

## **19 After section 15YA**

Insert:

### **15YAA *Vulnerable adult complainants***

- (1) A *vulnerable adult complainant*, in relation to a vulnerable adult proceeding, is an adult who is, or is alleged to be, a victim of an offence, of a kind referred to in subsection 15Y(2), to which the proceeding relates.
- (2) However, the adult is not a *vulnerable adult complainant* if the adult informs the court that he or she does not wish to be treated as such a complainant.
- (3) A vulnerable adult complainant need not be involved in the vulnerable adult proceeding or the initiation of that proceeding.

### **15YAB *Special witnesses***

#### *Meaning of special witness*

- (1) In a proceeding for a Commonwealth offence, the court may declare a person to be a *special witness* in relation to the proceeding if satisfied that the person is unlikely to be able to satisfactorily give evidence in the ordinary manner because of:
  - (a) a disability; or
  - (b) intimidation, distress or emotional trauma arising from:
    - (i) the person's age, cultural background or relationship to a party to the proceeding; or
    - (ii) the nature of the evidence; or
    - (iii) some other relevant factor.

**Schedule 2** Supporting victims and witnesses in criminal proceedings  
**Part 1** Vulnerable witness protections

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Note: Such a declaration can also be made in a related proceeding (see subsection 15Y(5)).

- (2) A declaration under subsection (1) may be made on the court's own initiative or on application by or on behalf of a party to the proceeding.

*Orders that certain protections apply to a special witness*

- (3) In a special witness proceeding, the court may order that one or more of the following sections apply to a special witness:
- (a) section 15YG (about unrepresented defendants);
  - (b) section 15YH (about represented defendants);
  - (c) section 15YI (about closed-circuit television);
  - (d) section 15YL (about alternative arrangements);
  - (e) section 15YM (about use of video recordings);
  - (f) section 15YO (about accompanying adults);
  - (g) section 15YP (about excluding people from the courtroom).
- (4) An order under subsection (3) may be made on the court's own initiative or on application by or on behalf of the special witness.

**20 Subsections 15YB(1) and 15YC(1)**

Omit "a proceeding", substitute "a child proceeding".

**21 Subsection 15YE(1)**

Repeal the subsection, substitute:

- (1) The court must disallow a question put to a person in cross-examination in a proceeding if:
- (a) the question is inappropriate or unnecessarily aggressive; and
  - (b) the person is a person to whom subsection (3) applies.

**22 Subsection 15YE(2)**

Omit "child witness", substitute "person's".

**23 At the end of section 15YE**

Add:

- (3) This subsection applies to the following persons:
- (a) for a child proceeding—a child witness;

- (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
- (c) for a special witness proceeding—a special witness.

**24 Subsection 15YF(1)**

Omit “a proceeding”, substitute “a child proceeding”.

**25 Section 15YG (heading)**

Omit “child witnesses”, substitute “vulnerable persons”.

**26 Subsection 15YG(1)**

Omit “child witness (other than a child complainant)”, substitute “person to whom subsection (1A) applies (the *vulnerable person*)”.

**27 After subsection 15YG(1)**

Insert:

(1A) This subsection applies to the following persons:

- (a) for a child proceeding—a child witness (other than a child complainant);
- (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
- (c) for a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section.

**28 Subsection 15YG(2)**

Omit “unless satisfied that the child’s”, substitute “under subsection (1) unless satisfied that the vulnerable person’s”.

**29 Before paragraph 15YG(4)(a)**

Insert:

- (aa) if the vulnerable person is a vulnerable adult complainant—may be made by or on behalf of the defendant or the vulnerable person; and

**30 Subsection 15YG(5)**

Omit “child” (wherever occurring), substitute “vulnerable person”.

**31 Section 15YH (heading)**

Omit “**child witnesses and child complainants**”, substitute “**vulnerable persons**”.

**32 Section 15YH**

Before “A”, insert “(1)”.

**33 Section 15YH**

Omit “a child witness or a child complainant except through counsel”, substitute “, except through counsel, a person to whom subsection (2) applies”.

**34 At the end of section 15YH**

Add:

- (2) This subsection applies to the following persons:
- (a) for a child proceeding—a child witness;
  - (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
  - (c) for a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section.

**35 Division 4 of Part IAD (heading)**

Omit “**child witnesses**”, substitute “**vulnerable persons**”.

**36 Subsection 15YI(1)**

Omit “A child witness’ evidence in a proceeding”, substitute “Evidence in a proceeding from a person to whom subsection (1A) applies (the *vulnerable person*)”.

**37 Paragraphs 15YI(1)(a) and (b)**

Omit “child”, substitute “vulnerable person”.

**38 Subsection 15YI(1) (note)**

Omit “child witness”, substitute “vulnerable person”.

**39 After subsection 15YI(1)**

Insert:

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(1A) This subsection applies to the following persons:

- (a) for a child proceeding—a child witness;
- (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
- (c) for a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section.

**40 Subsection 15YI(2)**

Omit “child witness”, substitute “vulnerable person’s”.

**41 Subsection 15YJ(1)**

Omit “child witness’ evidence”, substitute “vulnerable person’s evidence”.

**42 Paragraph 15YJ(1)(c)**

Omit “child” (wherever occurring), substitute “vulnerable person”.

**43 Subsection 15YJ(2)**

Omit “15YM”, substitute “15YO (about accompanying adults)”.

**44 Section 15YK**

Omit “the child witness’ evidence”, substitute “the vulnerable person’s evidence”.

**45 Section 15YK**

Omit “child” (second and third occurring), substitute “vulnerable person”.

**46 Subsection 15YL(1)**

Omit “a child witness’ evidence in a proceeding”, substitute “evidence in a proceeding from a person to whom subsection (3) applies”.

**47 Paragraphs 15YL(1)(a) and (b)**

Omit “child”, substitute “person”.

**48 Subparagraph 15YL(2)(b)(ii)**

Omit “child’s”, substitute “person’s”.

**49 Subsection 15YL(3)**

Repeal the subsection, substitute:

*Persons to whom these alternative arrangements apply*

- (3) This subsection applies to the following persons:
- (a) for a child proceeding—a child witness;
  - (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
  - (c) for a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section;
- unless that person is at least 16 and chooses not to give evidence under the arrangements.

**50 Subsection 15YM(1)**

Omit “child witness”, substitute “person to whom subsection (1A) applies”.

