# Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Act 2021

# No. 131, 2021

## 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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# Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Act 2021

**No. 131, 2021**

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

[*Assented to 8 December 2021*]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Act 2021*.



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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.

**Commencement information**

| Column 1 | Column 2 | Column 3 |
|---|---|---|
| **Provisions** | **Commencement** | **Date/Details** |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 8 December 2021 |
| 2. Schedule 1 | The day after this Act receives the Royal Assent. | 9 December 2021 |
| 3. Schedule 2 | The later of:<br>(a) the start of the day after this Act receives the Royal Assent; and<br>(b) the commencement of Part 1 of Schedule 1 to the *Telecommunications Legislation Amendment (International Production Orders) Act 2021*.<br>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | 9 December 2021<br>(paragraph (a) applies) |

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule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.



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# Schedule 1—Extended supervision orders

## Part 1—Main amendments

### *Criminal Code Act 1995*

#### 1 Subsection 72.3(3) of the *Criminal Code* (note)

After "continuing detention orders", insert "and extended supervision orders".

#### 2 Subsection 100.1(1) of the *Criminal Code*

Insert:

***detained in custody*** has the meaning given by subsection (3A).

***detained in custody in a prison*** has the meaning given by subsection (3B).

***detained in non-prison custody*** has the meaning given by subsection (3C).

***immigration detention*** has the same meaning as in the *Migration Act 1958*.

***interim post-sentence order*** has the meaning given by section 105A.2.

***monitoring device*** means any electronic device capable of being used to determine or monitor the location of a person or an object or the status of an object.

Note: See also the definition of ***related monitoring equipment*** in this subsection.

***personal information*** has the same meaning as in the *Privacy Act 1988*.

***post-sentence order*** has the meaning given by section 105A.2.

***related monitoring equipment***, in relation to a monitoring device, means any electronic equipment necessary for operating the monitoring device.



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***reside*** includes reside temporarily.

***residence*** includes temporary residence.

***specified authority***: a person, or person in a class of persons, is a ***specified authority*** for a requirement or condition in a control order, an extended supervision order or interim supervision order in relation to another person (the ***subject***) if:

(a) the person or class is any of the following:
  (i) a police officer, or class of police officer;
  (ii) if the requirement or condition relates to electronic monitoring—a person, or class of person, who is involved in electronically monitoring the subject;
  (iii) for any requirement or condition in the order—any other person, or class of person; and
(b) the Court making the order is satisfied that the person or class is appropriate in relation to the requirement or condition; and
(c) the person or class is specified in the order.

## 3 Subsection 100.1(1) of the *Criminal Code* (definition of *tracking device*)

Repeal the definition.

## 3A Before subsection 100.1(2) of the *Criminal Code*

Insert:

*Elements of the definition of* ***terrorist act***

## 3B After subsection 100.1(3) of the *Criminal Code*

Insert:

*Definition of* ***detained in custody*** *etc.*

(3A) A person is ***detained in custody*** if the person is detained in custody under a law of the Commonwealth, a State or a Territory.

(3B) A person is ***detained in custody in a prison*** if the person is detained in custody in a gaol, lock-up or remand centre, including under a continuing detention order or interim detention order. However, a person is not ***detained in custody in a prison*** if the



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person is in immigration detention in a gaol, lock-up or remand centre.

(3C) A person is ***detained in non-prison custody*** if the person is detained in custody, but is not detained in custody in a prison.

Note: An example of a person who is detained in non-prison custody is a person who is in immigration detention (whether in a gaol, lock-up, remand centre or otherwise).

*References to person, property or public*

## 4 Subsection 100.1(4) of the *Criminal Code* (note)

Omit "must warn the person about continuing detention orders", substitute "or convicted of an offence relating to control orders or extended supervision orders, may be required to warn the person about continuing detention orders and extended supervision orders".

