





# **Counter-Terrorism Legislation Amendment Act (No. 1) 2016**

**No. 82, 2016**

**An Act to amend the law relating to  
counter-terrorism, and for related purposes**

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



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No. 82, 2016

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## **An Act to amend the law relating to counter-terrorism, and for related purposes**

[Assented to 29 November 2016]

The Parliament of Australia enacts:

### **1 Short title**

This Act is the *Counter-Terrorism Legislation Amendment Act (No. 1) 2016*.

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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>Provisions</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.	29 November 2016
2. Schedules 1 to 14	The day after this Act receives the Royal Assent.	30 November 2016
3. Schedule 15, Part 1	The day after this Act receives the Royal Assent.	30 November 2016
4. Schedule 15, Part 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
5. Schedules 16 to 18	The day after this Act receives the Royal Assent.	30 November 2016

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Receiving funds for legal assistance**

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

#### **1 After paragraph 102.6(3)(a) of the *Criminal Code***

Insert:

- (aa) legal advice or legal representation in connection with the question of whether the organisation is a terrorist organisation; or

#### **2 Subparagraph 102.8(4)(d)(ii) of the *Criminal Code***

Repeal the subparagraph, substitute:

- (ii) the question of whether the organisation is a terrorist organisation; or

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## **Schedule 2—Control orders for young people**

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

#### **1 Paragraph 104.2(3)(b) of the *Criminal Code***

Repeal the paragraph, substitute:

- (b) if the person is at least 18 years of age and the member has information about the person’s age—that information; and
- (ba) if the person is under 18 years of age—information about the person’s age; and

#### **2 Subsection 104.2(3) of the *Criminal Code* (note)**

Omit “16”, substitute “14”.

#### **3 Subsection 104.4(2) of the *Criminal Code***

Repeal the subsection, substitute:

- (2) For the purposes of paragraph (1)(d), in determining whether each of the obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, the court must take into account:
  - (a) as a paramount consideration in all cases—the objects of this Division (see section 104.1); and
  - (b) as a primary consideration in the case where the person is 14 to 17 years of age—the best interests of the person; and
  - (c) as an additional consideration in all cases—the impact of the obligation, prohibition or restriction on the person’s circumstances (including the person’s financial and personal circumstances).
- (2A) In determining what is in the best interests of a person for the purposes of paragraph (2)(b), the court must take into account the following:
  - (a) the age, maturity, sex and background (including lifestyle, culture and traditions) of the person;
  - (b) the physical and mental health of the person;
  - (c) the benefit to the person of having a meaningful relationship with his or her family and friends;

- (d) the right of the person to receive an education;
- (e) the right of the person to practise his or her religion;
- (f) any other matter the court considers relevant.

#### **4 Subsection 104.5(1) of the *Criminal Code* (note 2)**

Repeal the note, substitute:

Note 2: If the person is 14 to 17 years of age, then a confirmed control order must not end more than 3 months after the day on which the interim control order is made (see section 104.28).

#### **5 After subparagraph 104.12(1)(b)(iii) of the *Criminal Code***

Insert:

- (iiia) that the person has a right to obtain legal advice and legal representation;

#### **6 Subsection 104.12(5) of the *Criminal Code* (heading)**

Repeal the heading, substitute:

*If person is resident, or order made, in Queensland*

#### **7 At the end of section 104.12 of the *Criminal Code***

Add:

*If person is 14 to 17*

- (6) As soon as practicable after an interim control order is made in relation to a person who is 14 to 17 years of age, and at least 48 hours before the day specified as mentioned in paragraph 104.5(1)(e), an AFP member must take reasonable steps to serve a copy of the order personally on at least one parent or guardian of the person.

#### **8 Subparagraph 104.12A(2)(a)(iii) of the *Criminal Code***

After “other”, insert “written”.

#### **9 At the end of subsection 104.12A(2) of the *Criminal Code***

Add:

- ; and (c) if the person is 14 to 17 years of age—take reasonable steps to serve a copy of the documents mentioned in paragraph (a) personally on at least one parent or guardian of the person.
-

**10 At the end of paragraph 104.12A(4)(b) of the *Criminal Code***

Add:

- ; and (iv) if the person is 14 to 17 years of age—cause reasonable steps to be taken to serve a copy of the annotated order and the notification personally on at least one parent or guardian of the person.

**11 Before subsection 104.14(1) of the *Criminal Code***

Insert:

*When this section applies*

(1A) This section applies if:

- (a) an interim control order is made in relation to a person; and
- (b) an election is made under section 104.12A to confirm the order; and
- (c) the issuing court is satisfied on the balance of probabilities that section 104.12 and subsection 104.12A(2) have been complied with in relation to the order.

**12 Subsection 104.14(1) of the *Criminal Code***

Omit “If an election has been made to confirm an interim control order, then, on”, substitute “On”.

**13 Paragraph 104.14(1)(e) of the *Criminal Code***

Omit “(unless the monitor is already a representative of the person)”.

**14 Subsection 104.14(4) of the *Criminal Code***

Repeal the subsection (not including the heading), substitute:

- (4) The court may confirm the order without variation if none of the following persons attend the court on the specified day:
  - (a) the person in relation to whom the order is made;
  - (b) a representative of the person;
  - (c) if the person is a resident of Queensland, or the court made the order in Queensland—the Queensland public interest monitor.

**15 Subsection 104.16(1) of the *Criminal Code* (note)**

Repeal the note, substitute:

Note: If the person is 14 to 17 years of age, then a confirmed control order must not end more than 3 months after the day on which the interim control order is made (see section 104.28).

**16 At the end of section 104.17 of the *Criminal Code***

Add:

*If person is 14 to 17*

- (4) If the person is 14 to 17 years of age, then as soon as practicable after the interim control order is declared to be void, revoked or confirmed (with or without variation) under section 104.14, an AFP member must take reasonable steps to serve a copy of the declaration, revocation or confirmed control order personally on at least one parent or guardian of the person.

**17 Paragraph 104.18(4)(e) of the *Criminal Code***

Omit “(unless the monitor is a representative of the person)”.

**18 After subsection 104.19(2) of the *Criminal Code***

Insert:

- (2A) If the person is 14 to 17 years of age, the Commissioner must cause reasonable steps to be taken to give written notice of both the application and the grounds on which the revocation or variation is sought to at least one parent or guardian of the person.

**19 Paragraph 104.19(3)(e) of the *Criminal Code***

Omit “(unless the monitor is a representative of the person)”.

**20 Subsection 104.20(3) of the *Criminal Code***

Repeal the subsection, substitute:

- (3) As soon as practicable after a confirmed control order in relation to a person is revoked or varied, an AFP member must:
- (a) serve the revocation or variation personally on the person;
- and

- 
- (b) if the person is 14 to 17 years of age—take reasonable steps to serve a copy of the revocation or variation personally on at least one parent or guardian of the person.

### **21 Paragraph 104.23(2)(d) of the *Criminal Code***

Repeal the paragraph, substitute:

- (d) if the person is at least 18 years of age and the Commissioner has information about the person's age—that information; and
- (e) if the person is under 18 years of age—information about the person's age.

### **22 Subsection 104.23(2) of the *Criminal Code* (note 1)**

Omit “16”, substitute “14”.

### **23 Subsection 104.23(3) of the *Criminal Code***

Repeal the subsection, substitute:

- (3) As soon as practicable after an application is made under subsection (1), the Commissioner must:
  - (a) cause the documents mentioned in subsection (3AA) to be served personally on the person in relation to whom the order is made; and
  - (b) if the person is a resident of Queensland, or the court will hear the application in Queensland—cause the documents mentioned in subsection (3AA) to be given to the Queensland public interest monitor; and
  - (c) if the person is 14 to 17 years of age—cause reasonable steps to be taken to serve the documents mentioned in subsection (3AA) personally on at least one parent or guardian of the person.

(3AA) The documents are the following:

- (a) written notice of the application and the grounds on which the variation is sought;
- (b) a copy of the documents mentioned in paragraph (2)(b);
- (c) any other written details required to enable the person in relation to whom the order is made to understand and respond to the substance of the facts, matters and

circumstances which will form the basis of the variation of the order.

**24 Subsection 104.23(3A) of the *Criminal Code***

Omit “subsection (3) does”, substitute “subsections (3) and (3AA) do”.

**25 Paragraph 104.23(4)(e) of the *Criminal Code***

Omit “(unless the monitor is a representative of the person)”.

**26 Subsection 104.24(2) of the *Criminal Code***

Repeal the subsection, substitute:

- (2) For the purposes of paragraph (1)(b), in determining whether each of the additional obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, the court must take into account:
- (a) as a paramount consideration in all cases—the objects of this Division (see section 104.1); and
  - (b) as a primary consideration in the case where the person is 14 to 17 years of age—the best interests of the person; and
  - (c) as an additional consideration in all cases—the impact of the obligation, prohibition or restriction on the person’s circumstances (including the person’s financial and personal circumstances).
- (2A) In determining what is in the best interests of the person for the purposes of paragraph (2)(b), the court must take into account the matters referred to in subsection 104.4(2A).

**27 At the end of section 104.26 of the *Criminal Code***

Add:

*If person is 14 to 17*

- (5) As soon as practicable after a control order in relation to a person who is 14 to 17 years of age is varied under section 104.24, an AFP member must take reasonable steps to serve a copy of the varied order personally on at least one parent or guardian of the person.

**28 Subdivision H of Division 104 of Part 5.3 of the *Criminal Code* (heading)**

Repeal the heading, substitute:

**Subdivision H—Special rules for young people (14 to 17)**

**29 Subsection 104.28(1) of the *Criminal Code* (heading)**

Repeal the heading, substitute:

*Rule for people under 14*

**30 Subsection 104.28(1) of the *Criminal Code***

Omit “16”, substitute “14”.

**31 Subsection 104.28(2) of the *Criminal Code* (heading)**

Repeal the heading, substitute:

*Rule for people 14 to 17*

**32 Subsection 104.28(2) of the *Criminal Code***

Omit “at least 16 but under 18”, substitute “14 to 17 years of age”.

**32A At the end of section 104.28 of the *Criminal Code***

Add:

*Young person’s right to legal representation*

- (4) If an issuing court is satisfied, in proceedings relating to a control order, that:
- (a) the person to whom the control order relates, or the person in relation to whom the control order is requested, is at least 14 but under 18; and
  - (b) the person does not have a lawyer acting in relation to the proceedings;
- the court must appoint a lawyer to act for the person in relation to the proceedings.
- (5) However, the issuing court is not required to appoint a lawyer if:
- (a) the proceedings are ex parte proceedings relating to a request for an interim control order; or

- (b) the person refused a lawyer previously appointed under subsection (4) during proceedings relating to:
  - (i) the control order; or
  - (ii) if the control order is a confirmed control order—the interim control order that was confirmed.
- (6) The regulations may provide in relation to the appointing of lawyers under subsection (4) (including in relation to lawyers appointed under that subsection).

**33 Before section 104.28A of the *Criminal Code***

Insert:

**Subdivision I—Miscellaneous**

**34 At the end of subsection 104.29(2) of the *Criminal Code***

Add:

- (j) for control orders relating to people who are 14 to 17 years of age—the matters referred to in paragraphs (a) to (i) in so far as those matters specifically relate to those control orders.

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## **Schedule 3—Control orders and tracking devices**

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

#### **1 After subsection 104.5(3) of the *Criminal Code***

Insert:

- (3A) If the court imposes a requirement under paragraph (3)(d) that the person wear a tracking device, then the court must also impose on the person by the order a requirement that the person do all of the following:
- (a) take steps specified in the order (if any) and reasonable steps to ensure that the tracking device and any equipment necessary for the operation of the tracking device are or remain in good working order;
  - (b) report to persons specified in the order (if any), at the times and places specified in the order (if any), for the purposes of having the tracking device inspected;
  - (c) if the person becomes aware that the tracking device or any equipment necessary for the operation of the tracking device is not in good working order—notify an AFP member as soon as practicable, but no later than 4 hours, after becoming so aware.
- (3B) If the court imposes a requirement under paragraph (3)(d) that the person wear a tracking device, then the court must also include in the order an authorisation for one or more AFP members:
- (a) to take steps specified in the order to ensure that the tracking device and any equipment necessary for the operation of the tracking device are or remain in good working order; and
  - (b) to enter one or more premises specified in the order for the purposes of installing any equipment necessary for the operation of the tracking device.

#### **2 Subdivision G of Division 104 of Part 5.3 of the *Criminal Code* (heading)**

Repeal the heading, substitute:

**Subdivision G—Offences relating to control orders**

**3 At the end of Subdivision G of Division 104 of Part 5.3 of the *Criminal Code***

Add:

**104.27A Offence relating to tracking devices**

- (1) A person commits an offence if:
- (a) a control order is in force in relation to the person; and
  - (b) the control order requires the person to wear a tracking device; and
  - (c) the person engages in conduct; and
  - (d) the conduct results in interference with, or disruption or loss of, a function of the tracking device.

Penalty: Imprisonment for 5 years.

- (2) A person (the *perpetrator*) commits an offence if:
- (a) the perpetrator knows that, or is reckless as to whether, a control order is in force in relation to another person; and
  - (b) the perpetrator knows that, or is reckless as to whether, the control order requires the other person to wear a tracking device; and
  - (c) the perpetrator engages in conduct; and
  - (d) the conduct results in interference with, or disruption or loss of, a function of the tracking device.

Penalty: Imprisonment for 5 years.

## **Schedule 4—Issuing court for control orders**

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

#### **1 Subsection 100.1(1) of the *Criminal Code* (paragraph (b) of the definition of *issuing court*)**

Repeal the paragraph.

## Schedule 5—Preventative detention orders

### *Criminal Code Act 1995*

#### **1 Paragraph 105.1(a) of the *Criminal Code***

Repeal the paragraph, substitute:

- (a) prevent a terrorist act that is capable of being carried out, and could occur, within the next 14 days from occurring; or

#### **2 Subsection 105.4(5) of the *Criminal Code***

Repeal the subsection, substitute:

- (5) A terrorist act referred to in subsection (4) must be one that:
  - (a) for paragraphs (4)(a) and (c)—the AFP member suspects, on reasonable grounds; or
  - (b) for paragraphs (4)(b) and (c)—the issuing authority is satisfied there are reasonable grounds to suspect;is capable of being carried out, and could occur, within the next 14 days.

## **Schedule 6—Issuing authorities for preventative detention orders**

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

**1 Subsection 100.1(1) of the *Criminal Code* (definition of *Judge*)**

Repeal the definition.

**2 Subsection 100.1(1) of the *Criminal Code* (paragraph (c) of the definition of *superior court*)**

Repeal the paragraph.

**3 Paragraph 105.2(1)(b) of the *Criminal Code***

After “Judge”, insert “of the Federal Court of Australia or of the Federal Circuit Court of Australia”.

## **Schedule 7—Application of amendments of the Criminal Code**

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

#### **1 In the appropriate position in Division 106 of Part 5.3 of the Criminal Code**

Add:

#### **106.7 Application provision for certain amendments in the Counter-Terrorism Legislation Amendment Act (No. 1) 2016**

- (1) Division 104, as amended by Schedules 2 and 3 to the *Counter-Terrorism Legislation Amendment Act (No. 1) 2016*, applies to an order made under that Division after the commencement of this section, where:
  - (a) the order is requested (however described) after that commencement; and
  - (b) the conduct in relation to which that request is made occurs before or after that commencement.
- (2) Despite the amendment made by Schedule 4 to the *Counter-Terrorism Legislation Amendment Act (No. 1) 2016*, Division 104 continues to apply in relation to:
  - (a) a request for an interim control order, where the request was made before the commencement of this section; and
  - (b) the making of an interim control order in response to such a request; and
  - (c) the making of a declaration in relation to such an interim control order; and
  - (d) the revocation of such an interim control order; and
  - (e) the confirmation of such an interim control order (with or without variation); and
  - (f) the making of a confirmed control order that corresponds to such an interim control order that has been so confirmed; and
  - (g) the revocation or variation of such a confirmed control order; and

- (h) any other proceedings under that Division that are associated with, or incidental to, a matter covered by any of the above paragraphs;  
as if the amendment had not been made.
- (3) Section 104.29, as amended by Schedule 8 to the *Counter-Terrorism Legislation Amendment Act (No. 1) 2016*, applies in relation to any year that ends on 30 June after the commencement of this section.
- (4) Division 105, as amended by Schedule 5 to the *Counter-Terrorism Legislation Amendment Act (No. 1) 2016*, applies in relation to an application for the following made after the commencement of this section:
- (a) a preventative detention order;
  - (b) an initial preventative detention order;
  - (c) an extension of an initial preventative detention order;
  - (d) a continued preventative detention order;
  - (e) an extension of a continued preventative detention order.

## **Schedule 8—Monitoring of compliance with control orders etc.**

### *Crimes Act 1914*

#### **1 After Part IAAA**

Insert:

### **Part IAAB—Monitoring of compliance with control orders etc.**

#### **Division 1—Introduction**

##### **3ZZJA Simplified outline of this Part**

- If a control order is in force in relation to a person, and the person has a prescribed connection with premises, a constable may enter and search the premises if:
  - (a) the person is the occupier of the premises and consents to the entry; or
  - (b) the entry is made under a monitoring warrant.
- If a control order is in force in relation to a person, a constable may conduct an ordinary search or a frisk search of the person if:
  - (a) the person consents to the search; or
  - (b) the search is conducted under a monitoring warrant.
- A search must be for any of the following purposes:
  - (a) the protection of the public from a terrorist act;
  - (b) preventing the provision of support for, or the facilitation of, a terrorist act;
  - (c) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;

- (d) determining whether the control order has been, or is being, complied with.

### **3ZZJB Definitions**

In this Part:

***confirmed control order*** has the same meaning as in Part 5.3 of the *Criminal Code*.

***control order*** has the same meaning as in Part 5.3 of the *Criminal Code*.

***damage***, in relation to data, includes damage by erasure of data or addition of other data.

***engage in a hostile activity*** has the same meaning as in Part 5.3 of the *Criminal Code*.

***evidential material*** has the same meaning as in Part IAA.

***foreign country***, when used in the expression ***hostile activity in a foreign country***, has the same meaning as in the *Criminal Code*.

***frisk search*** has the same meaning as in Part IAA.

***inspecting officer*** means a person appointed under subsection 3ZZUA(1).

***interim control order*** has the same meaning as in Part 5.3 of the *Criminal Code*.

***issuing officer*** means a magistrate.

***monitoring powers***:

- (a) in relation to premises—has the meaning given by sections 3ZZKB, 3ZZKC and 3ZZKD; or
- (b) in relation to a person—has the meaning given by section 3ZZLB.

***monitoring warrant*** means a warrant under section 3ZZOA or 3ZZOB.

***ordinary search*** has the same meaning as in Part IAA.

**premises** includes the following:

- (a) a structure, building or conveyance;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b).

**prescribed connection** with premises has the meaning given by section 3ZZJC.

**recently used conveyance**, in relation to a search of a person, means a conveyance that the person had operated or occupied at any time within 24 hours before the search commenced.

**relevant data** has the meaning given by subsection 3ZZKC(3).

**seizable item** has the same meaning as in Part IAA.

**staff member** of the Australian Federal Police means a person referred to in paragraph (a) of the definition of **law enforcement officer** in subsection 3(1).