**51 After subsection 15YM(1)**

Insert:

- (1A) This subsection applies to the following persons:
- (a) for a child proceeding—a child witness;
  - (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
  - (c) for a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section;

**52 Subsection 15YM(2)**

Omit “if satisfied that it is not in the interest of justice for the child’s”, substitute “under subsection (1) if satisfied that it is not in the interest of justice for the person’s”.

**53 Subsection 15YM(4)**

Omit “child witness”, substitute “person”.

**54 Subsection 15YN(1)**

Omit “child witness”, substitute “person”.

**55 Paragraph 15YN(2)(a)**

Omit “child witness if the child”, substitute “person if the person”.

**56 After Division 5 of Part IAD**

Insert:

**Division 5A—Special rules for later trials**

**15YNA When this Division applies**

This Division applies if a proceeding (the *original proceeding*) involving the trial of one or more defendants:

- (a) concludes and, on appeal, a new proceeding involving the trial of any or all of the defendants is ordered; or
- (b) is discontinued and a new proceeding involving the trial of any or all of the defendants is ordered.

**15YNB Original evidence admissible in new proceeding**

- (1) For the new proceeding, the prosecutor may prepare a record of all the evidence given by any person to whom subsection (4) applies (the *vulnerable person*) in the original proceeding if:
  - (a) the record is in a form, and is authenticated in a way, prescribed under subsection (5); and
  - (b) the prosecutor gives written notice to the court, and to the defendants in the new proceeding, of the prosecutor’s intention to tender that record as evidence in the new proceeding; and
  - (c) that notice is so given:
    - (i) at least 21 days before the court commences hearing the new proceeding; or
    - (ii) within such other period as the court allows.

Note: The record would include all the evidence given in the original proceeding by the vulnerable person (whether evidence on examination in chief, on cross-examination or on re-examination).

- (2) However, the prosecutor may alter or edit that record with the agreement of each defendant in the new proceeding.
- (3) Both of the following are admissible as evidence in the new proceeding:
  - (a) a record of evidence prepared under subsection (1) and (2);
  - (b) the exhibits tendered in the original proceeding in connection with that evidence.
- (4) This subsection applies to the following persons:
  - (a) if the original proceeding was a child proceeding—a child complainant;
  - (b) if the original proceeding was a vulnerable adult proceeding—a vulnerable adult complainant.
- (5) The Minister may, in writing, prescribe the form, and ways for authenticating, records prepared under subsection (1).

**15YNC Vulnerable person not to be made to give further evidence**

- (1) A vulnerable person whose evidence is included in a record admitted under section 15YNB need not give any further evidence in the new proceeding unless the court orders that this is necessary:
  - (a) to clarify the vulnerable person's evidence given in the original proceeding; or
  - (b) to give proper consideration of information or material that has become available since the original proceeding; or
  - (c) in the interests of justice.

Note: This subsection covers further evidence that could otherwise be given on examination in chief, on cross-examination or on re-examination.

- (2) If the court makes an order under subsection (1), the court is to ensure that the vulnerable person is questioned in the new proceeding only about the matters specified in the order.
- (3) An order under subsection (1) may be made on the court's own initiative or on application by or on behalf of a party to the new proceeding.
- (4) Despite subsection (1), the vulnerable person may seek leave of the court to give further evidence in the new proceeding.

Subsections (1) and (2) cease to apply to the person if leave is given.

### **15YND Defendants' access to video recordings**

- (1) If a record prepared under subsections 15YNB(1) and (2) includes a video recording, neither:
  - (a) the defendants in the new proceeding; nor
  - (b) their legal representatives in the new proceeding;are entitled to be given the video recording or a copy of it.
- (2) However, they must be given reasonable access to the video recording in order to view it.

Note: This may require access on more than one occasion.

### **15YNE Warnings etc. not to be given about vulnerable persons' evidence**

If there is a jury in the new proceeding, the judge is not to warn the jury, or suggest to the jury in any way, that the law requires greater or lesser weight to be given to evidence that is included in a record admitted under section 15YNB.

### **15YNF Division applies despite other rules of evidence**

This Division has effect despite the *Evidence Act 1995*, any other law and any other rules of evidence or procedure.

### **57 Section 15YO (heading)**

Omit “child witnesses”, substitute “vulnerable persons”.

### **58 Subsection 15YO(1)**

Omit “child witness”, substitute “person to whom subsection (1A) applies”.

### **59 Subsection 15YO(1)**

Omit “child” (second and third occurring), substitute “person”.

### **60 After subsection 15YO(1)**

Insert:

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(1A) This subsection applies to the following persons:

- (a) for a child proceeding—a child witness;
- (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
- (c) for a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section;

**61 Subsection 15YO(2)**

Omit “so chosen”, substitute “chosen under subsection (1)”.

**62 Subsections 15YO(2) and (3)**

Omit “child” (wherever occurring), substitute “person”.

**63 Subsection 15YO(4)**

Omit “child” (first occurring), substitute “person”.

**64 Paragraph 15YO(4)(a)**

Omit “child or otherwise influence the child’s”, substitute “person or otherwise influence the person’s”.

**65 Paragraph 15YO(4)(b)**

Omit “child”, substitute “person”.

**66 Subsection 15YO(5)**

Omit “child”, substitute “person”.

**67 Section 15YP**

Repeal the section, substitute:

**15YP Excluding people from the courtroom**

The court may order that some or all of the members of the public be excluded from the courtroom in which any of the following persons is giving evidence in a proceeding:

- (a) for a child proceeding—a child witness;
- (b) for a vulnerable adult proceeding—a vulnerable adult complainant;

- (c) for a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section.

**68 Section 15YQ (heading)**

Omit “children’s”, substitute “vulnerable persons”.

**69 Section 15YQ**

Before “If”, insert “(1)”.

**70 Section 15YQ**

Omit “child witness”, substitute “person to whom subsection (2) applies”.

**71 Paragraph 15YQ(a)**

Repeal the paragraph, substitute:

- (a) that the law regards persons to whom subsection (2) applies as an unreliable class of witness; or

**72 Paragraph 15YQ(d)**

Omit “child”, substitute “person”.

**73 At the end of section 15YQ**

Add:

- (2) This subsection applies to the following persons:
- (a) for a child proceeding—a child witness;
  - (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
  - (c) for a special witness proceeding—a special witness.