## 5 Subsection 102.1(1) of the *Criminal Code* (the definition of *close family member*)

Repeal the definition, substitute:

***close family member*** of a person (the ***first person***) means:

(a) the first person's spouse or de facto partner; or

(b) a parent, step-parent or grandparent of the first person; or

(c) any other person who would be a parent, step-parent or grandparent of the first person if the first person were a child (within the meaning of Part VII of the *Family Law Act 1975*) of the other person or a third person; or

(d) a child, step-child or grandchild of the first person; or

(e) any other person who would be a step-child or grandchild of the first person if the other person were a child (within the meaning of Part VII of the *Family Law Act 1975*) of a third person; or

(f) a brother, sister, step-brother or step-sister of the first person; or

(g) any other person who would be a brother, sister, step-brother or step-sister of the first person if the other person were a child (within the meaning of Part VII of the *Family Law Act 1975*) of a third person; or



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(h) a guardian or carer of the first person.

## 6 Subsection 102.1(19) of the *Criminal Code*

Repeal the subsection.

## 6A Subsection 104.2(5) of the *Criminal Code* (note)

Repeal the note, substitute:

Note: An interim control order in relation to a person who is detained in custody in a prison does not begin to be in force until the person ceases to be detained in custody in a prison (see paragraph 104.5(1)(d) and subsection 104.5(1D)).

## 7 Subparagraph 104.3(e)(i) of the *Criminal Code*

After "the orders)", insert ", and all previous applications for post-sentence orders or interim post-sentence orders,".

## 8 Subparagraph 104.3(e)(ii) of the *Criminal Code*

After "control orders", insert "or of post-sentence orders".

## 9 After subparagraph 104.3(e)(iii) of the *Criminal Code*

Insert:

(iiia) the outcomes and particulars of all previous applications for revocations of post-sentence orders or interim post-sentence orders made in relation to the person;

(iiib) the particulars of any revocations that occur by operation of this Act of continuing detention orders in relation to the person;

(iiic) the outcomes and particulars of all previous applications for review of post-sentence orders in relation to the person;

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

Repeal the subsection.

## 11 Subparagraph 104.5(1)(d)(ii) of the *Criminal Code*

Repeal the subparagraph, substitute:

(ii) if the order does not begin to be in force under subsection (1D) when it is served personally on the



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person—the order begins to be in force under subsection (1E); and

## 12 Before subsection 104.5(1A) of the *Criminal Code*

Insert:

*Attendance of person at court*

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

Insert:

*Rules relating to the period an interim control order is in force*

(1D) The interim control order does not begin to be in force when it is served personally on the person if, at that time:

(a) the person is detained in custody in a prison; or

(b) an extended supervision order or interim supervision order is in force in relation to the person.

Note: An interim control order in relation to a person who is detained in non-prison custody begins to be in force when the order is served personally on the person (see paragraph (1)(d)).

(1E) The interim control order referred to in subsection (1D) instead begins to be in force when all of the following conditions are met:

(a) either of the following events occurs:

(i) the person ceases to be detained in custody in a prison;

(ii) the extended supervision order or interim supervision order ceases to be in force in relation to the person;

(b) when the event occurs:

(i) the interim control order has not been confirmed under section 104.14; and

(ii) the person is in the community without an extended supervision order or interim supervision order being in force in relation to the person.

Note: Persons detained in non-prison custody are taken to be in the community (see section 105A.18AA).

(1F) To avoid doubt, the interim control order never comes into force if the condition in subparagraph (1E)(b)(ii) is not met.



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## 14 Subsection 104.5(2AA) of the *Criminal Code* (note)

Repeal the note.

## 15 Before subsection 104.5(2A) of the *Criminal Code*

Insert:

*National security information*

## 16 Paragraph 104.5(3)(d) of the *Criminal Code*

Repeal the paragraph, substitute:

(d) a requirement that the person be subject to electronic monitoring (for example, by wearing a monitoring device at all times), and comply with directions given by a specified authority in relation to electronic monitoring;

(da) a requirement that:

(i) the person carry at all times a specified mobile phone; and

(ii) the person be available to answer any call from a specified authority or, as soon as reasonably practicable, return a call that the person was unable to answer; and

(iii) the person comply with specified directions, or any directions given by a specified authority, in relation to the requirement in subparagraph (i) or (ii);

## 17 Subsection 104.5(3) of the *Criminal Code* (note)

Omit "Note", substitute "Note 1".

## 18 At the end of subsection 104.5(3) of the *Criminal Code*

Add:

Note 2: For paragraph (3)(d), see also:

(a) section 104.5A (obligations relating to monitoring devices); and

(b) section 104.28C (sharing information relating to electronic monitoring); and

(c) section 104.28D (arrangements for electronic monitoring and other functions and powers).