**State or Territory agency**: see section 3ZZUF.

**State or Territory inspecting authority**: see section 3ZZUF.

**strip search** has the same meaning as in Part IAA.

### **3ZZJC Prescribed connection with premises**

For the purposes of this Part, a person has a **prescribed connection** with premises if:

- (a) the person:
  - (i) is the legal or beneficial owner of the premises (whether alone or together with one or more other persons); or
  - (ii) has any other legal or equitable estate or interest in the premises; or
- (b) the person occupies, or resides on, the premises; or
- (c) the person has possession or control of the premises (whether alone or together with one or more other persons); or
- (d) the person performs any of the duties of his or her employment on the premises; or
- (e) the person carries on a business on the premises (whether alone or together with one or more other persons); or

- (f) the person performs voluntary work on the premises; or
- (g) both:
  - (i) the premises are used by a school, college, university or other educational institution; and
  - (ii) the person attends the premises in his or her capacity as a student at the school, college, university or other educational institution.

### **3ZZJD Privileges not abrogated**

#### *Self-incrimination*

- (1) This Part (other than section 3ZZUE) does not affect the right of a person to refuse to answer a question, give information, or produce a document, on the ground that the answer to the question, the information, or the production of the document, might tend to incriminate him or her or make him or her liable to a penalty.

#### *Legal professional privilege*

- (2) This Part (other than section 3ZZUE) does not affect the right of a person to refuse to answer a question, give information, or produce a document, on the ground that:
  - (a) the answer to the question or the information would be privileged from being given on the ground of legal professional privilege; or
  - (b) the document would be privileged from being produced on the ground of legal professional privilege.

#### *Other legislation not affected*

- (3) The fact that this section is included in this Part does not imply that the privilege against self-incrimination or legal professional privilege is abrogated in any other law of the Commonwealth.

### **3ZZJE Application of Part**

- (1) This Part is not intended to limit or exclude the operation of another law of the Commonwealth (including other provisions of this Act) relating to:
  - (a) the search of premises; or

- (b) the searching of persons or conveyances; or
  - (c) the seizure of things; or
  - (d) the requesting of information or documents from persons.
- (2) To avoid any doubt, it is declared that even though another law of the Commonwealth (including other provisions of this Act) provides power to do one or more of the things referred to in subsection (1), a similar power conferred by this Part may be used despite the existence of the power under the other law.

## **Division 2—Powers of constables in relation to premises**

### **Subdivision A—Monitoring powers**

#### **3ZZKA Entering premises by consent or under a warrant**

- (1) If:
- (a) a control order is in force in relation to a person; and
  - (b) the person has a prescribed connection with particular premises;
- a constable may enter the premises, and exercise the monitoring powers, for any of the following purposes:
- (c) the protection of the public from a terrorist act;
  - (d) preventing the provision of support for, or the facilitation of, a terrorist act;
  - (e) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;
  - (f) determining whether the control order has been, or is being, complied with.

Note: The *monitoring powers* are set out in sections 3ZZKB, 3ZZKC and 3ZZKD.

- (2) However, a constable is not authorised to enter the premises unless:
- (a) the person:
    - (i) is the occupier of the premises; and
    - (ii) has consented to the entry; or
  - (b) the entry is made under a monitoring warrant.

Note: If entry to the premises is with the occupier's consent, the constable must leave the premises if the consent ceases to have effect (see section 3ZZNA).

### **3ZZKB General monitoring powers**

The following are the *monitoring powers* that a constable may exercise in relation to premises under section 3ZZKA:

- (a) the power to search the premises and any thing on the premises;
- (b) the power to search for and record fingerprints found at the premises;
- (c) the power to take samples of things found at the premises;
- (d) the power to examine or observe any activity conducted on the premises;
- (e) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;
- (f) the power to make any still or moving image or any recording of the premises or any thing on the premises;
- (g) the power to inspect any document on the premises;
- (h) the power to take extracts from, or make copies of, any such document;
- (i) the power to take onto the premises such equipment and materials as the constable requires for the purpose of exercising powers in relation to the premises;
- (j) the powers set out in subsections 3ZZKC(1) and (4) and 3ZZKD(2).

### **3ZZKC Operating electronic equipment**

- (1) The *monitoring powers* include the power to:
    - (a) operate electronic equipment on the premises; and
    - (b) use a disk, tape or other storage device that:
      - (i) is on the premises; and
      - (ii) can be used with the equipment or is associated with it.
  - (2) The *monitoring powers* include the powers mentioned in subsection (4) if relevant data is found in the exercise of the power under subsection (1).
  - (3) *Relevant data* means information relevant to:
-

- (a) the protection of the public from a terrorist act; or
  - (b) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (c) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (d) determining whether the relevant control order has been, or is being, complied with.
- (4) The powers are as follows:
- (a) the power to operate electronic equipment on the premises to put the relevant data in documentary form and remove the documents so produced from the premises;
  - (b) the power to operate electronic equipment on the premises to transfer the relevant data to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or
    - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (5) A constable may operate electronic equipment as mentioned in subsection (1) or (4) only if the constable believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Note: For compensation for damage to electronic equipment, see section 3ZZNF.

### **3ZZKD Securing electronic equipment to obtain expert assistance**

#### *Scope*

- (1) This section applies if a constable enters premises under a monitoring warrant.

*Securing equipment*

- (2) The **monitoring powers** include the power to secure any electronic equipment that is on the premises if the constable suspects on reasonable grounds that:
- (a) there is relevant data on the premises; and
  - (b) the relevant data may be accessible by operating the equipment; and
  - (c) expert assistance is required to operate the equipment; and
  - (d) the relevant data may be destroyed, altered or otherwise interfered with, if the constable does not take action under this subsection.
- The equipment may be secured by locking it up, placing a guard or any other means.
- (3) The constable must give notice to the occupier of the premises, or another person who apparently represents the occupier, of:
- (a) the constable's intention to secure the equipment; and
  - (b) the fact that the equipment may be secured for up to 24 hours.

*Period equipment may be secured*

- (4) The equipment may be secured until the earlier of the following happens:
- (a) the 24-hour period ends;
  - (b) the equipment has been operated by the expert.

Note: For compensation for damage to electronic equipment, see section 3ZZNF.

*Extensions*

- (5) The constable may apply to an issuing officer for an extension of the 24-hour period if the constable believes on reasonable grounds that the equipment needs to be secured for longer than that period.
- (6) Before making the application, the constable must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.

- (7) The 24-hour period may be extended more than once.

Note: For the process by which an issuing officer may extend the period, see section 3ZZQA.

## **Subdivision B—Powers to ask questions and seek production of documents**

### **3ZZKE Asking questions and seeking production of documents**

#### *Scope*

- (1) This section applies if a constable enters premises under section 3ZZKA.

#### *Entry with consent*

- (2) If the entry is authorised because the occupier of the premises consented to the entry, the constable may ask the occupier to answer any questions, and produce any document, that is likely to assist in:
- (a) the protection of the public from a terrorist act; or
  - (b) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (c) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (d) determining whether the relevant control order has been, or is being, complied with.

Note 1: A person is not required to answer a question, or produce a document, in response to a request under this subsection.

Note 2: See also sections 3ZZRC and 3ZZRD.

#### *Entry under a monitoring warrant*

- (3) If:
- (a) the entry is authorised by a monitoring warrant; and
  - (b) the warrant authorises the constable to exercise powers under this subsection;
- the constable may (subject to subsections (4) to (7)) require any person on the premises to answer any questions, and produce any document, that is likely to assist in:

- (c) the protection of the public from a terrorist act; or
- (d) preventing the provision of support for, or the facilitation of, a terrorist act; or
- (e) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
- (f) determining whether the relevant control order has been, or is being, complied with.

Note: See also sections 3ZZRC and 3ZZRD.

*Legal professional privilege and privilege against self-incrimination*

- (4) Before a constable requires a person to answer a question or produce a document under subsection (3), the constable must explain the effect of section 3ZZJD to the person.
- (5) An answer to a question or a document produced under subsection (3) by a person is not admissible in evidence against him or her in criminal proceedings if a constable fails to explain the effect of section 3ZZJD to the person in accordance with subsection (4). The failure does not otherwise affect the use of the answer or document.

Note: For the uses that may be made of the answer or document, see sections 3ZZRC and 3ZZRD.

*Exceptions to subsection (3)*

- (6) A person is not subject to a requirement under subsection (3) if:
  - (a) the person does not possess the information or document required; and
  - (b) the person has taken all reasonable steps available to the person to obtain the information or document required and has been unable to obtain it.
- (7) A person is not subject to a requirement under subsection (3) to produce a document if the document is not at the premises.

*Offence*

- (8) A person commits an offence if:
    - (a) the person is subject to a requirement under subsection (3); and
-

- (b) the person engages in conduct; and
- (c) the person's conduct breaches the requirement.

Penalty for contravention of this subsection: 30 penalty units.

## Subdivision C—Other powers

### 3ZZKF Other powers

#### *Scope*

- (1) This section applies if:
  - (a) a constable enters premises under section 3ZZKA; and
  - (b) the entry is authorised by a monitoring warrant.

#### *Powers*

- (2) The constable has the following powers in relation to the premises:
  - (a) the power to seize things found during the exercise of monitoring powers on the premises that the constable suspects on reasonable grounds to be:
    - (i) evidential material; or
    - (ii) evidential material (within the meaning of the *Proceeds of Crime Act 2002*); or
    - (iii) tainted property (within the meaning of that Act); or
    - (iv) seizable items;
  - (b) the power to conduct an ordinary search or a frisk search of a person at or near the premises if the constable suspects on reasonable grounds that the person has any evidential material or seizable items in his or her possession;
  - (c) the power to seize other things found while conducting an ordinary search or a frisk search of a person at or near the premises that the constable suspects on reasonable grounds to be:
    - (i) evidential material; or
    - (ii) evidential material (within the meaning of the *Proceeds of Crime Act 2003*); or
    - (iii) tainted property (within the meaning of that Act); or
    - (iv) seizable items.

**3ZZKG Availability of assistance and use of force in executing a warrant**

*Scope*

- (1) This section applies if:
- (a) a constable enters premises under section 3ZZKA; and
  - (b) the entry is authorised by a monitoring warrant.

*Availability of assistance and use of force*

- (2) In:
- (a) executing the warrant; or
  - (b) exercising the powers set out in section 3ZZKF in relation to the premises;
- the constable may use such force against persons and things as is necessary and reasonable in the circumstances.
- (3) In executing the warrant, the constable may obtain such assistance as is necessary and reasonable in the circumstances.
- (4) If a person (other than a constable) has been authorised by the constable to assist in executing the warrant, the person may:
- (a) enter the premises; and
  - (b) exercise the monitoring powers in relation to the premises; and
  - (c) in:
    - (i) entering the premises; or
    - (ii) exercising the monitoring powers;use such force against things as is necessary and reasonable in the circumstances.
- (5) If a person (other than a constable) has been authorised by the constable to assist in executing the warrant:
- (a) the person may only exercise the monitoring powers set out in subsection 3ZZKD(2) if the constable forms the suspicion mentioned in that subsection; and
  - (b) the person must not exercise a power set out in subsection 3ZZKD(5) or section 3ZZKE or 3ZZKF.

- (6) A power exercised by a person assisting the constable as mentioned in subsection (4) is taken to have been exercised by the constable.

### **Division 3—Powers of constables in relation to persons subject to control orders**

#### **3ZZLA Searching a person by consent or under a warrant**

- (1) If a control order is in force in relation to a person, a constable may conduct an ordinary search or a frisk search of the person, and exercise the monitoring powers, for any of the following purposes:
- (a) the protection of the public from a terrorist act;
  - (b) preventing the provision of support for, or the facilitation of, a terrorist act;
  - (c) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;
  - (d) determining whether the control order has been, or is being, complied with.

Note: The *monitoring powers* are set out in section 3ZZLB.

- (2) However, a constable is not authorised to conduct an ordinary search or a frisk search of the person unless:
- (a) the person has consented to the search; or
  - (b) the search is conducted under a monitoring warrant.

#### **3ZZLB Monitoring powers**

The following are the *monitoring powers* that a constable may exercise in relation to a person under section 3ZZLA:

- (a) the power to search things found in the possession of the person;
- (b) the power to search any recently used conveyance;
- (c) the power to record fingerprints from things found in the course of:
  - (i) a search under section 3ZZLA; or
  - (ii) a search under paragraph (a) or (b) of this section;
- (d) the power to take samples from things found in the course of:
  - (i) a search under section 3ZZLA; or

- (ii) a search under paragraph (a) or (b) of this section.

### **3ZZLC Seizure powers**

#### *Scope*

- (1) This section applies if:
- (a) a constable conducts a search of a person, or of a recently used conveyance, under section 3ZZLA; and
  - (b) the search is authorised by a monitoring warrant.

#### *Powers*

- (2) The constable has the following powers:
- (a) the power to seize things found in the course of the search that the constable suspects on reasonable grounds to be:
    - (i) evidential material; or
    - (ii) seizable items;
  - (b) the power to seize other things found on or in the possession of the person, or in the recently used conveyance, in the course of the search that the constable suspects on reasonable grounds to be:
    - (i) evidential material (within the meaning of the *Proceeds of Crime Act 2002*); or
    - (ii) tainted property (within the meaning of that Act).

### **3ZZLD Availability of assistance and use of force in executing a warrant**

#### *Scope*

- (1) This section applies if:
- (a) a constable conducts a search of a person, or of a recently used conveyance, under section 3ZZLA; and
  - (b) the search is authorised by a monitoring warrant.

#### *Availability of assistance and use of force*

- (2) In:
- (a) executing the warrant; or

- (b) exercising the powers set out in section 3ZZLC in relation to the person or conveyance;  
the constable may use such force against persons and things as is necessary and reasonable in the circumstances.
- (3) In executing the warrant, the constable may obtain such assistance as is necessary and reasonable in the circumstances.
- (4) If a person (other than a constable) has been authorised by the constable to assist in executing the warrant, the person may:
- (a) exercise the monitoring powers in relation to the person mentioned in paragraph (1)(a); and
  - (b) in exercising the monitoring powers, use such force against things as is necessary and reasonable in the circumstances.
- (5) If a person (other than a constable) has been authorised by the constable to assist in executing the warrant, the person must not exercise a power set out in section 3ZZLC.
- (6) A power exercised by a person assisting the constable as mentioned in subsection (4) is taken to have been exercised by the constable.

## **Division 4—Obligations and incidental powers of constables**

### **3ZZNA Consent of occupier of premises**

- (1) Before obtaining the consent of an occupier of premises for the purposes of paragraph 3ZZKA(2)(a), a constable must inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If a constable entered premises because of the consent of the occupier of the premises, the constable, and any person assisting

the constable, must leave the premises if the consent ceases to have effect.

(6) If:

- (a) a constable enters premises because of the consent of the occupier of the premises; and
- (b) the constable has not shown the occupier his or her identity card before entering the premises;

the constable must do so on, or as soon as is reasonably practicable after, entering the premises.

### **3ZZNB Consent to search of a person**

- (1) Before obtaining the consent of a person for the purposes of paragraph 3ZZLA(2)(a), a constable must inform the person that the person may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.

### **3ZZNC Announcement before entry under warrant**

Before entering premises under a monitoring warrant, a constable must:

- (a) announce that he or she is authorised to enter the premises; and
- (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
- (c) give any person at the premises an opportunity to allow entry to the premises.

### **3ZZND Constable to be in possession of warrant**

A constable executing a monitoring warrant must be in possession of the warrant or a copy of the warrant.

### **3ZZNE Details of warrant etc. to be given to occupier**

If:

- (a) a monitoring warrant is being executed by a constable in relation to premises; and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;
- the constable must, as soon as practicable, make a copy of the warrant available to the occupier or other person.

### **3ZZNF Compensation for damage to electronic equipment**

#### *Scope*

- (1) This section applies if:
  - (a) as a result of electronic equipment being operated as mentioned in this Part:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.

#### *Compensation*

- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in:
  - (a) the Federal Court of Australia or the Federal Circuit Court of Australia; or
  - (b) a court of a State or Territory that has jurisdiction in relation to the matter;

for such reasonable amount of compensation as the court determines.

- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

### **3ZZNG Occupier entitled to be present during search**

- (1) If:
  - (a) a monitoring warrant in relation to premises is being executed; and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises; the person is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

### **3ZZNH Person subject to a control order is entitled to be present during search**

- (1) If:
  - (a) a monitoring warrant in relation to premises is being executed; and
  - (b) the warrant was issued on the basis that a control order is in force in relation to a person; and
  - (c) the person is present at the premises; the person is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

## Division 5—Monitoring warrants

### 3ZZOA Monitoring warrant in relation to premises

#### *Application for warrant*

- (1) A constable may apply to an issuing officer for a warrant under this section in relation to premises.

#### *Issue of warrant*

- (2) The issuing officer may issue the warrant if the issuing officer is satisfied, by information on oath or affirmation, that:
- (a) a control order is in force in relation to a person; and
  - (b) the person has a prescribed connection with the premises; and
  - (c) having regard to:
    - (i) the nature of the person's prescribed connection with the premises; and
    - (ii) one or more of the matters set out in paragraphs (4)(a) to (f), and the matter set out in paragraph (4)(g); and
    - (iii) such other matters (if any) as the issuing officer considers relevant;it is reasonably necessary that one or more constables should have access to the premises for the purposes of:
    - (iv) the protection of the public from a terrorist act; or
    - (v) preventing the provision of support for, or the facilitation of, a terrorist act; or
    - (vi) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
    - (vii) determining whether the control order has been, or is being, complied with.
- (3) The issuing officer must not issue the warrant unless the applicant or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The matters referred to in subparagraph (2)(c)(ii) are the following:
-

- (a) the possibility that the person has engaged, is engaging, or will engage, in a terrorist act;
- (b) the possibility that the person has provided, is providing, or will provide, support for a terrorist act;
- (c) the possibility that the person has facilitated, is facilitating, or will facilitate, a terrorist act;
- (d) the possibility that the person has provided, is providing, or will provide, support for the engagement in a hostile activity in a foreign country;
- (e) the possibility that the person has facilitated, is facilitating, or will facilitate, the engagement in a hostile activity in a foreign country;
- (f) the possibility that the person has contravened, is contravening, or will contravene, the control order;
- (g) whether allowing one or more constables to have access to the premises, and exercise the monitoring powers in relation to the premises and the powers set out in section 3ZZKF in relation to the premises, would be likely to have the least interference with any person's liberty and privacy that is necessary in the circumstances.

*Content of warrant*

- (5) The warrant must:
  - (a) describe the premises to which the warrant relates; and
  - (b) state that the warrant is issued under this section; and
  - (c) state the purpose or purposes for which the warrant is issued; and
  - (d) authorise one or more constables (whether or not named in the warrant) from time to time while the warrant remains in force:
    - (i) to enter the premises; and
    - (ii) to exercise the monitoring powers in relation to the premises; and
    - (iii) to exercise the powers set out in section 3ZZKF in relation to the premises; and
  - (e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and

- (f) specify the time at which the warrant expires (see subsection (7)); and
  - (g) state whether the warrant authorises a constable to exercise powers under subsection 3ZZKE(3) in relation to the entry; and
  - (h) state that a person who is not a constable may be authorised under section 3ZZKG to assist in executing the warrant; and
  - (i) state the name of the person to whom the relevant control order relates; and
  - (j) describe the nature of the person's prescribed connection with the premises; and
  - (k) state that the control order is in force; and
  - (l) state whether the control order is an interim control order or a confirmed control order; and
  - (m) specify the date the control order was made; and
  - (n) specify the court that made the control order; and
  - (o) if the control order is an interim control order—specify the date the order was served on the person; and
  - (p) if the control order is a confirmed control order—specify the end of the period during which the order is in force; and
  - (q) if the warrant is issued for the purposes of determining whether the control order has been, or is being, complied with—specify the obligations, prohibitions and restrictions that are imposed by the order.
- (6) To avoid doubt, paragraph (5)(c) does not require the purpose or purposes for which the warrant is issued to be specified in the warrant if disclosure of that purpose, or those purposes, is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).
- (7) The time stated in the warrant under paragraph (5)(f) as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.
- Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.
- (8) Paragraph (5)(f) and subsection (7) do not prevent the issue of successive monitoring warrants in relation to the same premises.
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### **3ZZOB Monitoring warrant in relation to a person**

#### *Application for warrant*

- (1) A constable may apply to an issuing officer for a warrant under this section in relation to a person.