**74 Section 15YR (heading)**

Omit “child complainants”, substitute “vulnerable adult complainants”.

**75 Paragraph 15YR(1)(c)**

Repeal the paragraph, substitute:

- (c) the matter:

- (i) identifies another person, who is a person to whom subsection (1A) applies (the *vulnerable person*) in relation to a proceeding, as being a child witness or vulnerable adult complainant; or
  - (ii) is likely to lead to the vulnerable person being identified as such a person; and
- (d) the vulnerable person is not a defendant in the proceeding.

**76 After subsection 15YR(1)**

Insert:

(1A) This subsection applies to the following persons:

- (a) for a child proceeding—a child witness;
- (b) for a vulnerable adult proceeding—a vulnerable adult complainant.

**77 Paragraphs 15YR(4)(a) and (b)**

Omit “child witness or child complainant”, substitute “vulnerable person”.

**78 Section 15YT**

Repeal the section, substitute:

**15YT Other video link evidence provisions are unaffected**

Nothing in this Part affects the operation of Division 279 of the *Criminal Code* (about video link evidence in offences against humanity).

***Criminal Code Act 1995***

**79 At the end of subsection 270.12(1) of the *Criminal Code***

Add:

Note: Division 279 (video link evidence) applies to a proceeding for an offence against this Division.

**80 At the end of subsection 271.12(1) of the *Criminal Code***

Add:

Note: Division 279 (video link evidence) applies to a proceeding for an offence against this Division.

**81 At the end of section 272.7 of the *Criminal Code***

Add:

Note: Division 279 (video link evidence) applies to a proceeding for an offence against this Division.

**82 Subdivision D of Division 272 of the *Criminal Code***

Repeal the Subdivision.

**83 At the end of section 273.4 of the *Criminal Code***

Add:

Note: Division 279 (video link evidence) applies to a proceeding for an offence against this Division.

**84 Subdivision D of Division 273 of the *Criminal Code***

Repeal the Subdivision.

**85 At the end of Chapter 8 of the *Criminal Code***

Add:

**Division 279—Video link evidence**

**279.1 Proceedings to which this Division applies**

This Division applies to a proceeding for an offence against any of the following Divisions of this Chapter:

- (a) Division 270 (slavery and slavery-like conditions);
- (b) Division 271 (trafficking in persons and debt bondage);
- (c) Division 272 (child sex offences outside Australia);
- (d) Division 273 (offences involving child pornography material or child abuse material outside Australia).

**279.2 When court may take evidence by video link**

In a proceeding, the court may, on application by a party to the proceeding, direct that a witness give evidence by video link if:

- (a) the witness will give the evidence from outside Australia; and

- (b) the witness is not a defendant in the proceeding; and
- (c) the facilities required by section 279.3 are available or can reasonably be made available; and
- (d) the court is satisfied that attendance of the witness at the court to give the evidence would:
  - (i) cause unreasonable expense or inconvenience; or
  - (ii) cause the witness psychological harm or unreasonable distress; or
  - (iii) cause the witness to become so intimidated or distressed that his or her reliability as a witness would be significantly reduced; and
- (e) the court is satisfied that it is consistent with the interests of justice that the evidence be taken by video link.

### **279.3 Technical requirements for video link**

- (1) A witness can give evidence under a direction only if:
  - (a) the courtroom or other place in Australia where the court is sitting (the *Australian location*); and
  - (b) the place where the evidence is given (the *overseas location*);are equipped with video facilities that:
  - (c) enable appropriate persons at the Australian location to see and hear the witness give the evidence; and
  - (d) enable appropriate persons at the overseas location to see and hear appropriate persons at the Australian location.
- (2) In subsection (1):

*appropriate persons* means such persons as the court considers appropriate.

### **279.4 Application of laws about witnesses**

A person who gives evidence under a direction is taken to give it at the courtroom or other place in Australia where the court is sitting.

Note: This section has effect, for example, for the purposes of laws relating to evidence, procedure, contempt of court and perjury.

### **279.5 Administration of oaths and affirmations**

An oath or affirmation to be sworn or made by a witness who is to give evidence under a direction may be administered either:

- (a) by means of the video link, in as nearly as practicable the same way as if the witness were to give the evidence at the courtroom or other place in Australia where the court is sitting; or
- (b) as follows:
  - (i) on behalf of the court and as directed by it;
  - (ii) by a person (whether an Australian official or not) authorised by the court;
  - (iii) at the place where the witness is to give the evidence.

### **279.6 Expenses**

A court may make such orders as are just for payment of expenses incurred in connection with giving evidence under a direction by the court under this Division.

### **279.7 Other laws about foreign evidence not affected**

This Division does not prevent any other law about taking evidence of a witness outside Australia from applying for the purposes of a proceeding.

## Part 2—Victim impact statements

### *Crimes Act 1914*

#### 86 Subsection 16(1)

Insert:

*family* has a meaning affected by subsection 16A(4).

#### 87 Subsection 16(1)

Insert:

*harm* includes:

- (a) physical, psychological and emotional suffering; and
- (b) economic and other loss; and
- (c) damage.

#### 88 Subsection 16(1)

Insert:

*victim impact statement* has the meaning given by section 16AAA.

#### 89 At the end of Division 1 of Part IB

Add:

#### 16AAA *Victim impact statements*

- (1) A *victim impact statement*, for an individual who is a victim of an offence, is an oral or written statement for which the following requirements are satisfied:
  - (a) the statement must be made by one of the following:
    - (i) the individual;
    - (ii) if the court gives leave, a member of the individual's family;
    - (iii) a person appointed by the court;
  - (b) the statement must describe the impact of the offence on the victim, including details of the harm suffered by the victim as a result of the offence;

- (c) if the statement is written, the statement must be:
    - (i) signed or otherwise acknowledged by the maker of the statement; and
    - (ii) given to both the prosecutor and the offender (or the offender's legal representative) at a reasonable time before the hearing for determining the sentence to be passed on the offender;
  - (d) if the statement is to be oral, a written or oral summary of the statement must be given to both the prosecutor and the offender (or the offender's legal representative) at a reasonable time before the hearing for determining the sentence to be passed on the offender.
- (2) However, the court may order that the requirement in paragraph (1)(d) does not apply to a particular oral statement.
  - (3) The Minister may, in writing, prescribe a form for victim impact statements. Such a form does not restrict how victim impact statements may be made.
  - (4) The Minister may delegate, in writing, his or her power under subsection (3) to:
    - (a) the Secretary of the Department; or
    - (b) an SES employee, or acting SES employee, in the Department.

#### **90 After paragraph 16A(2)(e)**

Insert:

- (ea) if an individual who is a victim of the offence has suffered harm as a result of the offence—any victim impact statement for the victim;

#### **91 Subsection 16A(4)**

Omit “this section”, substitute “this Part”.

#### **92 After section 16AA**

Insert:

**16AB Matters relating to victim impact statements**

- (1) This section applies in relation to victim impact statements made known to a court as described in paragraph 16A(2)(ea).
- (2) Only one victim impact statement may be made for each victim of an offence, unless the court gives leave.
- (3) No implication is to be drawn from the absence of a victim impact statement for a victim.
- (4) All or part of a victim impact statement for a victim may be read to the court by or on behalf of the victim.
- (5) A victim impact statement is not to be read to the court, or otherwise taken into account, to the extent that:
  - (a) it expresses an opinion about an appropriate sentence; or
  - (b) it is offensive, threatening, intimidating or harassing; or
  - (c) admitting it into evidence would otherwise not be in the interests of justice.
- (6) The person convicted of the offence may only test the facts in a victim impact statement:
  - (a) by way of cross-examining the maker of the statement; and
  - (b) if the court gives leave to do so.
- (7) For the purposes of Part IAD (about protecting vulnerable persons):
  - (a) giving evidence includes giving a reading under subsection (4); and
  - (b) a cross-examination includes a cross-examination under subsection (6).

Note: This confirms that any protections available under Part IAD will be available for the reading or the cross-examination.

## **Part 3—Application of amendments**

### **93 Application of amendments**

The amendments made by this Schedule apply in relation to offences committed (or alleged to have been committed) on or after the day this Schedule commences.

## Schedule 3—Deterring people smuggling

### Part 1—Main amendments

#### *Crimes Act 1914*

##### **1 Subsection 3ZQA(1) (definition of age determination information)**

Omit “a photograph (including an X-ray photograph) or any other record or information”, substitute “a record, or information,”.

##### **2 Subsection 3ZQA(2)**

Omit “, which may include the taking of an X-ray of a part of a person’s body,”.

#### *Migration Act 1958*

##### **3 Section 236A**

Repeal the section, substitute:

##### **236A No discharge without conviction for certain offences**

The court may only make an order under section 19B of the *Crimes Act 1914* (discharge of offenders without conviction) in respect of a charge for an offence against section 233B, 233C or 234A if the person charged was aged under 18 when the offence was alleged to have been committed.

Note: See also section 236D, which relates to age.

##### **4 At the end of Subdivision A of Division 12 of Part 2**

Add:

##### **236C Time in immigration detention counts for sentencing etc.**

- (1) This section applies to the court when imposing a sentence on, or setting a non-parole period for, a person convicted of an offence against this Subdivision.

- (2) The court must take into account any period that the person has spent in immigration detention during the period:
- (a) starting when the offence was committed; and
  - (b) ending when the person is sentenced for the offence.

Note: This enables the court to take into account time spent while not in punitive detention.

- (3) Neither section 236B nor this section prevents section 16E of the *Crimes Act 1914* from applying to the imposition of the sentence or the setting of the non-parole period.

Note: Section 16E of the *Crimes Act 1914* applies State law to aspects of sentencing for federal offences, subject to specified exceptions.

### **236D Burden and standard of proof in relation to age**

If, in proceedings relating to an offence against this Subdivision:

- (a) the defendant claims to have been aged under 18 at the time the offence was alleged to have been, or was, committed, and
- (b) the prosecution disputes this claim;

the prosecution bears the burden of proving, on the balance of probabilities, that the defendant was aged 18 or over at that time.

### **236E Evidentiary certificates in proceedings for offences**

*Who may issue a certificate*

- (1) A written certificate may be issued under this subsection by:
- (a) an officer who participates in the boarding of a ship or aircraft (the **target ship or aircraft**) under Division 12A; or
  - (b) if a ship (the **target ship**) is boarded under Division 12A—the commander of the Commonwealth ship or Commonwealth aircraft whose crew members participated in the boarding; or
  - (c) the commander of a Commonwealth ship or Commonwealth aircraft used under section 245C or 245D to chase a ship (the **target ship**) that was not boarded under Division 12A.

Note: For definitions for this section, see subsection (6).

*Certificate is prima facie evidence of the matters in it*

- (2) The certificate is to be received in proceedings for an offence against this Subdivision as prima facie evidence of the matters stated in the certificate.

*Matters that can be specified in a certificate*

- (3) The certificate may specify one or more of the following:
- (a) the location of the target ship or aircraft at the time (the **boarding time**) it was boarded, or during the period it was chased but not boarded, (as applicable) under Division 12A;
  - (b) if an officer boarded the target ship under Division 12A from another ship or aircraft—the location of the other ship or aircraft immediately before the boarding time;
  - (c) if the target ship was chased, but not boarded, under Division 12A—the location of the Commonwealth ship or Commonwealth aircraft during the period the target ship was chased;
  - (d) if a request was made to board the target ship or aircraft—the person by whom the request was made, and the manner in which the request was made;
  - (e) if no request was made to board the target ship or aircraft—the reason why no such request was made;
  - (f) the contents of any list of passengers on board the target ship or aircraft, or passenger cards relating to passengers on board the target ship or aircraft;
  - (g) the number of passengers on board the target ship or aircraft;
  - (h) the number of crew on board the target ship or aircraft;
  - (i) if the target ship or aircraft was boarded:
    - (i) whether any officer secured any goods on board the target ship or aircraft; and
    - (ii) a description of the goods; and
    - (iii) a description of how the goods were dealt with after they were secured;
  - (j) any other matter prescribed under subsection (5).
- (4) Subsection (2) does not apply to so much of the certificate as specifies whether a person is the master, owner, agent or charterer of the target ship or aircraft.

- (5) The Minister may, by legislative instrument, prescribe other matters that may be specified in a certificate issued under subsection (1).