#### *Issue of warrant*

- (2) The issuing officer may issue the warrant if the issuing officer is satisfied, by information on oath or affirmation, that:
- (a) a control order is in force in relation to the person; and
  - (b) having regard to:
    - (i) one or more of the matters set out in paragraphs (4)(a) to (f), and the matter set out in paragraph (4)(g); and
    - (ii) such other matters (if any) as the issuing officer considers relevant;it is reasonably necessary that a constable should conduct an ordinary search or a frisk search of the person for the purposes of:
    - (iii) the protection of the public from a terrorist act; or
    - (iv) preventing the provision of support for, or the facilitation of, a terrorist act; or
    - (v) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
    - (vi) determining whether the control order has been, or is being, complied with.
- (3) The issuing officer must not issue the warrant unless the applicant or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The matters referred to in subparagraph (2)(b)(i) are the following:
- (a) the possibility that the person has engaged, is engaging, or will engage, in a terrorist act;
  - (b) the possibility that the person has provided, is providing, or will provide, support for a terrorist act;

- (c) the possibility that the person has facilitated, is facilitating, or will facilitate, a terrorist act;
- (d) the possibility that the person has provided, is providing, or will provide, support for the engagement in a hostile activity in a foreign country;
- (e) the possibility that the person has facilitated, is facilitating, or will facilitate, the engagement in a hostile activity in a foreign country;
- (f) the possibility that the person has contravened, is contravening, or will contravene, the control order;
- (g) whether allowing one or more constables to conduct an ordinary search or a frisk search of the person, and exercise the monitoring powers in relation to the person and the powers set out in section 3ZZLC in relation to the person or a recently used conveyance, would be likely to have the least interference with any person's liberty and privacy that is necessary in the circumstances.

*Content of warrant*

- (5) The warrant must:
  - (a) state the name of the person; and
  - (b) state that the warrant is issued under this section; and
  - (c) state the purpose or purposes for which the warrant is issued; and
  - (d) authorise a constable (whether or not named in the warrant) from time to time while the warrant remains in force:
    - (i) to conduct an ordinary search or a frisk search of the person; and
    - (ii) to exercise the monitoring powers in relation to the person; and
    - (iii) to exercise the powers set out in section 3ZZLC in relation to the person or a recently used conveyance; and
  - (e) state whether the search is authorised to be carried out at any time of the day or during specified hours of the day; and
  - (f) specify the time at which the warrant expires (see subsection (7)); and
  - (g) state that a person who is not a constable may be authorised under section 3ZZLD to assist in executing the warrant; and

- (h) state the name of the person to whom the relevant control order relates; and
  - (i) state that the control order is in force; and
  - (j) state whether the control order is an interim control order or a confirmed control order; and
  - (k) specify the date the control order was made; and
  - (l) specify the court that made the control order; and
  - (m) if the control order is an interim control order—specify the date on which the order was served on the person; and
  - (n) if the control order is a confirmed control order—specify the end of the period during which the order is in force; and
  - (o) if the warrant is issued for the purposes of determining whether the control order has been, or is being, complied with—specify the obligations, prohibitions and restrictions that are imposed by the order.
- (6) To avoid doubt, paragraph (5)(c) does not require the purpose or purposes for which the warrant is issued to be specified in the warrant if disclosure of that purpose, or those purposes, is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).
- (7) The time stated in the warrant under paragraph (5)(f) as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.
- Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.
- (8) Paragraph (5)(f) and subsection (7) do not prevent the issue of successive monitoring warrants in relation to the same person.

### **3ZZOC Restrictions on personal searches**

A monitoring warrant cannot authorise a strip search or a search of a person's body cavities.

### **3ZZOD Monitoring warrant must not be executed if the relevant control order is revoked etc.**

- (1) If:
-

- (a) a monitoring warrant was issued on the basis that a control order was in force in relation to a person; and
- (b) any of the following happens:
  - (i) the control order is revoked;
  - (ii) a court declares the control order to be void;
  - (iii) a court varies the control order by removing one or more obligations, prohibitions or restrictions imposed on the person by the control order;

a constable must not:

- (c) execute the warrant; or
- (d) exercise a power under Division 2 or 3, if the exercise of the power is consequential on the warrant.

*Evidence*

- (2) A thing seized in breach of subsection (1) is not admissible in evidence in criminal proceedings other than proceedings covered by paragraph 3ZQU(1)(j).
- (3) Information obtained in breach of subsection (1) is not admissible in evidence in criminal proceedings other than proceedings covered by paragraph 3ZQU(1)(j).
- (4) A document obtained in breach of subsection (1) is not admissible in evidence in criminal proceedings other than proceedings covered by paragraph 3ZQU(1)(j).

**Division 6—Monitoring warrants by telephone or other electronic means**

**3ZZPA Monitoring warrants by telephone or other electronic means**

- (1) A constable may make an application to an issuing officer for a monitoring warrant by telephone, telex, fax or other electronic means:
  - (a) in an urgent case; or
  - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The issuing officer:

- (a) may require communication by voice to the extent that it is practicable in the circumstances; and
  - (b) may make a recording of the whole or any part of any such communication by voice.
- (3) An application under this section must include all information required to be provided in an ordinary application for a monitoring warrant, but the application may, if necessary, be made before the information is sworn.
- (4) If an application is made to an issuing officer under this section and the issuing officer, after considering the information and having received and considered such further information (if any) as the issuing officer required, is satisfied that:
  - (a) a monitoring warrant in the terms of the application should be issued urgently; or
  - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;the issuing officer may complete and sign the same form of warrant that would be issued under section 3ZZOA or 3ZZOB, as the case requires.
- (5) If the issuing officer decides to issue the monitoring warrant, the issuing officer is to inform the applicant, by telephone, telex, fax or other electronic means, of the terms of the warrant and the day on which, and the time at which, it was signed.
- (6) The applicant must then complete a form of monitoring warrant in terms substantially corresponding to those given by the issuing officer, stating on the form the name of the issuing officer and the day on which, and the time at which, the warrant was signed.
- (7) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was executed, whichever is the earlier, give or transmit to the issuing officer the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.
- (8) The issuing officer is to attach to the documents provided under subsection (7) the form of warrant completed by the issuing officer.

- (9) If:
- (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a monitoring warrant issued under this section was duly authorised; and
  - (b) the form of warrant signed by the issuing officer is not produced in evidence;
- the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

### **3ZZPB Offences relating to telephone warrants**

A person commits an offence if:

- (a) the person states in a document that purports to be a form of warrant under section 3ZZPA the name of an issuing officer unless that officer issued the warrant; or
- (b) the person states on a form of warrant under that section a matter that, to the person's knowledge, departs in a material particular from the form authorised by the issuing officer; or
- (c) the person purports to execute, or present to a person, a document that purports to be a form of warrant under that section that the person knows:
  - (i) has not been approved by an issuing officer under that section; or
  - (ii) to depart in a material particular from the terms authorised by an issuing officer under that section; or
- (d) the person gives to an issuing officer a form of warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

## **Division 7—Extension of periods in which things secured**

### **3ZZQA Extension of periods in which things secured**

#### *Application*

- (1) This section applies if a constable applies to an issuing officer under subsection 3ZZKD(5) for an extension of the period during which a thing may be secured.

*Granting extension*

- (2) The issuing officer may, by order, grant an extension of the period if the issuing officer is satisfied, by information on oath or affirmation, that it is necessary to secure the thing to ensure that relevant data is not destroyed, altered or otherwise interfered with.
- (3) The issuing officer must not grant the extension unless the constable or some other person has given to the issuing officer, either orally or by affidavit, such further information (if any) as the issuing officer requires concerning the grounds on which the extension is being sought.

*Content of order*

- (4) The order extending the period must:
  - (a) describe the thing to which the order relates; and
  - (b) state the period for which the extension is granted; and
  - (c) state that the order is made under this section; and
  - (d) state that the constable is authorised to secure the thing for that period.

**Division 8—Things seized, documents produced, and answers given, under this Part**

**3ZZRA Receipts for things seized under this Part**

- (1) If a thing is seized by a constable under this Part, the constable must provide a receipt for the thing.
- (2) If 2 or more things are seized, they may be covered in the one receipt.

**3ZZRB Using, sharing and returning things seized under this Part**

Division 4C of Part IAA applies to a thing seized under this Part in a corresponding way to the way in which it applies to a thing seized under Division 2 of Part IAA.

**3ZZRC Using, sharing and returning documents produced under section 3ZZKE**

- (1) Subject to subsection (2), Division 4C of Part IAA applies to a document produced under section 3ZZKE in a corresponding way to the way in which it applies to a document produced under Division 4B of Part IAA.
- (2) Section 3ZQU has effect, in relation to a document produced under section 3ZZKE, as if the following additional purposes were set out in subsection 3ZQU(1):
  - (a) the protection of the public from a terrorist act;
  - (b) preventing the provision of support for, or the facilitation of, a terrorist act;
  - (c) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;
  - (d) determining whether the relevant control order has been, or is being, complied with.

**3ZZRD Answers to questions asked under section 3ZZKE**

An answer given to a question asked under subsection 3ZZKE(2) or (3) may only be used for one or more of the following purposes:

- (a) the protection of the public from a terrorist act;
- (b) preventing the provision of support for, or the facilitation of, a terrorist act;
- (c) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;
- (d) determining whether the relevant control order has been, or is being, complied with;
- (e) preventing, investigating or prosecuting an offence.

**Division 9—Powers of issuing officers**

**3ZZSA Powers of issuing officers**

*Powers conferred personally*

- (1) A power conferred on an issuing officer by this Part is conferred on the issuing officer:
-

- (a) in a personal capacity; and
- (b) not as a court or a member of a court.

*Powers need not be accepted*

- (2) The issuing officer need not accept the power conferred.

*Protection and immunity*

- (3) An issuing officer exercising a power conferred by this Part has the same protection and immunity as if the issuing officer were exercising the power:
  - (a) as the court of which the issuing officer is a member; or
  - (b) as a member of the court of which the issuing officer is a member.

## **Division 10—General**

### **3ZZTA Conduct of ordinary searches and frisk searches**

An ordinary search or a frisk search of a person under this Part must, if practicable, be conducted by a person of the same sex as the person being searched.

### **3ZZTB Protection of persons—control order declared to be void**

- (1) If:
  - (a) a monitoring warrant was issued on the basis that an interim control order was in force; and
  - (b) a court subsequently declares the interim control order to be void;a criminal proceeding does not lie against a person in respect of anything done, or omitted to be done, in good faith by the person:
  - (c) in the purported execution of the warrant; or
  - (d) in the purported exercise of a power, or the purported performance of a function or duty, in a case where the purported exercise of the power, or the purported performance of the function or duty, is consequential on the warrant.

- (2) Subsection (1) does not apply to a thing done, or omitted to be done, at a particular time if, at that time, the person knew, or ought reasonably to have known, of the declaration.

**3ZZTC Dealing with things, information or documents obtained under a monitoring warrant—control order declared to be void**

*Scope*

- (1) This section applies if:
- (a) a monitoring warrant was issued on the basis that an interim control order was in force; and
  - (b) a court subsequently declares the interim control order to be void; and
  - (c) before the declaration was made, a thing was seized, information was obtained, or a document was produced, as a result of:
    - (i) the purported execution of the warrant; or
    - (ii) the purported exercise of a power, or the purported performance of a function or duty, in a case where the purported exercise of the power, or the purported performance of the function or duty, is consequential on the warrant.

*Dealing*

- (2) A person may:
- (a) adduce the thing, information or document as evidence in a proceeding; or
  - (b) use or communicate the information; or
  - (c) use, or communicate the contents of, the document;
- if:
- (d) the person reasonably believes that doing so is necessary to assist in preventing, or reducing the risk of:
    - (i) the commission of a terrorist act; or
    - (ii) serious harm to a person; or
    - (iii) serious damage to property; or
  - (e) the person does so for one or more purposes set out in subsection (3).
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*Purposes*

- (3) The purposes are purposes connected with:
- (a) the performance of a function or duty, or the exercise of a power, by a person, court, tribunal or other body under, or in relation to a matter arising under, Division 105 of the *Criminal Code*, so far as the function, duty or power relates to a preventative detention order (within the meaning of Part 5.3 of the *Criminal Code*); or
  - (b) the performance of a function or duty, or the exercise of a power, by a person, court, tribunal or other body under, or in relation to a matter arising under, Part 2A of the *Terrorism (Police Powers) Act 2002* (NSW), so far as the function, duty or power relates to a preventative detention order (within the meaning of that Part); or
  - (c) the performance of a function or duty, or the exercise of a power, by a person, court, tribunal or other body under, or in relation to a matter arising under, Part 2A of the *Terrorism (Community Protection) Act 2003* (Vic.), so far as the function, duty or power relates to a preventative detention order (within the meaning of that Part); or
  - (d) the performance of a function or duty, or the exercise of a power, by a person, court, tribunal or other body under, or in relation to a matter arising under, the *Terrorism (Preventative Detention) Act 2005* (Qld), so far as the function, duty or power relates to a preventative detention order (within the meaning of that Act); or
  - (e) the performance of a function or duty, or the exercise of a power, by a person, court, tribunal or other body under, or in relation to a matter arising under, the *Terrorism (Preventative Detention) Act 2006* (WA), so far as the function, duty or power relates to a preventative detention order (within the meaning of that Act); or
  - (f) the performance of a function or duty, or the exercise of a power, by a person, court, tribunal or other body under, or in relation to a matter arising under, the *Terrorism (Preventative Detention) Act 2005* (SA), so far as the function, duty or power relates to a preventative detention order (within the meaning of that Act); or
  - (g) the performance of a function or duty, or the exercise of a power, by a person, court, tribunal or other body under, or in
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relation to a matter arising under, the *Terrorism (Preventative Detention) Act 2005* (Tas.), so far as the function, duty or power relates to a preventative detention order (within the meaning of that Act); or

- (h) the performance of a function or duty, or the exercise of a power, by a person, court, tribunal or other body under, or in relation to a matter arising under, Part 2 of the *Terrorism (Extraordinary Temporary Powers) Act 2006* (ACT), so far as the function, duty or power relates to a preventative detention order (within the meaning of that Part); or
- (i) the performance of a function or duty, or the exercise of a power, by a person, court, tribunal or other body under, or in relation to a matter arising under, Part 2B of the *Terrorism (Emergency Powers) Act* (NT), so far as the function, duty or power relates to a preventative detention order (within the meaning of that Part).

*Definition*

- (4) In this section:

*serious harm* has the same meaning as in the *Criminal Code*.

**3ZZTD Commissioner to keep documents connected with issue of monitoring warrants**

The Commissioner must cause to be kept in the Australian Federal Police's records:

- (a) each monitoring warrant issued to the Australian Federal Police; and
- (b) each instrument revoking a monitoring warrant; and
- (c) each order under section 3ZZQA granting an extension of a period.

**3ZZTE Commissioner to notify Ombudsman in relation to monitoring warrants**

- (1) Within 6 months after a monitoring warrant is issued in response to an application by the Australian Federal Police, the Commissioner must:
  - (a) notify the Ombudsman that the warrant has been issued; and

- (b) give to the Ombudsman a copy of the warrant.
- (2) As soon as practicable after a member or special member of the Australian Federal Police has contravened a provision of this Part or of a monitoring warrant, the Commissioner must notify the Ombudsman of the contravention.
- (3) A failure to comply with subsection (1) or (2) does not affect the validity of a monitoring warrant.

## **Division 11—Inspections by Ombudsman**

### **3ZZUA Appointment of inspecting officers**

- (1) The Ombudsman may appoint members of the Ombudsman's staff to be inspecting officers for the purposes of this Division.
- (2) An appointment under subsection (1) must be in writing.

### **3ZZUB Inspection of records by the Ombudsman**

- (1) The Ombudsman may inspect the records of the Australian Federal Police to determine the extent of compliance by the Australian Federal Police and members and special members of the Australian Federal Police with the provisions of:
  - (a) this Part; or
  - (b) monitoring warrants.
- (2) For the purpose of an inspection under this section, the Ombudsman:
  - (a) may, after notifying the Commissioner, enter at any reasonable time premises occupied by the Australian Federal Police; and
  - (b) is entitled to have full and free access at all reasonable times to all records of the Australian Federal Police that are relevant to the inspection; and
  - (c) may require a staff member of the Australian Federal Police to give the Ombudsman any information that the Ombudsman considers necessary, being information that is in the staff member's possession, or to which the staff member has access, and that is relevant to the inspection.

- (3) The Commissioner must ensure that staff members of the Australian Federal Police give the Ombudsman any assistance the Ombudsman reasonably requires to enable the Ombudsman to perform functions under this section.

**3ZZUC Power to obtain relevant information**

- (1) If the Ombudsman has reasonable grounds to believe that a staff member of the Australian Federal Police is able to give information relevant to an inspection under this Division, subsections (2) and (3) have effect.
- (2) The Ombudsman may, by writing given to the staff member, require the staff member to give the information to the Ombudsman:
- (a) by writing signed by the staff member; and
  - (b) at a specified place and within a specified period.
- (3) The Ombudsman may, by writing given to the staff member, require the staff member to attend:
- (a) before a specified inspecting officer; and
  - (b) at a specified place; and
  - (c) within a specified period or at a specified time on a specified day;
- to answer questions relevant to the inspection.
- (4) If the Ombudsman:
- (a) has reasonable grounds to believe that a staff member of the Australian Federal Police is able to give information relevant to an inspection under this Division; and
  - (b) does not know the staff member's identity;
- the Ombudsman may, by writing given to the Commissioner, require the Commissioner, or a person nominated by the Commissioner, to attend:
- (c) before a specified inspecting officer; and
  - (d) at a specified place; and
  - (e) within a specified period or at a specified time on a specified day;
- to answer questions relevant to the inspection.

- (5) The place, and the period or the time and day, specified in a requirement under this section, must be reasonable having regard to the circumstances in which the requirement is made.

### **3ZZUD Offence**

A person commits an offence if:

- (a) the person is required under section 3ZZUC to attend before another person, to give information or to answer questions; and
- (b) the person refuses or fails to do so.

Penalty: Imprisonment for 6 months.

### **3ZZUE Ombudsman to be given information etc. despite other laws**

- (1) Despite any other law, a person is not excused from giving information, answering a question, or giving access to a document, as and when required under this Division, on the ground that giving the information, answering the question, or giving access to the document, as the case may be:
- (a) would contravene a law; or
  - (b) would be contrary to the public interest; or
  - (c) might tend to incriminate the person or make the person liable to a penalty; or
  - (d) would disclose one of the following:
    - (i) a legal advice given to a Minister or a Department, or a prescribed authority (within the meaning of the *Ombudsman Act 1976*);
    - (ii) a communication between an officer of a Department or of a prescribed authority (within the meaning of the *Ombudsman Act 1976*) and another person or body, being a communication protected against disclosure by legal professional privilege.
- (2) However, if the person is a natural person:
- (a) the information, the answer, or the fact that the person has given access to the document, as the case may be; and
  - (b) any information or thing (including a document) obtained as a direct or indirect consequence of giving the information, answering the question or giving access to the document;
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are not admissible in evidence against the person except in a proceeding by way of a prosecution for an offence against Part 7.4 or 7.7 of the *Criminal Code*.

- (3) Nothing in any other law prevents a staff member of the Australian Federal Police from:
  - (a) giving information to the Ombudsman or an inspecting officer (whether orally or in writing and whether or not in answer to a question); or
  - (b) giving access to a record of the Australian Federal Police to the Ombudsman or an inspecting officer;for the purposes of an inspection under this Division.
- (4) Nothing in any other law prevents a staff member of the Australian Federal Police from making a record of information, or causing a record of information to be made, for the purposes of giving the information to a person as permitted by subsection (3).
- (5) The fact that a person is not excused under subsection (1) from giving information, answering a question or producing a document does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that information, answer or document.

**3ZZUF Exchange of information between Ombudsman and State or Territory inspecting authorities**

- (1) The Ombudsman may give information that:
  - (a) relates to a State or Territory agency; and
  - (b) was obtained by the Ombudsman under this Division;to the State or Territory inspecting authority in relation to the agency.
- (2) The Ombudsman may only give information to an authority under subsection (1) if the Ombudsman is satisfied that the giving of the information is necessary to enable the authority to perform its functions in relation to the State or Territory agency.
- (3) The Ombudsman may receive from a State or Territory inspecting authority information relevant to the performance of the Ombudsman's functions under this Division.

- (4) In this Part:

***State or Territory agency*** means the police force or police service of a State or Territory.

***State or Territory inspecting authority***, in relation to a State or Territory agency, means the authority that, under the law of the State or Territory concerned, has the function of making inspections of a similar kind to those provided for in section 3ZZUB.

### **3ZZUG Ombudsman not to be sued**

- (1) The Ombudsman, an inspecting officer, or a person acting under an inspecting officer's direction or authority, is not liable to an action, suit or proceeding for or in relation to an act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of a function or power conferred by this Division.
- (2) A reference in this section to the Ombudsman includes a reference to a Deputy Ombudsman or a delegate of the Ombudsman.

### **3ZZUH Annual report**

- (1) The Ombudsman must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report on the results of any inspections under section 3ZZUB in the year.
- Note: The report is included in a report under section 104.29 of the *Criminal Code*.
- (2) The report must include the number of contraventions by the Australian Federal Police and members and special members of the Australian Federal Police of the provisions of:
- (a) this Part; or
  - (b) monitoring warrants;
- identified by the Ombudsman in the year.
- (3) The Ombudsman must give a copy of a report under this section to the Commissioner.
- (4) A report under this section must not include information which, if made public, could reasonably be expected to:

- (a) endanger a person's safety; or
- (b) prejudice an investigation, or prosecution, of an offence; or
- (c) compromise the operational activities or methodologies of:
  - (i) the Australian Federal Police; or
  - (ii) any other Commonwealth, State, Territory or foreign law enforcement, intelligence or security agency.

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

#### **2 Subsection 104.29(1) of the *Criminal Code***

After "this Division", insert " , Division 5 of Part IAAB of the *Crimes Act 1914* (monitoring warrants), and the rest of that Part to the extent that it relates to that Division,".

#### **3 After paragraph 104.29(2)(f) of the *Criminal Code***

Insert:

- ; (g) the number of monitoring warrants issued under Division 5 of Part IAAB of the *Crimes Act 1914*;
- (h) the number of such warrants executed under that Division;
- (i) the report prepared by the Ombudsman under subsection 3ZZUH(1) of the *Crimes Act 1914*.

## **Schedule 9—Telecommunications interception**

### **Part 1—Amendments**

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

##### **1 Subsection 5(1)**

Insert:

***confirmed control order*** has the same meaning as in Part 5.3 of the *Criminal Code*.

***connected with***: a purpose is ***connected with*** a preventative detention order law if the purpose is connected with the performance of a function or duty, or the exercise of a power, by a person, court, tribunal or other body under, or in relation to a matter arising under, that law, so far as the function, duty or power relates to a preventative detention order (within the meaning of that law).

***control order*** has the same meaning as in Part 5.3 of the *Criminal Code*.

***control order warrant*** means a warrant issued:

- (a) under subsection 46(4) or 46A(2A); or
- (b) under section 48 in the circumstances mentioned in subsection 46(4).

***control order warrant agency*** means:

- (a) a Commonwealth agency; or
- (b) an eligible authority of a State that a declaration in force under section 34 authorises to apply for control order warrants (see section 38A).

***engage in a hostile activity*** has the same meaning as in Part 5.3 of the *Criminal Code*.

***foreign country***, when used in the expression ***hostile activity in a foreign country***, has the same meaning as in the *Criminal Code*.

***interim control order*** has the same meaning as in Part 5.3 of the *Criminal Code*.

**2 Subsection 5(1) (subparagraph (b)(vi) of the definition of *permitted purpose*)**

Repeal the subparagraph, substitute:

- (vi) a preventative detention order law; or

**3 Subsection 5(1) (at the end of paragraph (c) of the definition of *permitted purpose*)**

Add:

- (vi) the performance of a function or duty, or the exercise of a power, by a person, court or other body under, or in relation to a matter arising under, Division 104 of the *Criminal Code* (Control orders); or
- (vii) a preventative detention order law; or

**4 Subsection 5(1) (definition of *preventative detention order*)**

Repeal the definition.

**5 Subsection 5(1)**

Insert:

***preventative detention order law*** means:

- (a) Division 105 of the *Criminal Code*; or
- (b) Part 2A of the *Terrorism (Police Powers) Act 2002* (NSW); or
- or
- (c) Part 2A of the *Terrorism (Community Protection) Act 2003* (Vic.); or
- (d) the *Terrorism (Preventative Detention) Act 2005* (Qld); or
- (e) the *Terrorism (Preventative Detention) Act 2006* (WA); or
- (f) the *Terrorism (Preventative Detention) Act 2005* (SA); or
- (g) the *Terrorism (Preventative Detention) Act 2005* (Tas.); or
- (h) Part 2 of the *Terrorism (Extraordinary Temporary Powers) Act 2006* (ACT); or
- (i) Part 2B of the *Terrorism (Emergency Powers) Act* (NT).

Note: For when a purpose is connected with a preventative detention order law, see the definition of ***connected with***.

***succeeding control order*** has the meaning given by section 6U.

*terrorist act* has the same meaning as in Part 5.3 of the *Criminal Code*.

## **6 Paragraph 5B(1)(bc)**

Repeal the paragraph, substitute:

- (bc) a proceeding under, or a proceeding relating to a matter arising under, a preventative detention order law, so far as the proceeding relates to a preventative detention order (within the meaning of that law); or

## **7 Paragraph 6H(a)**

After “46(1)(c) and (d)”, insert “or 46(4)(c), (d) and (e), as the case requires”.

## **8 Paragraph 6H(b)**

Omit “or 46A(1)(c) and (d)”, substitute “, 46(4)(c), (d) and (e), 46A(1)(c) and (d) or 46A(2A)(c), (d) and (e)”.

## **9 At the end of Part 1-2**

Add:

### **6T When control order is taken to be in force**

For the purposes of this Act, if:

- (a) a control order has been made in relation to a person; and
  - (b) apart from this section, the control order has not come into force because it has not been served on the person;
- the control order is taken to be in force.

### **6U Succeeding control orders**

If 2 or more successive control orders are made in relation to the same person, each later control order is a *succeeding control order* in relation to each earlier control order.

## **10 Subsection 7(9) (note)**

Repeal the note, substitute:

- Note: See subsection (6). A Part 2-5 warrant can only be issued for:
- (a) the purposes of an investigation relating to the commission of one or more serious offences; or

(b) purposes relating to a control order.

### **11 At the end of section 34**

Add:

Note: The declaration may also authorise the eligible authority to apply for control order warrants: see section 38A.

### **12 Paragraph 35(1)(a)**

Omit “sections 80 and 81”, substitute “section 80 (other than paragraphs 80(f) and (g)) and section 81 (other than paragraph 81(1)(h), and subsection 81(2), so far as that subsection relates to paragraph 81(1)(h))”.

### **13 At the end of Division 2 of Part 2-5**

Add:

### **38A Agencies authorised to apply for control order warrants**

- (1) This section applies to a declaration made under section 34 in relation to an eligible authority of a State.

#### *Authorisation*

- (2) When the Minister makes the declaration, the Minister must, in the declaration, authorise the eligible authority to apply for control order warrants if:
- (a) the Premier of the State requests that the eligible authority be so authorised; and
  - (b) the Minister is satisfied as mentioned in subsection (4) of this section.
- (3) The Minister must amend the declaration to authorise the eligible authority to apply for control order warrants if:
- (a) the declaration does not already so authorise the eligible authority; and
  - (b) the Premier of the State requests that the eligible authority be so authorised; and
  - (c) the Minister is satisfied as mentioned in subsection (4).

*Criteria to be authorised to apply for a control order warrant*

- (4) For the purposes of paragraph (2)(b) or (3)(c), the Minister must be satisfied that the law of the State makes satisfactory provision:
- (a) imposing on the chief officer of the eligible authority requirements corresponding to the requirements that paragraphs 80(f) and (g) and 81(1)(h) and subsection 81(2), so far as that subsection relates to paragraph 81(1)(h), impose on the chief officer of a Commonwealth agency; and
  - (b) imposing on the chief officer of the eligible authority requirements corresponding to the requirements that section 59B imposes on the chief officer of a Commonwealth agency; and
  - (c) giving an authority of the State powers corresponding to those that subsections 83(3) and 84(2) and sections 85 and 85A give to the Ombudsman, if the authority of the State receives a notice from the eligible authority because of the requirements mentioned in paragraph (b) of this subsection; and
  - (d) requiring an authority of the State that has made an inspection of the eligible authority's records under the powers mentioned in paragraph (c) to report in writing to the responsible Minister about the results of the inspection; and
  - (e) requiring the responsible Minister to give to the Minister, as soon as practicable, a copy of a report that an authority of the State gives to the responsible Minister under a power or requirement mentioned in paragraph (c) or (d).

*Removal of authorisation*

- (5) The Minister must amend the declaration to remove the authorisation of the eligible authority to apply for control order warrants if the Premier of the State requests the Minister to remove the authorisation.
- (6) The Minister may amend the declaration to remove the authorisation of the eligible authority to apply for control order warrants if the Minister is satisfied that:
- (a) the law of the State no longer makes satisfactory provision in relation to the eligible authority as mentioned in subsection (4); or

- (b) the extent of compliance with a requirement of a law of that State, being a requirement of a kind mentioned in subsection (4), has been unsatisfactory in so far as the requirement relates to the eligible authority; or
- (c) the extent of compliance by the chief officer of the eligible authority, or by officers of the eligible authority, with this Act has been unsatisfactory, so far as this Act relates to control order warrants.

- (7) If the Minister amends the declaration under subsection (5) or (6), the amendment does not affect the validity of a control order warrant issued before the amendment in response to an application by the eligible authority.

**14 At the end of paragraph 44A(2)(a)**

Add “or 46(5)(a) to (f), as the case requires”.

**15 At the end of paragraph 44A(2)(b)**

Add “or 46A(2B)(a) to (f), as the case requires”.

**16 At the end of paragraph 45(2)(a)**

Add “or 46(5)(a) to (f), as the case requires”.

**17 At the end of paragraph 45(2)(b)**

Add “or 46A(2B)(a) to (f), as the case requires”.

**18 Before subsection 46(1)**

Insert:

*Warrant relating to the investigation of one or more serious offences*

**19 Subsection 46(2)**

Omit “The matters”, substitute “For the purposes of subsection (1), the matters”.

**20 Subsection 46(3)**

After “warrant”, insert “under subsection (1)”.

## **21 At the end of section 46**

Add:

### *Control order warrant*

- (4) If a control order warrant agency applies to an eligible Judge or nominated AAT member for a warrant in respect of a telecommunications service and the Judge or nominated AAT member is satisfied, on the basis of the information given to the Judge or nominated AAT member under this Part in connection with the application, that:
- (a) Division 3 has been complied with in relation to the application; and
  - (b) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
  - (c) there are reasonable grounds for suspecting that a particular person is using, or is likely to use, the service; and
  - (d) either:
    - (i) a control order is in force in relation to the particular person; or
    - (ii) a control order is in force in relation to another person, and the particular person is likely to communicate with the other person using the service; and
  - (e) information that would be likely to be obtained by intercepting under a warrant communications made to or from the service would be likely to substantially assist in connection with:
    - (i) the protection of the public from a terrorist act; or
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
    - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
    - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with; and
  - (f) having regard to the matters referred to in subsection (5), and to no other matters, the Judge or nominated AAT member

should issue a warrant authorising such communications to be intercepted;

the Judge or nominated AAT member may, in his or her discretion, issue such a warrant.

Note 1: Subsection (6) restricts the issuing of warrants if subparagraph (d)(ii) applies.

Note 2: For control orders that have been made but not come into force, see section 6T.

(5) For the purposes of subsection (4), the matters to which the Judge or nominated AAT member must have regard are:

- (a) how much the privacy of any person or persons would be likely to be interfered with by intercepting under a warrant communications made to or from the service referred to in subsection (4); and
- (b) how much the information referred to in paragraph (4)(e) would be likely to assist in connection with:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with; and
- (c) to what extent methods for:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;that do not involve so intercepting communications have been used by, or are available to, the agency; and

- (d) how much the use of such methods would be likely to assist in connection with:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with; and
- (e) how much the use of such methods would be likely to prejudice:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;whether because of delay or for any other reason; and
- (f) whether intercepting under a warrant communications made to or from the service referred to in subsection (4) would be the method that is likely to have the least interference with any person's privacy; and
- (g) the possibility that the person in relation to whom the control order is in force:
  - (i) has engaged, is engaging, or will engage, in a terrorist act; or
  - (ii) has provided, is providing, or will provide, support for a terrorist act; or
  - (iii) has facilitated, is facilitating, or will facilitate, a terrorist act; or
  - (iv) has provided, is providing, or will provide, support for the engagement in a hostile activity in a foreign country; or

- (v) has facilitated, is facilitating, or will facilitate, the engagement in a hostile activity in a foreign country; or
  - (vi) has contravened, is contravening, or will contravene, the control order; or
  - (vii) will contravene a succeeding control order; and
  - (h) in relation to an application by an interception agency of Victoria—any submissions made by the Victorian PIM under section 44A to the Judge or nominated AAT member; and
  - (i) in relation to an application by an interception agency of Queensland—any submissions made by the Queensland PIM under section 45 to the Judge or nominated AAT member.
- (6) The Judge or nominated AAT member must not issue a warrant in a case in which subparagraph (4)(d)(ii) applies unless he or she is satisfied that:
- (a) the agency has exhausted all other practicable methods of identifying the telecommunications services used, or likely to be used, by the person to whom the control order referred to in subparagraph (4)(d)(ii) relates; or
  - (b) interception of communications made to or from a telecommunications service used or likely to be used by that person would not otherwise be possible.

## **22 Before subsection 46A(1)**

Insert:

*Warrant relating to the investigation of one or more serious offences*

## **23 Subsection 46A(2)**

Omit “The matters”, substitute “For the purposes of subsection (1), the matters”.

## **24 After subsection 46A(2)**

Insert:

*Control order warrant*

- (2A) If a control order warrant agency applies to an eligible Judge or nominated AAT member for a warrant in respect of a person and

the Judge or nominated AAT member is satisfied, on the basis of the information given to the Judge or nominated AAT member under this Part in connection with the application, that:

- (a) Division 3 has been complied with in relation to the application; and
- (b) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
- (c) there are reasonable grounds for suspecting that a particular person is using, or is likely to use, more than one telecommunications service; and
- (d) a control order is in force in relation to the person; and
- (e) information that would be likely to be obtained by intercepting under a warrant:
  - (i) communications made to or from any telecommunications service that the person is using, or is likely to use; or
  - (ii) communications made by means of a particular telecommunications device or particular telecommunications devices that the person is using, or is likely to use;

would be likely to substantially assist in connection with:

- (iii) the protection of the public from a terrorist act; or
- (iv) preventing the provision of support for, or the facilitation of, a terrorist act; or
- (v) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
- (vi) determining whether the control order, or any succeeding control order, has been, or is being, complied with; and
- (f) having regard to the matters referred to in subsection (2B), and to no other matters, the Judge or nominated AAT member should issue a warrant authorising such communications to be intercepted;

the Judge or nominated AAT member may, in his or her discretion, issue such a warrant.

Note 1: Subsection (3) restricts the issuing of a warrant authorising interception of communications made by means of a

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telecommunications device or telecommunications devices identified in the warrant.

Note 2: For control orders that have been made but not come into force, see section 6T.

- (2B) For the purposes of subsection (2A), the matters to which the Judge or nominated AAT member must have regard are:
- (a) how much the privacy of any person or persons would be likely to be interfered with by intercepting under a warrant:
    - (i) communications made to or from any telecommunications service used, or likely to be used, by the person in respect of whom the warrant is sought; or
    - (ii) communications made by means of a particular telecommunications device or particular telecommunications devices used, or likely to be used, by the person in respect of whom the warrant is sought; as the case requires; and
  - (b) how much the information referred to in paragraph (2A)(e) would be likely to assist in connection with:
    - (i) the protection of the public from a terrorist act; or
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
    - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
    - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with; and
  - (c) to what extent methods (including the use of a warrant issued under section 46) for:
    - (i) the protection of the public from a terrorist act; or
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
    - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
    - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;
-

that do not involve the use of a warrant issued under this section in relation to the person have been used by, or are available to, the agency; and

- (d) how much the use of such methods would be likely to assist in connection with:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with; and
- (e) how much the use of such methods would be likely to prejudice:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;whether because of delay or for any other reason; and
- (f) whether intercepting under a warrant communications referred to in paragraph (a) of this subsection would be the method that is likely to have the least interference with any person's privacy; and
- (g) the possibility that the person in relation to whom the control order is in force:
  - (i) has engaged, is engaging, or will engage, in a terrorist act; or
  - (ii) has provided, is providing, or will provide, support for a terrorist act; or
  - (iii) has facilitated, is facilitating, or will facilitate, a terrorist act; or

- (iv) has provided, is providing, or will provide, support for the engagement in a hostile activity in a foreign country; or
- or
- (v) has facilitated, is facilitating, or will facilitate, the engagement in a hostile activity in a foreign country; or
- (vi) has contravened, is contravening, or will contravene, the control order; or
- (vii) will contravene a succeeding control order; and
- (h) in relation to an application by an interception agency of Victoria—any submissions made by the Victorian PIM under section 44A to the Judge or nominated AAT member; and
- (i) in relation to an application by an interception agency of Queensland—any submissions made by the Queensland PIM under section 45 to the Judge or nominated AAT member.

**25 Before subsection 46A(3)**

Insert:

*Restriction on issue of warrant—interception of communications made by means of one or more telecommunications devices*

**26 At the end of subsection 48(1)**

Add:

Note: Only a control order warrant agency may apply for a warrant under section 46 in the circumstances mentioned in subsection 46(4).

**27 At the end of subparagraph 48(3)(d)(ii)**

Add “or, in the case of a warrant issued in the circumstances mentioned in subsection 46(4), might jeopardise the achievement of an objective for which the warrant was issued”.

**28 Paragraph 49(3)(a)**

After “46(1)(d)(ii)”, insert “or 46(4)(d)(ii)”.

**29 Subsection 49(7)**

After “A warrant”, insert “issued under subsection 46(1) or 46A(1), or issued under section 48 in the circumstances mentioned in subsection 46(1),”.

### **30 At the end of section 49**

Add:

- (8) A control order warrant must:
  - (a) state that the warrant is issued on the basis of a control order made in relation to a person; and
  - (b) specify the name of the person; and
  - (c) specify the date the control order was made; and
  - (d) state whether the control order is an interim control order or a confirmed control order.

### **31 At the end of section 57**

Add:

- (6) For the purposes of the application of subsection (1) to a control order warrant issued on the ground that a control order was in force, that ground is taken to have ceased to exist if, and only if, neither that control order, nor any succeeding control order, is in force.