*Definitions*

- (6) In this section:

**commander** has the same meaning as in subsection 245B(12).

**Commonwealth aircraft** has the same meaning as in Division 12A.

**Commonwealth ship** has the same meaning as in Division 12A.

**officer** has the same meaning as in subsection 245F(18).

**236F Evidentiary certificates—procedural matters**

- (1) A certificate issued under subsection 236E(1) must not be admitted in evidence in proceedings for an offence unless:
- (a) the person charged with the offence; or
  - (b) a lawyer who has appeared for the person in those proceedings;
- has, at least 28 days before the certificate is sought to be so admitted, been given a copy of the certificate together with notice of the intention to produce the certificate as evidence in the proceedings.
- (2) If, under section 236E, a certificate is admitted in evidence in proceedings for an offence, the person charged with the offence may require the person who signed the certificate to be:
- (a) called as a witness for the prosecution; and
  - (b) cross-examined as if the person who signed the certificate had given evidence of the matters stated in the certificate.
- (3) However, subsection (2) does not entitle the person charged to require the person who signed the certificate to be called as a witness for the prosecution unless:
- (a) the prosecutor has been given at least 21 days' notice of the person's intention to require the person who signed the certificate to be so called; and
  - (b) the court, by order, allows the person charged to require the person who signed the certificate to be so called.

### Schedule 3 Deterring people smuggling

#### Part 1 Main amendments

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- (4) Any evidence given in support, or in rebuttal, of a matter stated in a certificate issued under subsection 236E(1) must be considered on its merits, and the credibility and probative value of such evidence must be neither increased nor diminished by reason of this section.

#### 5 Application of amendments

- (1) The amendment made by item 3 applies in relation to offences committed (or alleged to have been committed) at or after the commencement of this Part.
- (2) Section 236C (about time in immigration detention) of the *Migration Act 1958* (as inserted by this Part) applies in relation to sentences imposed, or non-parole periods set, at or after the commencement of this Part (whether the relevant offence was committed before, at or after that commencement).
- (3) Section 236D (about burden and standard of proof in relation to age) of the *Migration Act 1958* (as inserted by this Part) applies in relation to claims made, at or after the commencement of this Part, by defendants in proceedings (whether the proceedings began before, at or after that commencement).
- (4) Sections 236E and 236F (about evidentiary certificates) of the *Migration Act 1958* (as inserted by this Part) apply in relation to the boarding of ships or aircraft, or the chasing of ships not boarded, at or after the commencement of this Part.

## **Part 2—Other amendments**

### ***Migration Act 1958***

#### **6 Subsection 236E(1)**

Repeal the subsection, substitute:

##### *Issuing a certificate*

- (1) A written certificate may be issued under this subsection if an authorisation authorises the exercise of maritime powers in relation to a vessel or aircraft (the ***target vessel or aircraft***). The certificate may be issued by:
- (a) the authorising officer who gave the authorisation; or
  - (b) a maritime officer who boards the target vessel or aircraft in accordance with the authorisation.

Note: For definitions for this section, see subsection (6).

#### **7 Paragraphs 236E(3)(a) to (i)**

Repeal the paragraphs, substitute:

- (a) the location of the target vessel or aircraft during the exercise of those maritime powers;
- (b) the location, during the exercise of those maritime powers, of a Commonwealth ship or Commonwealth aircraft from which the exercise of those maritime powers was directed or coordinated;
- (c) the contents of any list of passengers on board the target vessel or aircraft, or passenger cards relating to passengers on board the target vessel or aircraft;
- (d) the number of passengers on board the target vessel or aircraft;
- (e) the number of crew on board the target vessel or aircraft;
- (f) details about anything a maritime officer did under subsection 64(1), or section 66, of the *Maritime Powers Act 2013* (about securing things) in the exercise of those maritime powers;

### 8 Subsection 236E(4)

Omit “ship”, substitute “vessel”.

### 9 Subsection 236E(6)

Repeal the subsection, substitute:

*Definitions*

(6) In this section:

***authorisation*** has the same meaning as in the *Maritime Powers Act 2013*.

***authorising officer*** has the same meaning as in the *Maritime Powers Act 2013*.

***Commonwealth aircraft*** has the same meaning as in the *Maritime Powers Act 2013*.

***Commonwealth ship*** has the same meaning as in the *Maritime Powers Act 2013*.

***maritime powers*** has the same meaning as in the *Maritime Powers Act 2013*.

### 10 Application and transitional provisions

- (1) The amendments made by this Part apply in relation to authorisations made at or after the commencement of this Part.
- (2) The amendments made by this Part do not apply in relation to the continuous exercise of powers (within the meaning of the *Maritime Powers Act 2013*) begun under the *Migration Act 1958* before the commencement of this Part.

Note: After that commencement, an evidentiary certificate may be issued under section 236E of the *Migration Act 1958* (as in force before that commencement) in relation to a boarding, or chase, begun under Division 12A of Part 2 of that Act before that commencement.

## **Schedule 4—Anti-Money Laundering and Counter-Terrorism Financing amendments**

### **Part 1—Main amendments**

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

**1 Section 5 (definition of *AAT reviewable decision*)**

Repeal the definition.

**2 Section 5 (after paragraph (h) of the definition of  
*designated agency*)**

Insert:

(ha) the Clean Energy Regulator; or

**3 Section 5 (after paragraph (u) of the definition of  
*designated agency*)**

Insert:

(ua) the Integrity Commission of Tasmania; or

**4 Section 5 (definition of *reviewable decision*)**

Repeal the definition, substitute:

*reviewable decision* has the meaning given by section 233B.

**5 Section 73**

Omit:

- |  |
|--|
| <ul style="list-style-type: none"><li>• Division 4 provides for review of decisions.</li></ul> |
|--|

**6 At the end of subsection 75B(6)**

Add:

Note: A deemed decision not to register the person is reviewable (see Part 17A).

**7 At the end of subsection 75C(2)**

Add:

Note: A decision not to register the person is reviewable (see Part 17A).

**8 Subsection 75C(5) (note)**

Repeal the note.

**9 At the end of subsection 75E(1)**

Add:

Note: A decision to impose a condition is reviewable (see Part 17A).

**10 At the end of subsection 75G(1)**

Add:

Note: A decision to cancel a registration is reviewable (see Part 17A).

**11 Subsection 75G(2)**

Omit “subsection 75R(1)”, substitute “subsection 233C(1)”.

**12 Division 4 of Part 6 (heading)**

Repeal the heading.

**13 Subsection 75Q(1)**

Omit “reviewable decision in relation to a person”, substitute “reviewable decision under section 75C, 75E or 75G in relation to one or more persons”.

**14 Subsection 75Q(1)**

Omit “the person”, substitute “each of the persons”.

**15 At the end of subsection 75Q(1)**

Add:

Note: An example of a reviewable decision relating to 2 persons is a decision refusing to register a person as a remittance affiliate of a registered remittance network provider, if the provider applied under subsection 75B(2) for that person to be so registered.

**16 Sections 75R and 75S**

Repeal the sections.

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**17 After subsection 123(7)**

Insert:

- (7AA) A reporting entity to whom information has been disclosed under subsection (7) must not disclose the information unless:
- (a) the disclosure is made to another reporting entity that belongs to the designated business group; and
  - (b) the disclosure is made for the purpose of informing the other reporting entity about the risks involved in dealing with the customer.

**18 After subsection 123(7A)**

Insert:

- (7B) A reporting entity to whom information has been disclosed under subsection (7A) must not disclose the information to another person.

**19 Paragraph 123(11)(a)**

After “(5A)”, insert “, (7AA), (7B)”.

**20 Paragraph 130(3)(a)**

Repeal the paragraph, substitute:

- (a) the disclosure:
  - (i) is for the purposes of, or in connection with, the performance of the official’s duties in connection with the investigation or proposed investigation concerned; and
  - (ii) is to a person who has given a written undertaking as set out in subsection (3AA) to the entrusted Commonwealth agency official about the information;

**21 After subsection 130(3)**

Insert:

- (3AA) The undertaking is that the recipient and its officials (if any) will comply with the Information Privacy Principles set out in section 14 of the *Privacy Act 1988* in respect of AUSTRAC information obtained under paragraph (3)(a).

## 22 Paragraph 136(1)(c)

Repeal the paragraph, substitute:

- (c) the information is given, or purportedly given, under:
  - (i) this Act; or
  - (ii) a provision of the regulations or of the AML/CTF Rules, if the regulations or Rules (as applicable) state that this section applies to that provision.

## 23 Paragraph 137(1)(c)

Repeal the paragraph, substitute:

- (c) the document is produced, or purportedly produced, under:
  - (i) this Act; or
  - (ii) a provision of the regulations or of the AML/CTF Rules, if the regulations or Rules (as applicable) state that this section applies to that provision.

## 24 After subsection 139(2)

Insert:

- (2A) Paragraph (1)(c) does not apply to a false customer name if the customer's use of that name is justified, or excused, by or under a law.

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

## 25 Subsection 145(1)

Repeal the subsection, substitute:

- (1) The AUSTRAC CEO may, in writing, appoint as an authorised officer for the purposes of this Act:
  - (a) a member of the staff of AUSTRAC; or
  - (b) a person whose services are made available to the AUSTRAC CEO under subsection 225(3), other than a person covered by paragraph 225(3)(g).

Note: For revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

## 26 At the end of subsection 161(2)

Add:

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Note: The AUSTRAC CEO's decisions under this subsection are reviewable (see Part 17A).

**27 Section 164A**

Repeal the section.

**28 At the end of subsection 191(2)**

Add:

Note: A decision to give a direction is reviewable (see Part 17A).

**29 Section 191A**

Repeal the section.

**30 At the end of paragraph 225(3)(f)**

Add "or".

**31 After paragraph 225(3)(f)**

Insert:

- (g) by persons with suitable qualifications and experience who are officers, or employees, of some other body or organisation (whether located within or outside Australia);

**32 After Part 17**

Insert:

**Part 17A—Review of decisions**

**233A Simplified outline**

The following is a simplified outline of this Part:

- Certain decisions of delegates of the AUSTRAC CEO may be reviewed by the Administrative Appeals Tribunal following a process of internal reconsideration by the AUSTRAC CEO.
- Certain decisions of the AUSTRAC CEO may be reviewed by the Administrative Appeals Tribunal.

### 233B Reviewable decisions

For the purposes of this Act, each of the following decisions of the AUSTRAC CEO is a *reviewable decision*:

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Reviewable decisions	
Item	Decision
1	A decision under subsection 75B(6) or section 75C to refuse to register a person as: (a) a remittance network provider; or (b) an independent remittance dealer; or (c) a remittance affiliate of a registered remittance network provider.
2	A decision under section 75E to impose conditions to which a person's registration is subject.
3	A decision under section 75G to cancel a person's registration.
4	A decision under subsection 161(2) to require certain things of a reporting entity.
5	A decision under subparagraph 161(2)(d)(ii) not to allow a longer period.
6	A decision under subsection 191(2) to give a reporting entity a direction.

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### 233C Giving notice of reviewable decisions

- (1) The AUSTRAC CEO must, as soon as practicable after a reviewable decision is made in relation to one or more persons, give a written notice to each of the persons containing:
- (a) the terms of the decision; and
  - (b) for a decision under section 75G to cancel a person's registration—the date the cancellation takes effect; and
  - (c) the reasons for the decision; and
  - (d) a statement setting out particulars of the persons' right to have the decision reviewed under this Part.

Note: An example of a reviewable decision made in relation to 2 persons is a decision refusing to register a person as a remittance affiliate of a registered remittance network provider, if the provider applied under subsection 75B(2) for that person to be so registered.

- (2) Subsection (1) does not apply to reviewable decisions taken to be made because of the operation of subsection 75B(6) (about deemed refusal).

**233D Applications for reconsideration of decisions made by delegates of the AUSTRAC CEO**

- (1) This section applies to a reviewable decision if the decision is made by a delegate of the AUSTRAC CEO.

Note: Reviewable decisions made by the AUSTRAC CEO personally may be reviewed by the Administrative Appeals Tribunal (see paragraph 233F(b)).

- (2) A person affected by a reviewable decision who is dissatisfied with the decision may apply to the AUSTRAC CEO for the decision to be reconsidered.
- (3) The application must:
- (a) be in the approved form; and
  - (b) contain the information required by the AML/CTF Rules; and
  - (c) be made within:
    - (i) 30 days after the applicant is informed of the decision; or
    - (ii) such longer period as the AUSTRAC CEO (whether before or after the end of the 30 day period) allows.
- (4) An approved form of an application may provide for verification by statutory declaration of statements in applications.