### **32 After section 59A**

Insert:

#### **59B Notification to Ombudsman by Commonwealth agencies in relation to control order warrants**

- (1) Within 6 months after a control order warrant is issued in response to an application by a Commonwealth agency, the chief officer of the agency must:
  - (a) notify the Ombudsman that the warrant has been issued; and
  - (b) give to the Ombudsman a copy of the warrant.
- (2) As soon as practicable after an officer of a Commonwealth agency contravenes any of the following conditions, restrictions or provisions, the chief officer of the agency must notify the Ombudsman of the contravention:
  - (a) a condition or restriction specified in a control order warrant under subsection 49(2);
  - (b) paragraph 57(1)(b), to the extent it applies to a control order warrant;

- (c) subsection 63(1), to the extent it applies to lawfully intercepted information obtained under a control order warrant;
  - (d) subsection 63(2), to the extent it applies to interception warrant information that relates to a control order warrant;
  - (e) section 79, to the extent it applies to a restricted record obtained under a control order warrant;
  - (f) section 79AA;
  - (g) subsection 103B(4).
- (3) A failure to comply with subsection (1) or (2) does not affect the validity of a control order warrant.

### **33 Subsections 63(1) and (2)**

After “to this Part”, insert “and section 299”.

### **34 Section 65A**

Repeal the section, substitute:

#### **65A Employee of carrier may communicate information to agency**

- (1) An employee of a carrier may, for a purpose or purposes set out in subsection (2), and for no other purpose, communicate to an officer of an agency:
  - (a) lawfully intercepted information other than foreign intelligence information; or
  - (b) interception warrant information.
- (2) The purposes are purposes connected with:
  - (a) the investigation by the agency of a serious offence; or
  - (b) any of the following:
    - (i) the protection of the public from a terrorist act;
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act;
    - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;
    - (iv) determining whether a control order has been, or is being, complied with;

- (v) the performance of a function or duty, or the exercise of a power, by a person, court or other body under, or in relation to a matter arising under, Division 104 of the *Criminal Code* (Control orders);
- (vi) a preventative detention order law.

### **35 Subsection 67(1B)**

Repeal the subsection, substitute:

- (1B) However, an officer or staff member of an agency may communicate to another person, make use of, or make a record of information mentioned in paragraph (1A)(a), (b) or (c) for a purpose or purposes set out in subsection (1C), and for no other purpose, if the information has not been communicated to an officer of the agency under section 68.
- (1C) The purposes are purposes connected with:
  - (a) if the warrant under which the information was obtained relates to an investigation—the investigation; or
  - (b) if the information was obtained under a control order warrant—any of the following:
    - (i) the protection of the public from a terrorist act;
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act;
    - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;
    - (iv) determining whether the control order has been, or is being, complied with;
    - (v) the performance of a function or duty, or the exercise of a power, by a person, court or other body under, or in relation to a matter arising under, Division 104 of the *Criminal Code*;
    - (vi) a preventative detention order law.

### **36 Section 79 (heading)**

Repeal the heading, substitute:

**79 Destruction of restricted records that are not likely to be required for a permitted purpose**

**37 After section 79**

Insert:

**79AA Destruction of restricted records—information obtained before a control order came into force**

(1) If:

- (a) a restricted record is in the possession of an agency; and
- (b) the restricted record relates to an interception authorised by a control order warrant; and
- (c) the warrant was issued for the purpose, or for purposes that include the purpose, of obtaining information that would be likely to assist in connection with determining whether the relevant control order, or any succeeding control order, has been, or is being, complied with; and
- (d) the interception occurred when the control order had been made, but had not come into force because it had not been served on the person to whom it relates; and
- (e) the chief officer of the agency is satisfied that none of the information obtained by the interception is likely to assist in connection with:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;

the chief officer of the agency must cause the restricted record to be destroyed as soon as practicable.

(2) Section 6T does not apply to subsection (1) of this section.

**38 At the end of section 80**

Add:

- ; and (f) a copy of each advice the chief officer gives to the Minister under subsection 103B(2) or paragraph 103B(4)(b); and

(g) each notice the chief officer receives from the Minister under paragraph 103B(3)(a) or (5)(a).

**39 After paragraph 81(1)(g)**

Insert:

; and (h) particulars of each reconsideration by the chief officer under paragraph 103B(4)(a) that does not result in the chief officer giving advice under paragraph 103B(4)(b);

**40 Paragraph 81A(2)(g)**

Before “each”, insert “in the case of a warrant issued under subsection 46(1) or 46A(1), or issued under section 48 in the circumstances mentioned in subsection 46(1)—”.

**41 At the end of subsection 81A(2)**

Add:

; and (h) in the case of a control order warrant—the name of the person to whom the relevant control order relates.

**42 Paragraph 81C(2)(g)**

Before “each”, insert “in the case of a warrant issued under subsection 46(1) or 46A(1), or issued under section 48 in the circumstances mentioned in subsection 46(1)—”.

**43 At the end of subsection 81C(2)**

Add:

; (h) in the case of a control order warrant—the name of the person to whom the relevant control order relates.

**44 Subsections 83(1) and (2)**

After “79,”, insert “79AA,”.

**45 At the end of section 83**

Add:

(3) The Ombudsman may inspect a Commonwealth agency’s records in order to ascertain the extent to which officers of the agency have complied during any period with the conditions, restrictions and

provisions mentioned in subsection 59B(2) (about control order warrants) if:

- (a) the chief officer of the agency notifies the Ombudsman under that subsection of a contravention of any of those conditions, restrictions or provisions; and
- (b) the contravention occurred in that period.

#### **46 Subsection 84(1)**

Omit “subsection 83(1)”, substitute “subsections 83(1) and (3)”.

#### **47 Section 85**

Repeal the section, substitute:

#### **85 Ombudsman may report on other breaches of this Act**

- (1) If, as a result of an inspection under this Part of the records of an agency, the Ombudsman is of the opinion that an officer of the agency has contravened a provision of this Act, the Ombudsman may include in his or her report on the inspection a report on the contravention.
- (2) To avoid doubt, for the purposes of subsection (1), a contravention of a condition or restriction specified in a warrant issued under this Act is a contravention of a provision of this Act.
- (3) Subsection (1) does not apply to a contravention of section 79, 79AA, 80 or 81.

#### **85A Annual report may cover notified breaches in relation to control order warrants**

- (1) In a report under subsection 84(1) in relation to a financial year, the Ombudsman may include a report on a contravention of which the Ombudsman is notified under subsection 59B(2) (about control order warrants), if the Ombudsman does not conduct an inspection under subsection 83(3) in relation to a period during which the contravention occurred.

Note: If the Ombudsman conducts an inspection under subsection 83(3), the relevant report under subsection 84(1):

- (a) must include the matters mentioned in subsection 84(1A) in relation to the inspection; and

- (b) may include other information about contraventions of this Act (see section 85).
- (2) For the purposes of subsection (1), it does not matter whether the Ombudsman is notified under subsection 59B(2) before, during or after the financial year to which the report relates.
- (3) Subsection (1) does not limit what the Ombudsman may include in a report under section 84 or 85.

#### **48 Subparagraph 103(ae)(i)**

Omit “required under subsection 84(1A) to be”.

#### **49 At the end of Division 2 of Part 2-8**

Add:

#### **103B Deferral of inclusion of information in report**

##### *Scope*

- (1) This section applies to information:
  - (a) included in a report submitted to the Minister:
    - (i) under section 84 by the Ombudsman in relation to a Commonwealth agency; or
    - (ii) under section 94 by the chief officer of a Commonwealth agency; or
    - (iii) under section 96 by the chief officer of an eligible authority of a State; and
  - (b) that the Minister would, apart from this section, be required to include in the next Ministerial report.

##### *Exclusion of information*

- (2) If the chief officer of the Commonwealth agency or eligible authority is satisfied that the information is control order information, the chief officer must advise the Minister in writing not to include the information in the next Ministerial report.
- (3) If the Minister is satisfied, on the advice of the chief officer, that the information is control order information, the Minister must:
  - (a) notify the chief officer in writing; and

- (b) not include the information in any Ministerial report until the Minister decides otherwise under subsection (5).

*Inclusion of information in subsequent report*

- (4) If the information has not been included in a Ministerial report because of subsection (3), the chief officer must, before the Minister prepares the next Ministerial report:
  - (a) reconsider whether the information is control order information; and
  - (b) if the chief officer is satisfied that the information is not control order information—advise the Minister in writing to include the information in the next Ministerial report.
- (5) If the Minister is satisfied, on the advice of the chief officer, that the information is not control order information, the Minister must:
  - (a) notify the chief officer in writing; and
  - (b) include the information in the next Ministerial report.

*Definitions*

- (6) In this section:

***control order information*** means information that, if made public, could reasonably be expected to enable a reasonable person to conclude that:

- (a) a control order warrant is likely to be, or is not likely to be, in force in relation to a telecommunications service used, or likely to be used, by a particular person; or
- (b) a control order warrant is likely to be, or is not likely to be, in force in relation to a particular person.

***Ministerial report*** means a report the Minister prepares under this Division.

**50 At the end of subsection 133(2)**

Add “or section 299”.

**51 Subsection 139(1)**

After “139A(2)”, insert “or 139B(2)”.

**52 Subsection 139A(1)**

After “139(2)”, insert “or (4A) or 139B(2)”.

**53 After section 139A**

Insert:

**139B Dealing for purposes relating to control orders and  
preventative detention orders**

- (1) An officer or staff member of:
  - (a) the Australian Federal Police; or
  - (b) the Police Force of a State or Territory;may, for one or more purposes referred to in subsection (2), and for no other purpose (other than a purpose referred to in subsection 139(2) or (4A) or 139A(2), if applicable), communicate to another person, make use of, or make a record of lawfully accessed information other than foreign intelligence information.
- (2) The purposes are purposes connected with:
  - (a) the performance of a function or duty, or the exercise of a power, by a person, court or other body under, or in relation to a matter arising under, Division 104 of the *Criminal Code* (Control orders); or
  - (b) a preventative detention order law.

**54 Section 142**

Omit “or 139A”, substitute “, 139A or 139B”.

**55 Paragraph 150(1)(b)**

Omit “or 139A(2)”, substitute “or (4A), 139A(2) or 139B(2)”.

**56 Chapter 6 (heading)**

Repeal the heading, substitute:

**Chapter 6—Miscellaneous**

**57 Part 6-1 (heading)**

Repeal the heading, substitute:

## Part 6-1—Miscellaneous

### 58 Before section 300

Insert:

#### 298 Protection of persons—control order declared to be void

- (1) If:
- (a) a warrant was issued on the basis that an interim control order was in force; and
  - (b) a court subsequently declares the interim control order to be void;
- a criminal proceeding does not lie against a person in respect of anything done, or omitted to be done, in good faith by the person:
- (c) in the purported execution of the warrant; or
  - (d) in the purported exercise of a power, or the purported performance of a function or duty, in a case where the purported exercise of the power, or the purported performance of the function or duty, is consequential on the warrant.
- (2) Subsection (1) does not apply to a thing done, or omitted to be done, at a particular time if, at that time, the person knew, or ought reasonably to have known, of the declaration.

#### 299 Dealing with information obtained under a warrant—control order declared to be void

##### *Scope*

- (1) This section applies if:
- (a) a warrant was issued on the basis that an interim control order was in force; and
  - (b) a court subsequently declares the interim control order to be void; and
  - (c) before the declaration was made, information was obtained as a result of:
    - (i) the purported execution of the warrant; or
    - (ii) the purported exercise of a power, or the purported performance of a function or duty, in a case where the

purported exercise of the power, or the purported performance of the function or duty, is consequential on the warrant.

*Dealing*

- (2) A person may:
- (a) communicate the information to another person; or
  - (b) make use of the information; or
  - (c) make a record of the information; or
  - (d) give the information in evidence in a proceeding;
- if:
- (e) the person reasonably believes that doing so is necessary to assist in preventing, or reducing the risk, of:
    - (i) the commission of a terrorist act; or
    - (ii) serious harm to a person; or
    - (iii) serious damage to property; or
  - (f) the person does so for one or more purposes connected with a preventative detention order law.

*Definition*

- (3) In this section:

***serious harm*** has the same meaning as in the *Criminal Code*.

## Part 2—Transitional provisions

### 59 Agencies authorised to apply for control order warrants

- (1) This item applies to a declaration that, at the commencement of this item, is in force under section 34 of the *Telecommunications (Interception and Access) Act 1979* in relation to an eligible authority of a State.
- (2) The declaration is taken, at that commencement, to authorise the eligible authority to apply for control order warrants, as mentioned in section 38A of that Act, as amended by this Schedule.
- (3) Paragraph 38A(6)(a) of that Act, as amended by this Schedule, does not apply in relation to the authorisation mentioned in subitem (2) of this item, until 18 months after that commencement.

### 60 Validation of dealing with information—preventative detention orders

- (1) If:
  - (a) before the commencement of this item, an officer or staff member of an agency communicated to another person, made use of, or made a record of, information; and
  - (b) apart from this item, the officer or staff member would have contravened section 63 of the *Telecommunications (Interception and Access) Act 1979* by communicating, using or recording that information; and
  - (c) the officer or staff member would not have contravened that section if subparagraph (c)(vii) of the definition of ***permitted purpose*** in subsection 5(1) of that Act, as amended by this Schedule, had been in force;

the communicating, using or recording the information is taken to have been done in accordance with section 67 of that Act.

Note: A result of this subitem is that the officer or staff member is taken not to have contravened section 63 of that Act.

- (2) If:
  - (a) before the commencement of this item, a person gave information in evidence in a proceeding; and

- (b) apart from this item, the person would have contravened section 63 of the *Telecommunications (Interception and Access) Act 1979* by giving the information in evidence; and
- (c) section 74 of that Act (about exempt proceedings) would have permitted the person to give the information in evidence in the proceeding if paragraph 5B(1)(bc) of that Act, as amended by this Schedule, had been in force; and
- (d) the relevant court, tribunal, person or body admitted the information in evidence in the proceeding;

section 74 of that Act is treated as having permitted the person to give the information in evidence in the proceeding.

Note: A result of this subitem is that the person is taken not to have contravened section 63 of that Act.

## Schedule 10—Surveillance devices

### *Surveillance Devices Act 2004*

#### **1 After paragraph 3(a)**

Insert:

- (aa) to establish procedures for law enforcement officers to obtain warrants for the installation and use of surveillance devices in cases where a control order is in force, and the use of a surveillance device would be likely to substantially assist in:
  - (i) protecting the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with; and
- (ab) to establish procedures for law enforcement officers to obtain tracking device authorisations for the use of tracking devices in cases where a control order is in force in relation to a person, and the use of a tracking device is to obtain information relating to the person for any of the following purposes:
  - (i) protecting the public from a terrorist act;
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act;
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with; and

#### **2 At the end of section 4**

Add:

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- 
- (5) For the avoidance of doubt, it is intended that a warrant may be issued under this Act for the installation, use, maintenance or retrieval of a surveillance device in a case where a control order is in force, and the use of a surveillance device would be likely to substantially assist in:
- (a) protecting the public from a terrorist act; or
  - (b) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (c) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (d) determining whether the control order, or any succeeding control order, has been, or is being, complied with.
- (6) For the avoidance of doubt, it is intended that, if a control order is in force in relation to a person, a tracking device authorisation may be given under this Act for the use of a tracking device to obtain information relating to the person for any of the following purposes:
- (a) protecting the public from a terrorist act;
  - (b) preventing the provision of support for, or the facilitation of, a terrorist act;
  - (c) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;
  - (d) determining whether the control order, or any succeeding control order, has been, or is being, complied with.

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

Insert:

***confirmed control order*** has the same meaning as in Part 5.3 of the *Criminal Code*.

***control order*** has the same meaning as in Part 5.3 of the *Criminal Code*.

***control order information*** has the meaning given by subsection 50A(6).

***control order warrant*** means a surveillance device warrant issued in response to an application under subsection 14(3C).

***engage in a hostile activity*** has the same meaning as in Part 5.3 of the *Criminal Code*.

***foreign country***, when used in the expression ***hostile activity in a foreign country***, has the same meaning as in the *Criminal Code*.

***interim control order*** has the same meaning as in Part 5.3 of the *Criminal Code*.

***preventative detention order law*** means:

- (a) Division 105 of the *Criminal Code*; or
- (b) Part 2A of the *Terrorism (Police Powers) Act 2002* (NSW); or
- or
- (c) Part 2A of the *Terrorism (Community Protection) Act 2003* (Vic.); or
- (d) the *Terrorism (Preventative Detention) Act 2005* (Qld); or
- (e) the *Terrorism (Preventative Detention) Act 2006* (WA); or
- (f) the *Terrorism (Preventative Detention) Act 2005* (SA); or
- (g) the *Terrorism (Preventative Detention) Act 2005* (Tas.); or
- (h) Part 2 of the *Terrorism (Extraordinary Temporary Powers) Act 2006* (ACT); or
- (i) Part 2B of the *Terrorism (Emergency Powers) Act* (NT).

**4 Subsection 6(1) (at the end of paragraph (o) of the definition of *relevant proceeding*)**

Add “or”.

**5 Subsection 6(1) (at the end of the definition of *relevant proceeding*)**

Add:

- ; or (q) a proceeding under, or a proceeding relating to a matter arising under, Division 104 of the *Criminal Code* (Control orders); or
- (r) a proceeding under, or a proceeding relating to a matter arising under, a preventative detention order law, so far as the proceeding relates to a preventative detention order (within the meaning of that preventative detention order law).

**6 Subsection 6(1)**

Insert:

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*succeeding control order* has the meaning given by section 6D.

*terrorist act* has the same meaning as in Part 5.3 of the *Criminal Code*.

## **7 After section 6B**

Insert:

### **6C When control order is taken to be in force**

For the purposes of this Act, if:

- (a) a control order has been made in relation to a person; and
  - (b) apart from this section, the control order has not come into force because it has not been served on the person;
- the control order is taken to be in force.

### **6D Succeeding control orders**

If 2 or more successive control orders are made in relation to the same person, each later control order is a *succeeding control order* in relation to each earlier control order.

## **8 After subsection 14(3B)**

Insert:

### *Control order warrants*

- (3C) A law enforcement officer (or another person on his or her behalf) may apply for the issue of a surveillance device warrant if:
- (a) a control order is in force in relation to a person; and
  - (b) the law enforcement officer suspects on reasonable grounds that the use of a surveillance device to obtain information relating to the person would be likely to substantially assist in:
    - (i) protecting the public from a terrorist act; or
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
    - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or

- (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with.

Note: For control orders that have been made but not come into force, see section 6C.

### **9 Subsection 14(4)**

Omit “or (3B)”, substitute “, (3B) or (3C)”.

### **10 Paragraph 14(6)(a)**

After “(3)(b)”, insert “, or would be likely to substantially assist as described in paragraph (3C)(b)”.

### **11 After paragraph 16(1)(bb)**

Insert:

- (bc) in the case of a control order warrant—that a control order is in force in relation to a person, and that the use of a surveillance device to obtain information relating to the person would be likely to substantially assist in:
  - (i) protecting the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with; and

### **12 At the end of subsection 16(1)**

Add:

Note: For control orders that have been made but not come into force, see section 6C.