**233E Reconsideration of reviewable decisions**

- (1) Upon receiving an application under section 233D, the AUSTRAC CEO must reconsider the reviewable decision.
- (2) The AUSTRAC CEO must:
- (a) affirm, vary or revoke the reviewable decision; and
  - (b) if the AUSTRAC CEO revokes the reviewable decision, make such other decision (if any) as the AUSTRAC CEO thinks appropriate.
- (3) The AUSTRAC CEO's reconsideration must be done by the AUSTRAC CEO personally, or by a person to whom the AUSTRAC CEO's power under this section is delegated who:
- (a) was not involved in making the reviewable decision; and

- (b) occupies a position in AUSTRAC that is senior to that occupied by any person involved in making the reviewable decision.
- (4) The AUSTRAC CEO must, as soon as practicable after making a decision under subsection (2), give written notice to the applicant of:
  - (a) the decision; and
  - (b) if the decision is to cancel a person’s registration—the date the cancellation takes effect; and
  - (c) the reasons for the decision; and
  - (d) a statement setting out particulars of the applicant’s right to have the decision reviewed by the Administrative Appeals Tribunal.
- (5) A decision of the AUSTRAC CEO under subsection (2) has effect (except for the purposes of section 233B) as if it were made under the provision under which the reviewable decision was made.

### **233F Review by the Administrative Appeals Tribunal**

An application may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision of the AUSTRAC CEO under subsection 233E(2);  
or
- (b) a reviewable decision made by the AUSTRAC CEO personally.

### **233G Failure to comply does not affect validity**

A failure to comply with subsection 233C(1) or 233E(4) (about giving notice) in relation to a decision does not affect the validity of the decision.

## **33 Application and transitional provisions**

### *Pending reviews*

- (1) Despite the repeals and amendments of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* made by this Part, the old law continues to apply, in relation to each of the following:

- (a) a reviewable decision made, or proposed to be made, before the commencement day;
- (b) a decision of the AUSTRAC CEO under section 161 or 191 of that Act made before the commencement day;

as if those repeals and amendments had not happened.

Note: A consequence of paragraph (a) is that the old law also applies in relation to AAT reviewable decisions made after the commencement day in relation to reviewable decisions made, or proposed to be made, before the commencement day.

#### *Secondary disclosures*

- (2) Subsections 123(7AA) and (7B), and paragraph 130(3)(a), of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (as inserted by this Part) apply in relation to information obtained before, on or after the commencement day.

#### *Existing appointments of authorised officers*

- (3) If an appointment under subsection 145(1) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* was in force immediately before the commencement day, the appointment has effect, on and after the commencement day, as if it had been made under that subsection as amended by this Part.

#### *Definitions*

- (4) In this item:

**commencement day** means the day this item commences.

**old law** means section 5, Part 6, Division 7 of Part 13 and Division 5 of Part 15 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as in force immediately before the commencement day.

**reviewable decision** means a **reviewable decision** within the meaning of the old law.

## Part 2—Other amendment

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

#### **34 Subsection 130(3AA)**

Omit “Information Privacy Principles set out in section 14 of the *Privacy Act 1988*”, substitute “Australian Privacy Principles”.

## **Schedule 5—Assisting the International Residual Mechanism for Criminal Tribunals**

### ***International Transfer of Prisoners Act 1997***

#### **1 Subsection 4(1) (definition of *Former Yugoslavia Tribunal*)**

Repeal the definition, substitute:

***Former Yugoslavia Tribunal:***

- (a) means the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by United Nations Security Council Resolution 827 S/RES/827 (1993); and
- (b) includes the organs referred to in Article 11 of the Statute of the Tribunal.

Note: In 2013, the text of United Nations Security Council resolutions was accessible through the United Nations website ([www.un.org](http://www.un.org)).

#### **2 Subsection 4(1)**

Insert:

***International Residual Mechanism for Criminal Tribunals:***

- (a) means the International Residual Mechanism for Criminal Tribunals, established by United Nations Security Council Resolution 1966 S/RES/1966 (2010); and
- (b) includes the organs referred to in Article 4 of the Statute of the Tribunal.

Note 1: In 2013, the text of United Nations Security Council resolutions was accessible through the United Nations website ([www.un.org](http://www.un.org)).

Note 2: The United Nations Security Council decided on 22 December 2010 to establish this Mechanism to carry out residual functions of the Former Yugoslavia Tribunal and the Rwanda Tribunal.

#### **3 Subsection 4(1) (definition of *Rwanda Tribunal*)**

Repeal the definition, substitute:

***Rwanda Tribunal:***

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- (a) means the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by United Nations Security Council Resolution 955 S/RES/955 (1994); and
- (b) includes the organs referred to in Article 10 of the Statute of the Tribunal.

Note: In 2013, the text of United Nations Security Council resolutions was accessible through the United Nations website ([www.un.org](http://www.un.org)).

#### **4 Subsection 4(1) (definition of *Statute of the Tribunal*)**

Repeal the definition, substitute:

*Statute of the Tribunal* means:

- (a) for the Former Yugoslavia Tribunal—the Statute of the Tribunal:
  - (i) adopted by United Nations Security Council Resolution 827 S/RES/827 (1993); and
  - (ii) annexed to the United Nations Secretary-General’s report S/25704 (1993) given pursuant to paragraph 2 of United Nations Security Council Resolution 808 S/RES/808 (1993); and
- (b) for the Rwanda Tribunal—the Statute of the Tribunal annexed to (and adopted by) United Nations Security Council Resolution 955 S/RES/955 (1994); and
- (c) for the International Residual Mechanism for Criminal Tribunals—the Statute of the Mechanism in Annex 1 to (and adopted by) United Nations Security Council Resolution 1966 S/RES/1966 (2010).

Note: In 2013, the text of United Nations Security Council resolutions and United Nations Secretary-General reports was accessible through the United Nations website ([www.un.org](http://www.un.org)).

#### **5 Subsection 4(1) (at the end of the definition of *Tribunal*)**

Add:

- ; or (c) the International Residual Mechanism for Criminal Tribunals.

**6 Subsection 4(1) (at the end of the definition of *Tribunal offence*)**

Add:

- ; or (c) an offence in relation to which the International Residual Mechanism for Criminal Tribunals has the power to prosecute persons under Article 1 of the Statute of the Tribunal.