### **13 After paragraph 16(2)(ea)**

Insert:

- (eb) in the case of a control order warrant issued on the basis of a control order that is in force in relation to a person—the likely value of the information sought to be obtained, in:

- 
- (i) protecting the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with; and
- (ec) in the case of a control order warrant issued on the basis of a control order that is in force in relation to a person—whether the use of the surveillance device in accordance with the warrant would be the means of obtaining the evidence or information sought to be obtained, that is likely to have the least interference with any person’s privacy; and
- (ed) in the case of a control order warrant issued on the basis of a control order that is in force in relation to a person—the possibility that the person:
- (i) has engaged, is engaging, or will engage, in a terrorist act; or
  - (ii) has provided, is providing, or will provide, support for a terrorist act; or
  - (iii) has facilitated, is facilitating, or will facilitate, a terrorist act; or
  - (iv) has provided, is providing, or will provide, support for the engagement in a hostile activity in a foreign country; or
  - (v) has facilitated, is facilitating, or will facilitate, the engagement in a hostile activity in a foreign country; or
  - (vi) has contravened, is contravening, or will contravene, the control order; or
  - (vii) will contravene a succeeding control order; and

**14 Paragraph 16(2)(f)**

Before “any”, insert “in the case of a warrant sought in relation to a relevant offence or a recovery order—”.

**15 At the end of subsection 16(2)**

Add:

; and (g) in the case of a control order warrant issued on the basis of a control order that is in force in relation to a person—any previous control order warrant sought or issued on the basis of a control order relating to the person.

#### **16 After subsection 17(1)**

Insert:

(1AA) If a control order warrant is issued on the basis of a control order that is in force in relation to a person, the warrant must also specify the following details in relation to the control order:

- (a) the name of the person;
- (b) the date the control order was made;
- (c) whether the control order is an interim control order or a confirmed control order.

#### **17 Subsection 20(2)**

Omit “or 21(3B)(a) and (b)”, substitute “, 21(3B)(a) and (b), 21(3C)(a) and (b) or 21(3D)(a) and (b)”.

#### **18 After subsection 21(3B)**

Insert:

(3C) If:

- (a) the surveillance device warrant is a control order warrant issued on the basis of a control order that was in force in relation to a person; and
- (b) the chief officer of the law enforcement agency to which the law enforcement officer belongs or is seconded is satisfied that the use of a surveillance device under the warrant to obtain information relating to the person is no longer required for any of the following purposes:
  - (i) protecting the public from a terrorist act;
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act;
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;

- 
- (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;

the chief officer must, in addition to revoking the warrant under section 20, take the steps necessary to ensure that use of the surveillance device authorised by the warrant is discontinued as soon as practicable.

(3D) If:

- (a) the surveillance device warrant is a control order warrant issued on the basis of a control order that was in force in relation to a person; and

- (b) no control order is in force in relation to the person;

the chief officer must, in addition to revoking the warrant under section 20, take the steps necessary to ensure that use of the surveillance device authorised by the warrant is discontinued as soon as practicable.

## **19 At the end of section 37**

Add:

- (4) If a control order is in force in relation to a person, a State or Territory law enforcement officer acting in the course of his or her duties may, without warrant, use an optical surveillance device to obtain information about the activities of the person for any of the following purposes:

- (a) protecting the public from a terrorist act;
- (b) preventing the provision of support for, or the facilitation of, a terrorist act;
- (c) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;
- (d) determining whether the control order has been, or is being, complied with;

if the use of that device does not involve:

- (e) entry onto premises without permission; or
- (f) interference without permission with any vehicle or thing.

## **20 After subsection 38(3)**

Insert:

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(3A) If a control order is in force in relation to a person, a State or Territory law enforcement officer acting in the course of his or her duties may, without warrant, use a surveillance device to obtain information relating to the person for any of the following purposes:

- (a) protecting the public from a terrorist act;
- (b) preventing the provision of support for, or the facilitation of, a terrorist act;
- (c) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;
- (d) determining whether the control order has been, or is being, complied with;

if the use involves listening to, or recording, words spoken by a person, and the use is confined to circumstances where:

- (e) the State or Territory law enforcement officer is the speaker of the words or is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard; or
- (f) the State or Territory law enforcement officer listens to or records the words with the consent, express or implied, of a person who is permitted to listen to or record the words:
  - (i) by paragraph (e); or
  - (ii) so far as subsection (6) applies in relation to the control order—by that subsection.

## 21 At the end of section 38

Add:

- (6) If:
  - (a) a control order is in force in relation to a person; and
  - (b) a person (other than a State or Territory law enforcement officer) is assisting a State or Territory law enforcement officer who is acting in the course of his or her duties in relation to any of the following purposes:
    - (i) protecting the public from a terrorist act;
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act;

- (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;
- (iv) determining whether the control order has been, or is being, complied with;

the person assisting may, without warrant, use a surveillance device to obtain information relating to the person mentioned in paragraph (a) if:

- (c) the use involves listening to, or recording, words spoken by a person; and
- (d) the person assisting is the speaker of the words or is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard.

## **22 After subsection 39(3A)**

Insert:

- (3B) If a control order is in force in relation to a person, a law enforcement officer may, with the written permission of an appropriate authorising officer, use a tracking device without a warrant to obtain information relating to the person for any of the following purposes:
  - (a) protecting the public from a terrorist act;
  - (b) preventing the provision of support for, or the facilitation of, a terrorist act;
  - (c) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;
  - (d) determining whether the control order, or any succeeding control order, has been, or is being, complied with.

## **23 Subsection 39(4)**

Omit “and (3A)”, substitute “, (3A) and (3B)”.

## **24 Subsections 39(5) and (7)**

Omit “or (3A)”, substitute “, (3A) or (3B)”.

## **25 After paragraph 40(1)(da)**

Insert:

- (db) if the authorisation is given on the basis of a control order that is in force in relation to a person—the following details in relation to the control order:
  - (i) the name of the person;
  - (ii) the date the control order was made;
  - (iii) whether the control order is an interim control order or a confirmed control order; and

**26 At the end of paragraph 45(1)(c)**

Add “or section 65B (which deals with information obtained before an interim control order is declared void)”.

**27 Paragraph 45(2)(c)**

After “operations”, insert “or section 65B (which deals with information obtained before an interim control order is declared void)”.

**28 Subsection 45(3)**

After “(5)”, insert “and section 65B”.

**29 At the end of subsection 45(5)**

Add:

- ; (j) in the case of information:
    - (i) obtained under a control order warrant; or
    - (ii) relating to an application for, the issue of, the existence of, or the expiration of, a control order warrant; or
    - (iii) that is likely to enable the identification of a person, object or premises specified in a control order warrant; determining whether the relevant control order, or any succeeding control order, has been, or is being, complied with;
  - (k) in the case of information:
    - (i) obtained under a tracking device authorisation given on the basis of a control order; or
    - (ii) relating to an application for, the giving of, the existence of, or the expiration of, a tracking device authorisation given on the basis of a control order; or
    - (iii) that is likely to enable the identification of a person, object or premises specified in a tracking device authorisation given on the basis of a control order;
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determining whether the control order, or any succeeding control order, has been, or is being, complied with.

**30 Subsection 45(6)**

Omit “and (c)”, substitute “, (c), (j) and (k)”.

**31 Subsection 45(9) (at the end of the definition of *State or Territory relevant proceeding*)**

Add:

- ; or (i) a proceeding under, or a proceeding relating to a matter arising under, a preventative detention order law (other than Division 105 of the *Criminal Code*), so far as the proceeding relates to a preventative detention order (within the meaning of that preventative detention order law).

**32 After section 46**

Insert:

**46A Destruction of records—information obtained before a control order came into force**

- (1) If:
- (a) a record or report is in the possession of a law enforcement agency; and
  - (b) the record or report comprises information obtained from the use of a surveillance device under:
    - (i) a control order warrant; or
    - (ii) a tracking device authorisation;

issued or given on the basis of a control order made in relation to a person; and

- (c) in the case of a control order warrant—the warrant was issued for the purpose, or for purposes that include the purpose, of obtaining information that would be likely to substantially assist in connection with determining whether the control order, or any succeeding control order, has been, or is being, complied with; and
- (d) in the case of a tracking device authorisation—the authorisation was given to obtain information relating to the person for the purpose, or for purposes that include the purpose, of determining whether the control order, or any succeeding control order, has been, or is being, complied with; and
- (e) the use of the surveillance device occurred when the control order had been made, but had not come into force because it had not been served on the person; and
- (f) the chief officer of the agency is satisfied that none of the information obtained from the use of the surveillance device is likely to assist in connection with:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;

the chief officer of the agency must cause the record or report to be destroyed as soon as practicable.

(2) Section 6C does not apply to subsection (1) of this section.

### **33 After subparagraph 49(2)(b)(xa)**

Insert:

- (xb) if the warrant is a control order warrant—give the details specified in subsection (2A); and

### **34 After subsection 49(2)**

Insert:

(2A) For the purposes of subparagraph (2)(b)(xb), the details are:

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- 
- (a) the benefit of the use of the device in:
    - (i) protecting the public from a terrorist act; or
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
    - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
    - (iv) determining whether a control order has been, or is being, complied with; and
  - (b) the general use to be made of any evidence or information obtained by the use of the device.

### **35 After section 49**

Insert:

#### **49A Notification to Ombudsman in relation to control order warrants etc.**

- (1) Within 6 months after a control order warrant is issued in response to an application by a law enforcement officer of a law enforcement agency, the chief officer of the agency must:
  - (a) notify the Ombudsman that the warrant has been issued; and
  - (b) give to the Ombudsman a copy of the warrant.
- (2) As soon as practicable after a law enforcement agency, or a law enforcement officer of a law enforcement agency, contravenes any of the following conditions or provisions, the chief officer of the agency must notify the Ombudsman of the contravention:
  - (a) a condition specified in a control order warrant;
  - (b) subsection 20(2), to the extent it applies to a control order warrant;
  - (c) section 45 or subsection 46(1), to the extent it applies to protected information obtained from the use of a surveillance device under a control order warrant;
  - (d) section 46A;
  - (e) subsection 50A(4).
- (3) A failure to comply with subsection (1) or (2) does not affect the validity of a control order warrant.

- (4) This section applies in relation to a tracking device authorisation given on the basis of a control order in the same way as this section applies in relation to a control order warrant.

### **36 At the end of section 50**

Add:

- (5) Subsection (4) has effect subject to section 50A.

### **37 After section 50**

Insert:

### **50A Deferral of inclusion of information in annual report**

#### *Scope*

- (1) This section applies to information in a report submitted to the Minister under subsection 50(1) by the chief officer of a law enforcement agency.

#### *Exclusion of information*

- (2) If the chief officer is satisfied that the information is control order information, the chief officer must advise the Minister in writing to exclude the information from the report before tabling it in Parliament under subsection 50(4).
- (3) If the Minister is satisfied, on the advice of the chief officer, that the information is control order information, the Minister must:
- (a) notify the chief officer in writing; and
  - (b) exclude the information from the report before tabling it in Parliament.

#### *Inclusion of information in subsequent report*

- (4) If:
- (a) because of subsection (3), the information has not been included in a report tabled in Parliament; and
  - (b) the chief officer submits a report (the **later report**) to the Minister under subsection 50(1);
- the chief officer must, before the Minister tables the later report:

- 
- (c) reconsider whether the information is control order information; and
  - (d) if the chief officer is satisfied that the information is not control order information—advise the Minister in writing to include the information in the later report before tabling it in Parliament.
- (5) If the Minister is satisfied, on the advice of the chief officer, that the information is not control order information, the Minister must:
- (a) notify the chief officer in writing; and
  - (b) include the information in the later report before tabling it in Parliament.

#### *Definitions*

- (6) In this section:

***control order information*** means information that, if made public, could reasonably be expected to enable a reasonable person to conclude that a control order warrant authorising:

- (a) the use of a surveillance device on particular premises; or
  - (b) the use of a surveillance device in or on a particular object or class of object; or
  - (c) the use of a surveillance device in respect of the conversations, activities or location of a particular person;
- is likely to be, or is not likely to be, in force.

### **38 At the end of section 51**

Add:

- ; (l) a copy of each advice the chief officer gives the Minister under subsection 50A(2) or paragraph 50A(4)(d);
- (m) each notice the chief officer receives from the Minister under paragraph 50A(3)(a) or (5)(a).

### **39 At the end of paragraph 52(1)(j)**

Add “or subsection 46A(1)”.

### **40 At the end of subsection 52(1)**

Add:

- ; (k) details of each reconsideration by the chief officer under paragraph 50A(4)(c) that does not result in the chief officer giving advice under paragraph 50A(4)(d).

**41 After subparagraph 53(2)(c)(iiib)**

Insert:

- (iiic) if the warrant is a control order warrant that was issued on the basis of a control order—the date the control order was made; and

**42 After subsection 55(2)**

Insert:

- (2A) The Ombudsman may inspect the records of a law enforcement agency to determine the extent of compliance during any period with the conditions and provisions mentioned in subsection 49A(2) (about control order warrants etc.) by the agency and law enforcement officers of the agency if:
  - (a) the chief officer of the agency notifies the Ombudsman under that subsection of a contravention of those conditions or provisions; and
  - (b) the contravention occurred in that period.

**43 At the end of section 61**

Add:

*Control order information*

- (4) The Minister must exclude information from the report before the Minister causes a copy of the report to be laid before each House of the Parliament if the Minister is satisfied that the information is control order information.
- (5) If the Minister must send a copy of the report to a Minister of a State under subsection (3), subsection (4) does not require the Minister to exclude from that copy information that the Minister must exclude from the copy of the report the Minister causes to be laid before each House of the Parliament.
- (6) If:

- 
- (a) because of subsection (4), information has not been included in a copy of a report laid before each House of the Parliament under subsection (2); and
  - (b) the Ombudsman makes a report (the *later report*) to the Minister under subsection (1);
- the Minister must, before causing a copy of the later report to be laid before each House of the Parliament:
- (c) reconsider whether the information is control order information; and
  - (d) if the Minister is satisfied that the information is not control order information—include the information in the copy of the later report before causing it to be laid before each House of the Parliament under subsection (2).

#### **44 At the end of Division 3 of Part 6**

Add:

#### **61A Report may cover notified breaches in relation to control order warrants etc.**

- (1) In a report under subsection 61(1) in relation to a 6-month period, the Ombudsman may include a report on a contravention of which the Ombudsman is notified under subsection 49A(2) (about control order warrants etc.), if the Ombudsman does not conduct an inspection under subsection 55(2A) in relation to a period during which the contravention occurred.

Note: If the Ombudsman conducts an inspection under subsection 55(2A), the Ombudsman must report on the results of the inspection under subsection 61(1).

- (2) For the purposes of subsection (1), it does not matter whether the Ombudsman is notified under subsection 49A(2) before, during or after the 6-month period to which the report relates.
- (3) Subsection (1) does not limit what the Ombudsman may include in a report under section 61.

#### **45 After section 65**

Insert:

## 65A Protection of persons—control order declared to be void

### *Control order warrant*

- (1) If:
- (a) a control order warrant was issued on the basis that an interim control order was in force; and
  - (b) a court subsequently declares the interim control order to be void;
- a criminal proceeding does not lie against a person in respect of anything done, or omitted to be done, in good faith by the person:
- (c) in the purported execution of the warrant; or
  - (d) in the purported exercise of a power, or the purported performance of a function or duty, in a case where the purported exercise of the power, or the purported performance of the function or duty, is consequential on the warrant.
- (2) Subsection (1) does not apply to a thing done, or omitted to be done, at a particular time if, at that time, the person knew, or ought reasonably to have known, of the declaration.

### *Tracking device authorisation*

- (3) If:
- (a) a tracking device authorisation was given on the basis that an interim control order was in force; and
  - (b) a court subsequently declares the interim control order to be void;
- a criminal proceeding does not lie against a person in respect of anything done, or omitted to be done, in good faith by the person:
- (c) in the purported execution of the authorisation; or
  - (d) in the purported exercise of a power, or the purported performance of a function or duty, in a case where the purported exercise of the power, or the purported performance of the function or duty, is consequential on the authorisation.
- (4) Subsection (3) does not apply to a thing done, or omitted to be done, at a particular time if, at that time, the person knew, or ought reasonably to have known, of the declaration.

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*Use of device without warrant*

- (5) If:
- (a) an optical surveillance device was used under subsection 37(4) on the basis that an interim control order was in force; and
  - (b) a court subsequently declares the interim control order to be void;
- a criminal proceeding does not lie against a person in respect of anything done, or omitted to be done, in good faith by the person:
- (c) in the purported exercise of the power conferred by subsection 37(4); or
  - (d) in the purported exercise of a power, or the purported performance of a function or duty, in a case where the purported exercise of the power, or the purported performance of the function or duty, is consequential on the purported exercise of the power conferred by subsection 37(4).
- (6) Subsection (5) does not apply to a thing done, or omitted to be done, at a particular time if, at that time, the person knew, or ought reasonably to have known, of the declaration.
- (7) If:
- (a) a surveillance device was used under subsection 38(3A) or (6) on the basis that an interim control order was in force; and
  - (b) a court subsequently declares the interim control order to be void;
- a criminal proceeding does not lie against a person in respect of anything done, or omitted to be done, in good faith by the person:
- (c) in the purported exercise of the power conferred by subsection 38(3A) or (6), as the case requires; or
  - (d) in the purported exercise of a power, or the purported performance of a function or duty, in a case where the purported exercise of the power, or the purported performance of the function or duty, is consequential on the purported exercise of the power conferred by subsection 38(3A) or (6), as the case requires.

- (8) Subsection (7) does not apply to a thing done, or omitted to be done, at a particular time if, at that time, the person knew, or ought reasonably to have known, of the declaration.

**65B Dealing with information obtained under a control order warrant, tracking device authorisation etc.—control order declared to be void**

*Scope*

- (1) This section applies if:
- (a) any of the following conditions is satisfied:
    - (i) a control order warrant was issued on the basis that an interim control order was in force;
    - (ii) a tracking device authorisation was given on the basis that an interim control order was in force;
    - (iii) an optical surveillance device was used under subsection 37(4) on the basis that an interim control order was in force;
    - (iv) a surveillance device was used under subsection 38(3A) or (6) on the basis that an interim control order was in force; and
  - (b) a court subsequently declares the interim control order to be void; and
  - (c) if subparagraph (a)(i) applies—before the declaration was made, information was obtained as a result of:
    - (i) the purported execution of the warrant; or
    - (ii) the purported exercise of a power, or the purported performance of a function or duty, in a case where the purported exercise of the power, or the purported performance of the function or duty, is consequential on the warrant; and
  - (d) if subparagraph (a)(ii) applies—before the declaration was made, information was obtained as a result of:
    - (i) the purported execution of the authorisation; or
    - (ii) the purported exercise of a power, or the purported performance of a function or duty, in a case where the purported exercise of the power, or the purported performance of the function or duty, is consequential on the authorisation; and
-

- 
- (e) if subparagraph (a)(iii) applies—before the declaration was made, information was obtained as a result of:
    - (i) the purported exercise of the power conferred by subsection 37(4); or
    - (ii) the purported exercise of a power, or the purported performance of a function or duty, in a case where the purported exercise of the power, or the purported performance of the function or duty, is consequential on the purported exercise of the power conferred by subsection 37(4); and
  - (f) if subparagraph (a)(iv) applies—before the declaration was made, information was obtained as a result of:
    - (i) the purported exercise of the power conferred by subsection 38(3A) or (6), as the case requires; or
    - (ii) the purported exercise of a power, or the purported performance of a function or duty, in a case where the purported exercise of the power, or the purported performance of the function or duty, is consequential on the purported exercise of the power conferred by subsection 38(3A) or (6), as the case requires.

#### *Dealing*

- (2) A person may use, communicate or publish the information if:
  - (a) the person reasonably believes that doing so is necessary to assist in preventing, or reducing the risk, of:
    - (i) the commission of a terrorist act; or
    - (ii) serious harm to a person; or
    - (iii) serious damage to property; or
  - (b) the person does so for one or more purposes set out in subsection (4).

#### *Evidence*

- (3) The information may be admitted in evidence in any proceedings if:
  - (a) doing so is necessary to assist in preventing, or reducing the risk, of:
    - (i) the commission of a terrorist act; or
    - (ii) serious harm to a person; or

- (iii) serious damage to property; or
- (b) it is admitted for one or more purposes set out in subsection (4).

*Purposes*

- (4) The purposes are purposes connected with the performance of a function or duty, or the exercise of a power, by a person, court, tribunal or other body under, or in relation to a matter arising under, a preventative detention order law, so far as the function, duty or power relates to a preventative detention order (within the meaning of that preventative detention order law).

*Definition*

- (5) In this section:  
*serious harm* has the same meaning as in the *Criminal Code*.

## **Schedule 11—Offence of advocating genocide**

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

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

Repeal the heading, substitute:

### **Part 5.1—Treason, urging violence and advocating terrorism or genocide**

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

Repeal the heading, substitute:

### **Division 80—Treason, urging violence and advocating terrorism or genocide**

#### **3 Subdivision C of Division 80 of the *Criminal Code* (heading)**

Repeal the heading, substitute:

### **Subdivision C—Urging violence and advocating terrorism or genocide**

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

Add:

#### **80.2D Advocating genocide**

- (1) A person commits an offence if:
- (a) the person advocates genocide; and
  - (b) the person engages in that conduct reckless as to whether another person will engage in genocide.

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

Penalty: Imprisonment for 7 years.

*Double jeopardy*

- (2) A person cannot be tried by a federal court or a court of a State or Territory for an offence against subsection (1) if the person has already been convicted or acquitted by the International Criminal Court for an offence constituted by substantially the same conduct as constituted the offence against subsection (1).

*Definitions*

- (3) In this section:

**advocate** means counsel, promote, encourage or urge.

**genocide** means the commission of an offence against Subdivision B (genocide) of Division 268, other than:

- (a) an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) to the extent that it relates to an offence against that Subdivision; or
- (b) an offence against that Subdivision that a person is taken to have committed because of section 11.2 (complicity and common purpose), 11.2A (joint commission) or 11.3 (commission by proxy).
- (4) A reference in this section to advocating genocide includes a reference to:
- (a) advocating genocide, even if genocide does not occur; and
- (b) advocating the commission of a specific offence that is genocide; and
- (c) advocating the commission of more than one offence, each of which is genocide.

## **Schedule 12—Security assessments**

### **Part 1—Main amendments**

#### *Australian Security Intelligence Organisation Act 1979*

##### **1 Subsection 35(1) (definition of security assessment)**

After “Commonwealth agency”, insert “, State or authority of a State”.

##### **2 Subsection 38(3)**

After “Commonwealth agency”, insert “, State or authority of a State”.

##### **3 At the end of subsection 38(6)**

Add “, State or authority of a State”.

##### **4 Subsection 40(1)**

Repeal the subsection, substitute:

- (1) It is within the functions of the Organisation:
  - (a) to furnish a security assessment in respect of a person to a Commonwealth agency for transmission to a State or an authority of a State for use in considering the taking of prescribed administrative action by the State or authority in respect of the person; or
  - (b) to furnish a security assessment in respect of a person to a State or an authority of a State for use in considering the taking of prescribed administrative action by the State or authority in respect of the person.

##### **5 Paragraph 40(2)(a)**

Omit “subject to paragraph (1)(b), communicate directly to a State or an authority of a State, whether in the form of an assessment or otherwise,”, substitute “furnish to a State or an authority of a State otherwise than in the form of an assessment”.

##### **6 Subsection 40(3)**

Repeal the subsection.

**7 Section 61**

After “Commonwealth agency”, insert “, State and authority of a State”.

**8 Paragraph 65(1)(b)**

After “Commonwealth agency”, insert “, State or authority of a State”.

**9 Application of amendment of paragraph 65(1)(b)**

The amendment of paragraph 65(1)(b) of the *Australian Security Intelligence Organisation Act 1979* made by this Schedule applies in relation to security assessments and communications furnished, or allegedly furnished, after the commencement of this Schedule.

## **Part 2—Consequential amendments**

### *Administrative Appeals Tribunal Act 1975*

#### **10 Section 29B**

After “Commonwealth agency”, insert “, State or authority of a State”.

#### **11 Subsections 39A(2), (6), (7), (8) and (12)**

After “Commonwealth agency”, insert “, State or authority of a State”.

#### **12 Paragraph 39A(15)(b)**

After “Commonwealth agency”, insert “, State or authority of a State”.

#### **13 Subsection 39A(15)**

After “that agency”, insert “, State or authority”.

#### **14 Subsections 43AAA(4) and (5)**

After “Commonwealth agency”, insert “, State or authority of a State”.

## **Schedule 13—Classification of publications etc.**

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

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

After “counsels”, insert “, promotes, encourages”.

#### **2 Application**

The amendment of the *Classification (Publications, Films and Computer Games) Act 1995* made by this Schedule applies in relation to the making of classifications on and after the commencement of this Schedule (whether the classifications were applied for before, on or after that commencement).

## **Schedule 14—Delayed notification search warrants**

### **Part 1—Amendments**

#### *Crimes Act 1914*

##### **1 Section 3ZZAC (definition of *conditions for issue*)**

Repeal the definition.

##### **2 Section 3ZZBA**

Repeal the section, substitute:

##### **3ZZBA Eligible officer may seek authorisation to apply for a delayed notification search warrant**

If an eligible officer of an eligible agency:

- (a) suspects, on reasonable grounds, that one or more eligible offences have been, are being, are about to be or are likely to be committed; and
- (b) suspects, on reasonable grounds, that entry and search of particular premises will substantially assist in the prevention or investigation of one or more of those offences; and
- (c) believes, on reasonable grounds, that it is necessary for the entry and search of the premises to be conducted without the knowledge of the occupier of the premises or any other person present at the premises;

the eligible officer may seek the authorisation of the chief officer of the agency to apply for a delayed notification search warrant in respect of the premises.

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

Repeal the subsections, substitute:

###### *Scope*

- (1A) This section applies if an eligible officer of an eligible agency seeks the authorisation of the chief officer of the agency to apply

for a delayed notification search warrant in respect of particular premises.

*Authorisation*

- (1) The chief officer may, in writing, authorise the eligible officer to apply for the delayed notification search warrant if the chief officer is satisfied that there are reasonable grounds for the eligible officer to have:
  - (a) the suspicions mentioned in paragraphs 3ZZBA(a) and (b); and
  - (b) the belief mentioned in paragraph 3ZZBA(c).
- (2) The chief officer may orally (in person or by telephone or other means of voice communication) authorise the eligible officer to apply for the delayed notification search warrant if the chief officer is satisfied that:
  - (a) there are reasonable grounds for the eligible officer to have:
    - (i) the suspicions mentioned in paragraphs 3ZZBA(a) and (b); and
    - (ii) the belief mentioned in paragraph 3ZZBA(c); and
  - (b) either:
    - (i) it is an urgent case; or
    - (ii) the delay that would occur if the authorisation were in writing would frustrate the effective execution of the delayed notification search warrant.

**4 Subsection 3ZZBC(1) (paragraph (a) of note 1)**

Repeal the paragraph, substitute:

- (a) why there are reasonable grounds for suspecting that one or more eligible offences have been, are being, are about to be or are likely to be committed (see paragraph 3ZZBA(a)); and
- (aa) why there are reasonable grounds for suspecting that entry and search of the premises will substantially assist in the prevention or investigation of one or more of those offences (see paragraph 3ZZBA(b)); and
- (ab) why there are reasonable grounds for believing that it is necessary for the entry and search of the premises to be conducted without the knowledge of the occupier of the premises or any other person present at the premises (see paragraph 3ZZBA(c)); and

**5 Paragraph 3ZZBD(1)(b)**

Omit “that the conditions for issue are met;”, substitute:

that there are reasonable grounds for the eligible officer to have:

- (i) the suspicions mentioned in paragraphs 3ZZBA(a) and (b); and
- (ii) the belief mentioned in paragraph 3ZZBA(c);

**6 Subsection 3ZZBD(1)**

Before “premises” (last occurring), insert “main”.

**7 Paragraph 3ZZBD(2)(a)**

After “the eligible offence”, insert “or offences”.

**8 At the end of paragraph 3ZZBD(2)(d)**

Add “or those offences”.

**9 At the end of subparagraph 3ZZBD(2)(e)(ii)**

Add “or those offences”.

**10 Paragraph 3ZZBE(1)(e)**

After “the eligible offence”, insert “or offences”.

**11 Paragraph 3ZZBF(5)(c)**

Repeal the paragraph, substitute:

(c) that there are reasonable grounds for the eligible officer to have:

- (i) the suspicions mentioned in paragraphs 3ZZBA(a) and (b); and
- (ii) the belief mentioned in paragraph 3ZZBA(c); and

**12 Subparagraph 3ZZFE(2)(c)(ii)**

After “the eligible offence”, insert “or offences”.

## Part 2—Application of amendments

### 13 Application of amendments

Despite the amendments made by this Schedule, Part IAAA of the *Crimes Act 1914* continues to apply, in relation to:

- (a) an authorisation given under section 3ZZBB of that Act before the commencement of this item; and
- (b) an application made under subsection 3ZZBC(1) or 3ZZBF(2) of that Act on the basis of such an authorisation; and
- (c) the issue of a delayed notification search warrant in response to such an application;

as if those amendments had not been made.

## **Schedule 15—Protecting national security information in control order proceedings**

### **Part 1—Main amendments**

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

**1 Subsection 19(4)**

After “section” (wherever occurring), insert “38J or”.

**2 Subparagraphs 38D(2)(a)(ii) and (b)(ii)**

After “38B”, insert “, 38J”.

**3 Subparagraph 38E(2A)(c)(ii)**

After “38B”, insert “, 38J”.

**4 Paragraph 38E(4)(b)**

After “38B”, insert “, 38J”.

**5 Paragraph 38F(6)(b)**

After “section”, insert “38J or”.

**6 Paragraphs 38G(1)(a), (b) and (c)**

After “section”, insert “38J or”.

**7 Subsection 38G(3)**

After “section”, insert “38J or”.

**8 Paragraphs 38H(5)(b), (6)(a) and (6)(b)**

After “section”, insert “38J or”.

**9 Subsection 38H(7)**

After “section”, insert “38J or”.

## 10 Before section 38I

Insert:

### Subdivision A—Closed hearing requirements

#### 11 Subsection 38I(1)

Omit “for a hearing under subsection 38G(1) or 38H(6)”, substitute:

that apply:

- (a) for a hearing under subsection 38G(1) or 38H(6) relating to the disclosure of information in a civil proceeding; or
- (b) if the court makes an order under subsection 38J(2), (3) or (4) that the closed hearing requirements in this section are to apply when information that is the subject of the order is disclosed to the court at a hearing in a proceeding under Division 104 of the *Criminal Code* (about control orders)—when the information is disclosed to the court at that hearing.

#### 12 Subsection 38I(1) (note)

Omit “those provisions”, substitute “subsections 38G(1) and 38H(6), and an order under subsection 38J(2), (3) or (4),”.

#### 13 After subsection 38I(3)

Insert:

- (3A) Despite subsections (2) and (3), if:
- (a) the hearing is under subsection 38G(1) or 38H(6); and
  - (b) the proceeding is under Division 104 of the *Criminal Code* (about control orders); and
  - (c) a person referred to in paragraph (2)(e) requests the court to make an order that one or more specified parties to the proceeding, and their legal representatives, are not entitled to be present during any part of the hearing in which a person referred to in paragraph (2)(e) gives information of the kind referred to in paragraph (3)(c) or (d);
- then the court may make that order.

Note: An order made under subsection 38J(2), (3) or (4) in relation to the proceeding will contain a similar restriction in relation to a hearing in the proceeding: see paragraph 38J(2)(e), 38J(3)(d) or 38J(4)(c).

**14 Paragraph 38I(5)(a)**

After “section”, insert “38J or”.

**15 Subsection 38I(6)**

Omit “If section 38K applies, the”, substitute “The”.

**16 Paragraph 38I(9)(a)**

After “allow”, insert “the following persons (other than a person who, because of an order under subsection (3A) or 38J(2), (3) or (4), is not entitled to be present during any part of the hearing)”.

**17 Subparagraph 38I(9)(a)(i)**

Omit “or”.

**18 Subparagraph 38I(9)(a)(iii)**

Omit “, and if applicable, section 38J”.

**19 At the end of section 38I**

Add:

- (10) If the court makes a decision under subsection (8), the Attorney-General or his or her legal representative may request that the court delay allowing access to the varied record or the record as mentioned in paragraph (9)(a) to allow time for the Attorney-General to:
- (a) decide whether to appeal against the court’s decision; and
  - (b) if the Attorney-General decides to do so—make the appeal.
- The court must grant the request.

**20 Before section 38J**

Insert:

**Subdivision B—Orders**

**21 Section 38J**

Repeal the section, substitute:

### 38J Special court orders in control order proceedings

*When this section applies*

- (1) This section applies if:
  - (a) the court has held a hearing required by subsection 38G(1) or 38H(6) about the disclosure of information in a proceeding under Division 104 of the *Criminal Code* relating to a request (the **control order request**) to the court to make, confirm or vary a control order in relation to a person (the **relevant person**); and
  - (b) the Attorney-General or the Attorney-General's legal representative has requested the court to make an order under subsection (2), (3) or (4) of this section about the disclosure and consideration of the information in the proceeding; and
  - (c) the court is satisfied that the relevant person has been given sufficient information about the allegations on which the control order request was based to enable effective instructions to be given in relation to those allegations.

*Non-disclosure certificate hearings*

- (2) If the hearing was required by subsection 38G(1) and the information is in the form of a document, the court may order under this subsection that:
  - (a) the following persons must not, except in permitted circumstances or in accordance with this subsection, disclose the information (whether in the proceeding or otherwise):
    - (i) any person to whom the certificate mentioned in subsection 38F(2) or (3) was given in accordance with that subsection;
    - (ii) any person to whom the contents of the certificate have been disclosed for the purposes of the hearing;
    - (iii) any other specified person; and
  - (b) those persons may disclose in the proceeding:
    - (i) a copy of the document with the information deleted; or
    - (ii) a copy of the document with the information deleted and a summary of the information, as set out in the order, attached to the document; or

- (iii) a copy of the document with the information deleted and a statement of facts, as set out in the order, that the information would, or would be likely to, prove attached to the document;  
(which disclosure may or may not be the same as was permitted in the certificate); and
  - (c) the information may be disclosed to the court in the proceeding; and
  - (d) the closed hearing requirements in section 38I are to apply when the information is disclosed to the court at a hearing in the proceeding; and
  - (e) the relevant person and the relevant person's legal representative are not entitled to be present during any part of a hearing in the proceeding in which the information is disclosed to the court; and
  - (f) if the information is disclosed to the court in the proceeding and, apart from the order, the information is admissible in evidence in the proceeding—the court may consider the information in the proceeding, even if the information has not been disclosed to the relevant person or the relevant person's legal representative.
- (3) If the hearing was required by subsection 38G(1), the court may, regardless of the form of the information, order under this subsection that:
  - (a) any of the following persons must not, except in permitted circumstances or in accordance with this subsection, disclose the information (whether in the proceeding or otherwise):
    - (i) any person to whom the certificate mentioned in subsection 38F(2) or (3) was given in accordance with that subsection;
    - (ii) any person to whom the contents of the certificate have been disclosed for the purposes of the hearing;
    - (iii) any other specified person; and
  - (b) the information may be disclosed to the court in the proceeding; and
  - (c) the closed hearing requirements in section 38I are to apply when the information is disclosed to the court at a hearing in the proceeding; and

- (d) the relevant person and the relevant person's legal representative are not entitled to be present during any part of a hearing in the proceeding in which the information is disclosed to the court; and
- (e) if the information is disclosed to the court in the proceeding and, apart from the order, the information is admissible in evidence in the proceeding—the court may consider the information in the proceeding, even if the information has not been disclosed to the relevant person or the relevant person's legal representative.

*Witness exclusion certificate hearings*

- (4) If the hearing was required by subsection 38H(6) in relation to the calling of a witness in the proceeding, the court may order under this subsection that:
  - (a) the relevant person and the relevant person's legal representative must not call the witness at a hearing in the proceeding; and
  - (b) the closed hearing requirements in section 38I are to apply if the witness is called at a hearing in the proceeding; and
  - (c) the relevant person and the relevant person's legal representative are not entitled to be present if the witness is called at a hearing in the proceeding.

*Factors to be considered by court*

- (5) The court must, in deciding whether to make an order under subsection (2), (3) or (4), consider the following matters:
  - (a) whether, having regard to the Attorney-General's certificate, there would be a risk of prejudice to national security if:
    - (i) where the certificate was given under subsection 38F(2) or (3)—the information were disclosed in contravention of the certificate; or
    - (ii) where the certificate was given under subsection 38H(2)—the witness were called;
  - (b) whether any such order would have a substantial adverse effect on the substantive hearing in the proceeding;
  - (c) any other matter the court considers relevant.

*Proceedings relating to making and confirming control order*

- (6) If the court makes an order under subsection (2), (3) or (4) in relation to a proceeding for the making of a control order in relation to the relevant person, then the order under that subsection also applies in relation to a proceeding for the confirmation of the control order in relation to the person.

*If order is not made*

- (7) If the court decides not to make an order under subsection (2), (3) or (4), then the court must make an order under section 38L.

**22 Subsection 38L(1)**

After “section”, insert “, unless the court has made an order under subsection 38J(2) or (3) in relation to the information”.

**23 At the end of subsection 38L(1)**

Add:

Note: Subsections 38J(2) and (3) allow the court to make an order about the disclosure and consideration of information in control order proceedings under Division 104 of the *Criminal Code*.

**24 At the end of subsection 38L(6)**

Add:

However, this subsection does not apply if the court has made an order under subsection 38J(4) about the calling of the person as a witness.

Note: Subsection 38J(4) allows the court to make an order about the calling of witnesses in control order proceedings under Division 104 of the *Criminal Code*.

**25 Subsection 38M(1)**

After “section”, insert “38J or”.

**26 Section 38O**

Omit “Division”, substitute “Subdivision”.

**27 Subsections 38P(1) and (2)**

After “section”, insert “38J or”.

**28 Section 38R (heading)**

Repeal the heading, substitute:

**38R Appeals against court orders under section 38J or 38L**

**29 Subsection 38R(1)**

After “section”, insert “38J or”.

**30 Section 47 (heading)**

Repeal the heading, substitute:

**47 Annual report**

**31 At the end of section 47**

Add:

; and (c) states the number of orders made under section 38J (about special court orders in proceedings under Division 104 of the *Criminal Code*); and

(d) identifies the proceedings under Division 104 of the *Criminal Code* to which the orders relate.

**32 Application of amendments**

The amendments of the *National Security Information (Criminal and Civil Proceedings) Act 2004* made by this Part apply to a civil proceeding that begins before or after the commencement of this item.

***Public Interest Disclosure Act 2013***

**33 Section 8 (paragraph (f) of the definition of *designated publication restriction*)**

After “section 31”, insert “, 38J or”.

## **Part 2—Special advocates**

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

#### **34 Section 7**

Insert:

*special advocate*, of a party to a civil proceeding, has the meaning given by subsection 38PA(1).

#### **35 Section 17**

Repeal the section, substitute:

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

Something is *likely to prejudice national security* if there is a real, and not merely a remote, possibility that it will prejudice national security.

#### **36 Paragraph 38I(2)(d)**

After “legal representatives”, insert “or special advocates”.

#### **37 Subsection 38I(9) (heading)**

Repeal the heading, substitute:

*Access to the record by a party, legal representative or special advocate*

#### **38 After paragraph 38I(9)(a)**

Insert:

- (aa) allow any party’s special advocate:
  - (i) to have access to the record; and
  - (ii) to prepare documents or records in relation to the record in a way and at a place prescribed by the regulations for the purposes of this paragraph; and

### 39 At the end of section 38M

Add:

*Special advocate*

- (5) The court must give a written statement of its reasons for making an order under section 38J or 38L to any special advocate of a party to the proceeding.