***International War Crimes Tribunals Act 1995***

**7 Section 4 (definition of *Former Yugoslavia Tribunal*)**

Repeal the definition, substitute:

***Former Yugoslavia Tribunal:***

- (a) means the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, established by United Nations Security Council Resolution 827 S/RES/827 (1993); and
- (b) includes the organs referred to in Article 11 of the Statute of the Tribunal.

Note: In 2013, the text of United Nations Security Council resolutions was accessible through the United Nations website ([www.un.org](http://www.un.org)).

**8 Section 4**

Insert:

***International Residual Mechanism for Criminal Tribunals:***

- (a) means the International Residual Mechanism for Criminal Tribunals, established by United Nations Security Council Resolution 1966 S/RES/1966 (2010); and
- (b) includes the organs referred to in Article 4 of the Statute of the Tribunal.

Note 1: In 2013, the text of United Nations Security Council resolutions was accessible through the United Nations website ([www.un.org](http://www.un.org)).

Note 2: The United Nations Security Council decided on 22 December 2010 to establish this Mechanism to carry out residual functions of the Former Yugoslavia Tribunal and the Rwanda Tribunal.

## 9 Section 4 (definition of *Rwanda Tribunal*)

Repeal the definition, substitute:

***Rwanda Tribunal:***

- (a) means the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, established by United Nations Security Council Resolution 955 S/RES/955 (1994); and
- (b) includes the organs referred to in Article 10 of the Statute of the Tribunal.

Note: In 2013, the text of United Nations Security Council resolutions was accessible through the United Nations website ([www.un.org](http://www.un.org)).

## 10 Section 4 (definition of *Statute of the Tribunal*)

Repeal the definition, substitute:

***Statute of the Tribunal*** means:

- (a) for the Former Yugoslavia Tribunal—the Statute of the Tribunal:
  - (i) adopted by United Nations Security Council Resolution 827 S/RES/827 (1993); and
  - (ii) annexed to the United Nations Secretary-General’s report S/25704 (1993) given pursuant to paragraph 2 of United Nations Security Council Resolution 808 S/RES/808 (1993); and
- (b) for the Rwanda Tribunal—the Statute of the Tribunal annexed to (and adopted by) United Nations Security Council Resolution 955 S/RES/955 (1994); and
- (c) for the International Residual Mechanism for Criminal Tribunals—the Statute of the Mechanism in Annex 1 to (and adopted by) United Nations Security Council Resolution 1966 S/RES/1966 (2010).

Note: In 2013, the text of United Nations Security Council resolutions and United Nations Secretary-General reports was accessible through the United Nations website ([www.un.org](http://www.un.org)).

**11 Section 4 (at the end of the definition of *Tribunal*)**

Add:

- ; or (c) the International Residual Mechanism for Criminal Tribunals.

**12 Section 4 (at the end of the definition of *Tribunal offence*)**

Add:

- ; or (c) an offence for which the International Residual Mechanism for Criminal Tribunals has the power to prosecute persons under Article 1 of the Statute of the Tribunal.

**13 At the end of subsection 42(3)**

Add:

- ; or (c) in the case of the International Residual Mechanism for Criminal Tribunals—Article 13 of the Statute of the Tribunal.

**14 Schedules 1 to 4**

Repeal the Schedules.

**15 Application of amendments**

All of the following:

- (a) the amendments made by items 2, 5, 6, 8 and 11 to 13 of this Schedule;
- (b) paragraph (c) of the definition of *Statute of the Tribunal* in subsection 4(1) of the *International Transfer of Prisoners Act 1997* (as inserted by this Schedule);
- (c) paragraph (c) of the definition of *Statute of the Tribunal* in section 4 of the *International War Crimes Tribunals Act 1995* (as inserted by this Schedule);

apply on or after the day this Schedule commences in relation to requests, or orders, made by the International Residual Mechanism for Criminal Tribunals before, on or after that day.

## Schedule 6—Miscellaneous amendments

### *Australian Federal Police Act 1979*

#### **1 Subsection 8(1C)**

Repeal the subsection, substitute:

- (1C) The Minister and the following person:
- (a) for Norfolk Island—the Administrator of Norfolk Island;
  - (b) for any other external Territory:
    - (i) the Minister administering the Department that deals with the administration of the Territory; or
    - (ii) the Territory’s Administrator (if any);
- may enter into arrangements for the provision of police services and regulatory services for that Territory.
- (1D) The provision of police services and regulatory services in an external Territory must be in accordance with any arrangements in force under subsection (1C) for the Territory.

#### **2 Transitional—preserving existing arrangements**

- (1) This item applies to arrangements if:
- (a) the arrangements were entered into under subsection 8(1C) of the *Australian Federal Police Act 1979*; and
  - (b) the arrangements were in force immediately before the commencement of this item.
- (2) The arrangements have effect, after the commencement of this item, as if they had been entered into under that subsection as substituted by this Schedule.

#### **3 Subsection 69C(3)**

Omit “the Deputy Commissioner”, substitute “a Deputy Commissioner”.

#### **4 At the end of section 69C (after the note)**

Add:

- (4) If:
-

- (a) the Commissioner has, under subsection (3), delegated one or more powers, functions or duties to a senior executive AFP employee; and
- (b) an AFP employee is acting in, or performing the duties of, the position held or occupied by the senior executive AFP employee;

the Commissioner is taken to have delegated the powers, functions or duties mentioned in paragraph (a) to the AFP employee mentioned in paragraph (b).

### ***Telecommunications (Interception and Access) Act 1979***

#### **5 Subsection 5(1) (definition of *Inspector of the Victorian Inspectorate*)**

Repeal the definition, substitute:

*Inspector of the Victorian Inspectorate* has the same meaning as *Inspector* has in the Victorian Inspectorate Act.

#### **6 Subsection 5(1) (subparagraph (f)(i) of the definition of *permitted purpose*)**

Omit “section 3A of”.

#### **7 Subsection 5(1) (subparagraph (f)(ii) of the definition of *permitted purpose*)**

Omit “section 3B of”.

#### **8 Subsection 5(1) (subparagraph (fa)(i) of the definition of *permitted purpose*)**

Omit “Part 3 of”.

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*[Minister's second reading speech made in—  
House of Representatives on 29 May 2013  
Senate on 19 June 2013]*

(123/13)

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52 *Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness  
Protection and Other Measures) Act 2013 No. 74, 2013*