Note: Subsections (2) to (4) of this section do not apply to the statement the court gives to the special advocate.

### 40 Subsections 38N(1) and 38S(1)

Omit “section 38M”, substitute “subsection 38M(4)”.

### 41 At the end of Division 3 of Part 3A

Add:

## Subdivision C—Special advocates in control order proceedings

### 38PA Appointment of special advocate

- (1) The court may appoint a person as a *special advocate* of a party to a civil proceeding if:
- (a) the proceeding is a proceeding under Division 104 of the *Criminal Code* relating to a request to the court to make, confirm or vary a control order in relation to the party; and
  - (b) the court makes an order under subsection 38I(3A) or subsection 38J(2), (3) or (4) that the party and the party’s legal representative are not entitled to be present during part of a hearing in the proceeding.

Note: For the function of the special advocate, see section 38PB.

- (2) The court may appoint a person under subsection (1) only if:
- (a) the person meets any requirements specified in the regulations; and
  - (b) the court has given:
    - (i) the parties to the proceeding and the parties’ legal representatives; and
    - (iii) the Attorney-General and the Attorney-General’s legal representative;

the opportunity to make submissions to the court about who the court should appoint.

- (3) If the party for whom the court is appointing a special advocate, or the party's legal representative, requests the court under paragraph (2)(b) to appoint a particular person who meets the requirements mentioned in paragraph (2)(a), the court may appoint a different person only if the court is satisfied that:
- (a) appointing the person requested would result in the proceeding being unreasonably delayed; or
  - (b) appointing the person requested would result in the person having an actual or potential conflict of interest; or
  - (c) both:
    - (i) the person requested has knowledge of national security information and disclosure of the information would be likely to prejudice national security; and
    - (ii) in the circumstances, there is a risk of inadvertent disclosure of that information.

### **38PB Function of special advocate**

The function of a special advocate of a party to a civil proceeding is to represent the interests of the party in the proceeding by:

- (a) making submissions to the court at any part of a hearing in the proceeding during which the party and the party's legal representative are not entitled to be present; and
- (b) adducing evidence and cross-examining witnesses at such a part of a hearing in the proceeding; and
- (c) making written submissions to the court.

### **38PC Relationship of special advocate and relevant person**

- (1) The relationship between a special advocate of a party to a civil proceeding and the party is not that of legal representative and client.
- (2) However, legal professional privilege applies to a communication between the party, or the party's legal representative, and the special advocate in the same way as it applies to a communication between the party and the party's legal representative.

- (3) The special advocate is not a party to the proceeding.
- (4) For the purposes of this Act, the special advocate is not a court official.

**38PD Communication before disclosure of information to special advocate by Attorney-General**

- (1) This Subdivision, other than subsection (2), does not restrict communication that:
  - (a) is between:
    - (i) a special advocate of a party to a civil proceeding; and
    - (ii) the party or the party's legal representative; and
  - (b) occurs before the Attorney-General discloses information to the special advocate under subsection 38PE(2) in relation to the proceeding.

Note: For communication between the special advocate and the party after such a disclosure, see section 38PF.

- (2) The court may make such orders as the court considers appropriate prohibiting or restricting communication mentioned in subsection (1) about any matter connected with the proceeding 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.

**38PE Disclosure of information to special advocate by Attorney-General**

- (1) At the same time as the court appoints a special advocate of a party to a civil proceeding, the court must make an order setting a day on which the Attorney-General must:
  - (a) disclose to the special advocate the information that is subject to whichever of the following is in effect at that time:
    - (i) a certificate given to the party or the party's legal representative under section 38F or 38H in relation to the proceeding;
    - (ii) an order made under subsection 38J(2), (3) or (4) in relation to the proceeding; and

- (b) if subparagraph (a)(i) applies—give to the special advocate a statement of the Attorney-General’s reasons for withholding the information from the party.
- (2) The Attorney-General must comply with the order.
- (3) After the Attorney-General discloses the information to the special advocate under subsection (2), the special advocate must not disclose the information (whether in the proceeding or otherwise) other than:
  - (a) in permitted circumstances specified in the certificate given under section 38F or 38H or in accordance with the order (if any) made under subsection 38J(2), (3) or (4); or
  - (b) to:
    - (i) the person who applied for the relevant control order (within the meaning of Part 5.3 of the *Criminal Code*) or that person’s legal representative; or
    - (ii) the Attorney-General, the Attorney-General’s legal representative or any other representative of the Attorney-General; or
  - (c) to the court at a part of a hearing in the proceeding during which the party and the party’s legal representative are not entitled to be present.

Note: The special advocate commits an offence if he or she contravenes this subsection: see subsection 46H(1).

- (4) Paragraphs 38J(2)(a) and (3)(a) and subsections 38L(2) and (4) (about the persons covered by special court orders) do not apply to the special advocate.

### **38PF Communication after disclosure of information to special advocate by Attorney-General**

- (1) This section applies after the Attorney-General discloses information to a special advocate of a party to a civil proceeding under subsection 38PE(2) in relation to the proceeding.

#### *Communication by special advocate*

- (2) The special advocate must not communicate with any person about any matter connected with the proceeding, other than communicating:

- (a) with:
  - (i) the magistrate, judge or judges comprising the court; or
  - (ii) the person who applied for the relevant control order (within the meaning of Part 5.3 of the *Criminal Code*) or that person's legal representative; or
  - (iii) the Attorney-General, the Attorney-General's legal representative or any other representative of the Attorney-General; or
- (b) with the party or the party's legal representative in accordance with subsections (3) and (4) or (10); or
- (c) with any other person if the communication is:
  - (i) about matters not connected with the substance of the proceeding; and
  - (ii) necessary for administrative purposes.

Note 1: The special advocate commits an offence if he or she contravenes this subsection: see subsection 46H(3).

Note 2: The restriction in this subsection continues to apply to communication by the special advocate after the proceeding ends, or after he or she ceases to be a special advocate: see section 38PG.

*Communication by special advocate—written communication with party through court*

- (3) The special advocate may submit a written communication to the court for the court's approval and for forwarding to the relevant person or the person's legal representative.
- (4) The court must:
  - (a) if the court is satisfied that the communication is not likely to prejudice national security—forward the communication without amendment to the relevant person or the person's legal representative; or
  - (b) if paragraph (a) does not apply:
    - (i) amend the communication to the extent necessary for the court to be satisfied that the communication is not likely to prejudice national security; and
    - (ii) forward the amended communication to the relevant person or the person's legal representative; or

- (c) if paragraph (a) does not apply and the court is satisfied that it is not practicable to amend the communication so that it is not likely to prejudice national security:
    - (i) decline to forward the communication; and
    - (ii) notify the special advocate of that decision.
- (5) The court may consult the Attorney-General, the Attorney-General's legal representative or any other representative of the Attorney-General before making a decision under subsection (4).
- (6) If the court forwards a communication from the special advocate to the relevant person or the person's legal representative under paragraph (4)(a) or (b), the court must give a description of the communication to:
  - (a) the person who applied for the relevant control order or that person's legal representative; and
  - (b) the Attorney-General, the Attorney-General's legal representative or any other representative of the Attorney-General.
- (7) The description must not disclose information that is the subject of legal professional privilege (see subsection 38PC(2)).

*Communication by party*

- (8) The party may communicate with the special advocate about any matter connected with the proceeding only in writing through the party's legal representative.

Note: The party commits an offence if he or she contravenes this subsection: see subsection 46H(4).
- (9) The party's legal representative may communicate with the special advocate about any matter connected with the proceeding only in writing.

Note: The party's legal representative commits an offence if he or she contravenes this subsection: see subsection 46H(5).
- (10) The special advocate may give to the party or the party's legal representative a bare acknowledgement of receipt of a written communication to which subsection (8) or (9) applies.

Note: The special advocate may also reply to the communication through the court in accordance with subsections (3) and (4).

**38PG Communication after end of proceeding or by or to former special advocate**

Subsections 38PD(2) and 38PE(3) and sections 38PF and 46H apply:

- (a) in relation to a civil proceeding even if the proceeding has ended; and
- (b) in relation to a person who has ceased to be a special advocate of a party to a civil proceeding in the same way as those provisions apply in relation to a special advocate of the party.

**38PH Hearings under subsection 38G(1) or 38H(6)**

To avoid doubt, for the purposes of this Subdivision and section 46H:

- (a) a hearing under subsection 38G(1) or 38H(6) relating to the disclosure of information in a civil proceeding; or
  - (b) proceedings relating to such a hearing;
- are taken to be part of the civil proceeding.

**38PI Regulations**

- (1) The regulations may determine matters relating to special advocates.
- (2) Without limiting subsection (1), the regulations may determine matters relating to the terms on which a person serves as a special advocate, including terms relating to:
  - (a) remuneration; or
  - (b) conflicts of interest; or
  - (c) immunity.

**42 At the end of Division 2 of Part 5**

Add:

#### **46H Offences relating to special advocates in control order proceedings**

##### *Disclosure of information by special advocate*

- (1) A person commits an offence if:
- (a) the Attorney-General discloses information to the person under subsection 38PE(2) in relation to a civil proceeding; and
  - (b) the person discloses the information (whether in the proceeding or otherwise); and
  - (c) paragraphs 38PE(3)(a), (b) and (c) do not apply to the disclosure by the person.

Penalty: Imprisonment for 2 years.

- (2) To avoid doubt, for the purposes of subsection (1) it does not matter whether the person also obtains the information in some way additional to that mentioned in paragraph (1)(a).

##### *Communication by special advocate after disclosure of information by Attorney-General*

- (3) A person commits an offence if:
- (a) the Attorney-General discloses information to the person under subsection 38PE(2) in relation to a civil proceeding; and
  - (b) the person communicates with another person about any matter connected with the proceeding; and
  - (c) the communication occurs after the disclosure mentioned in paragraph (a); and
  - (d) paragraphs 38PF(2)(a), (b) and (c) do not apply to the communication.

Penalty: Imprisonment for 2 years.

##### *Communication by party or legal representative after disclosure of information by Attorney-General*

- (4) A person commits an offence if:
- (a) the person is or was a party to a civil proceeding; and

- (b) the Attorney-General discloses information to a special advocate of the person under subsection 38PE(2) in relation to the proceeding; and
- (c) the person communicates with the special advocate about any matter connected with the proceeding, other than in writing through the party's legal representative; and
- (d) the communication occurs after the disclosure mentioned in paragraph (b).

Penalty: Imprisonment for 2 years.

- (5) A person commits an offence if:
  - (a) the Attorney-General discloses information to a special advocate of a party to a civil proceeding under subsection 38PE(2) in relation to the proceeding; and
  - (b) the person communicates with the special advocate about any matter connected with the proceeding, other than in writing; and
  - (c) the communication occurs after the disclosure mentioned in paragraph (a); and
  - (d) the first person is the legal representative of the party:
    - (i) at or after the time disclosure occurs; and
    - (ii) at or before the time the communication occurs.

Penalty: Imprisonment for 2 years.

### **43 At the end of section 47**

Add:

- ; and (e) states the number of special advocates appointed during the year under section 38PA; and
- (f) identifies the proceedings under Division 104 of the *Criminal Code* in relation to which the special advocates were appointed.

## **Schedule 16—Dealing with national security information in proceedings**

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

#### **1 Paragraph 19(1A)(b)**

Repeal the paragraph, substitute:

- (b) the orders are not inconsistent with this Act; and
- (c) the orders are not inconsistent with regulations made under this Act.

#### **2 After subsection 19(1A)**

Insert:

- (1B) Paragraph (1A)(c) does not apply to orders made on an application by the Attorney-General or a representative of the Attorney-General for the orders.

#### **3 Paragraph 19(3A)(b)**

Repeal the paragraph, substitute:

- (b) the orders are not inconsistent with this Act; and
- (c) the orders are not inconsistent with regulations made under this Act.

#### **4 After subsection 19(3A)**

Insert:

- (3B) Paragraph (3A)(c) does not apply to orders made on an application by the Attorney-General or a representative of the Attorney-General for the orders.

#### **5 Subsection 23(2)**

Repeal the subsection, substitute:

- (2) Regulations prescribing a matter described in paragraph (1)(a) or (b) of this section apply in relation to national security information

disclosed, or to be disclosed, in a federal criminal proceeding only if:

- (a) there is not an order in force under section 22 relating to that information; or
- (b) there is an order in force under section 22 relating to that information but the order does not deal with that matter.

Example: Suppose regulations made for the purpose of subsection (1) of this section deal with ways of storing, handling and destroying information, and an order is in force under section 22 dealing with storing and handling, but not destroying, particular information. The regulations do not apply to the storage and handling of the information dealt with by the order, but that information must be destroyed in accordance with the regulations.

## 6 Subsection 38C(2)

Repeal the subsection, substitute:

- (2) Regulations prescribing a matter described in paragraph (1)(a) or (b) of this section apply in relation to national security information disclosed, or to be disclosed, in a civil proceeding only if:
  - (a) there is not an order in force under section 38B relating to that information; or
  - (b) there is an order in force under section 38B relating to that information but the order does not deal with that matter.

Example: Suppose regulations made for the purpose of subsection (1) of this section deal with ways of storing, handling and destroying information, and an order is in force under section 38B dealing with storing and handling, but not destroying, particular information. The regulations do not apply to the storage and handling of the information dealt with by the order, but that information must be destroyed in accordance with the regulations.

## 7 Application and transitional provisions

- (1) The amendments of sections 23 and 38C of the *National Security Information (Criminal and Civil Proceedings) Act 2004* made by this Schedule apply in relation to orders made on or after the commencement of this Schedule.
- (2) The *National Security Information (Criminal and Civil Proceedings) Regulation 2015*, as in force immediately before the commencement of this Schedule, has effect on and after that commencement as if it had been made on that commencement.

- (3) However, subsection 5(2) of the *National Security Information (Criminal and Civil Proceedings) Regulation 2015* does not have effect on or after that commencement, except in relation to orders made before that commencement.
- (4) This item does not prevent the amendment or repeal of the *National Security Information (Criminal and Civil Proceedings) Regulation 2015*.

## Schedule 17—Disclosures by taxation officers

### *Taxation Administration Act 1953*

#### **1 Subsection 355-65(2) in Schedule 1 (at the end of the table)**

Add:

- |    |                                  |  |
|----|----------------------------------|--|
| 10 | an *Australian government agency | is for the purpose of preventing, detecting, disrupting or investigating conduct that relates to a matter of security as defined by section 4 of the <i>Australian Security Intelligence Organisation Act 1979</i> |
|----|----------------------------------|--|

#### **2 After section 355-180 in Schedule 1**

Insert:

#### **355-182 Exception—on-disclosure of certain information to Commonwealth Ombudsman**

- (1) Section 355-155 does not apply if:
- (a) the entity is an officer of an \*Australian government agency; and
  - (b) the information was acquired by the entity under the exception in subsection 355-65(1) operating in relation to item 10 in the table in subsection 355-65(2); and
  - (c) the record is made for, or the disclosure is to:
    - (i) the Commonwealth Ombudsman or a Deputy Commonwealth Ombudsman; or
    - (ii) a member of staff referred to in subsection 31(1) of the *Ombudsman Act 1976*; and
  - (d) the record or disclosure is for the purpose of the performance of a function or duty of the Commonwealth Ombudsman, the Deputy Commonwealth Ombudsman or the member of staff, under the *Ombudsman Act 1976*.

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

- (2) Section 355-155 does not apply if:

- (a) the entity is:
  - (i) the Commonwealth Ombudsman or a Deputy Commonwealth Ombudsman; or
  - (ii) a member of staff referred to in subsection 31(1) of the *Ombudsman Act 1976*; and
- (b) the information was acquired by the entity under subsection (1) or this subsection; and
- (c) the record or disclosure is for the purpose of the performance of a function or duty of the Commonwealth Ombudsman, the Deputy Commonwealth Ombudsman or the member of staff, under the *Ombudsman Act 1976*.

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

### **3 Application of amendments**

The amendments of the *Taxation Administration Act 1953* made by this Schedule apply in relation to records and disclosures of information made on or after the commencement of this item, whether the information was obtained before, on or after that commencement.

## Schedule 18—Special intelligence operations

### *Australian Security Intelligence Organisation Act 1979*

#### 1 Section 4

Insert:

*entrusted person* means:

- (a) an ASIO employee; or
- (b) an ASIO affiliate; or
- (c) a person who has entered into a contract, agreement or arrangement with ASIO (other than as an ASIO affiliate).

#### 2 Subsection 18A(5) (definition of *entrusted person*)

Repeal the definition.

#### 3 Subsection 18B(5) (definition of *entrusted person*)

Repeal the definition.

#### 4 Subsections 35P(1) and (2)

Repeal the subsections, substitute:

*Disclosures by entrusted persons*

- (1) A person commits an offence if:
- (a) the person is, or has been, an entrusted person; and
  - (b) information came to the knowledge or into the possession of the person in the person's capacity as an entrusted person; and
  - (c) the person discloses the information; and
  - (d) the information relates to a special intelligence operation.

Penalty: Imprisonment for 5 years.

Note: Recklessness is the fault element for paragraphs (1)(b) and (d)—see section 5.6 of the *Criminal Code*.

- (1A) Strict liability applies to paragraph (1)(a).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- 
- (1B) A person commits an offence if:
- (a) the person is, or has been, an entrusted person; and
  - (b) information came to the knowledge or into the possession of the person in the person's capacity as an entrusted person; and
  - (c) the person discloses the information; and
  - (d) the information relates to a special intelligence operation; and
  - (e) either or both of the following subparagraphs apply:
    - (i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation;
    - (ii) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation.

Penalty: Imprisonment for 10 years.

Note: Recklessness is the fault element for paragraphs (1B)(b) and (d) and subparagraph (1B)(e)(ii)—see section 5.6 of the *Criminal Code*.

- (1C) Strict liability applies to paragraph (1B)(a).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

#### *Other disclosures*

- (2) A person commits an offence if:
- (a) the person discloses information; and
  - (b) the information relates to a special intelligence operation; and
  - (c) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation.

Penalty: Imprisonment for 5 years.

Note: Recklessness is the fault element for paragraphs (2)(b) and (c)—see section 5.6 of the *Criminal Code*.

- (2A) A person commits an offence if:
- (a) the person discloses information; and
  - (b) the information relates to a special intelligence operation; and
  - (c) either or both of the following subparagraphs apply:

- (i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation;
- (ii) the person knows that the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a special intelligence operation.

Penalty: Imprisonment for 10 years.

Note: Recklessness is the fault element for paragraph (2A)(b)—see section 5.6 of the *Criminal Code*.

### 5 Subsection 35P(3)

Omit “and (2)”, substitute “to (2A)”.

### 6 After subsection 35P(3)

Insert:

- (3A) Subsections (2) and (2A) do not apply to a person disclosing information if:
- (a) the information has already been communicated, or made available, to the public (the *prior publication*); and
  - (b) the person was not involved in the prior publication (whether directly or indirectly); and
  - (c) at the time of the disclosure, the person believes that the disclosure:
    - (i) will not endanger the health or safety of any person; and
    - (ii) will not prejudice the effective conduct of a special intelligence operation; and
  - (d) having regard to the nature, extent and place of the prior publication, the person has reasonable grounds for that belief.

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

### 7 Subsection 35P(4)

Omit “or (2)”, substitute “, (1B), (2) or (2A)”.

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*[Minister's second reading speech made in—  
Senate on 15 September 2016  
House of Representatives on 22 November 2016]*

*(96/16)*

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*No. 82, 2016*

*Counter-Terrorism Legislation Amendment Act (No. 1) 2016*

*145*