## 19 Subsections 104.5(3A) and (3B) of the *Criminal Code*

Repeal the subsections, substitute:



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(3A) A specified authority may give a direction under paragraph (3)(d) or (da) only if the specified authority is satisfied that the direction is reasonable in all the circumstances to give effect to:

(a) the requirement in that paragraph; or

(b) the objects of this Division (see section 104.1).

## 20 At the end of Subdivision B of Division 104 of the *Criminal Code*

Add:

### 104.5A Obligations relating to monitoring devices

*Additional obligations on person*

(1) If the issuing court imposes a requirement under paragraph 104.5(3)(d) in a control order that a person wear a monitoring device, then:

(a) the requirement must specify that the person wear the monitoring device at all times; and

(b) the order must include the requirement referred to in paragraph 104.5(3)(da); and

(c) the order must include a requirement that the person do all of the following:

(i) allow a specified authority to enter the person's residence at any reasonable time for any purpose relating to the electronic monitoring of the person;

(ii) allow a specified authority to install, repair or fit the monitoring device or any related monitoring equipment;

(iii) take the steps specified in the order (if any) and any other reasonable steps to ensure that the monitoring device and any related monitoring equipment are or remain in good working order;

(iv) if the person becomes aware that the monitoring device and any related monitoring equipment are not in good working order—notify a specified authority as soon as reasonably practicable;

(v) allow a specified authority, police officer or corrective services officer to remove the monitoring device;



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(vi) allow a police officer to remove any related monitoring equipment.

*Powers of specified authorities and others*

(2) After including the requirement under paragraph 104.5(3)(d) in the order, the court must also include in the order an authorisation for:

(a) one or more specified authorities to enter the person's residence as specified in the order at any reasonable time for any purpose relating to the electronic monitoring of the person; and

(b) one or more specified authorities to install, repair or fit the monitoring device and any related monitoring equipment; and

(c) one or more specified authorities or police officers to take the steps specified in the order to ensure that the device and any related monitoring equipment are or remain in good working order; and

(d) one or more specified authorities, police officers or corrective services officers to remove the monitoring device; and

(e) one or more police officers to remove any related monitoring equipment.

(3) If:

(a) a monitoring device is installed on the person; and

(b) either:

(i) the requirement under paragraph 104.5(3)(d) is removed from the control order; or

(ii) the control order ceases to be in force;

the device and any related monitoring equipment may be removed in accordance with paragraph (2)(d) or (e) even though no authorisation under subsection (2) is in force.

*Powers relating to monitoring devices and related electronic equipment*

(4) Before exercising a power referred to in paragraph (2)(a), (b), (d) or (e), or subsection (3), a specified authority, police officer or corrective services officer must inform the person:



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(a) that the device and equipment are to be installed, repaired, fitted or removed (as the case requires); and
(b) of the proposed timing of the taking of the action; and
(c) that the person may consent to the taking of the action; and
(d) that if consent is not given, reasonable force may be used to take the action, or to enter the person's residence in order to take the action.

(5) If the person does not give consent, reasonable force may be used by a police officer to take the action, or to enter the person's residence in order to take the action.

## 21 Paragraph 104.12A(4)(a) of the *Criminal Code*

Before "the order", insert "if the order is in force—".

## 22 Subparagraph 104.12A(4)(b)(i) of the *Criminal Code*

Repeal the subparagraph, substitute:

(i) annotate a copy of the order to indicate that it has ceased to be in force or will not come into force (as the case requires); and

## 23 Section 104.15 of the *Criminal Code* (heading)

Repeal the heading, substitute:

### 104.15 Effect of confirmation process on interim control orders

## 24 Before subsection 104.15(1) of the *Criminal Code*

Insert:

*Void interim control orders*

## 25 Before subsection 104.15(2) of the *Criminal Code*

Insert:

*Revoked interim control orders*

## 26 Before subsection 104.15(3) of the *Criminal Code*

Insert:



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*Confirming interim control orders that were in force*

## 27 Subsection 104.15(3) of the *Criminal Code*

After "then", insert "(subject to subsection (4) of this section)".

## 28 At the end of section 104.15 of the *Criminal Code*

Add:

*Interim control orders that were not in force*

(4) The interim control order never comes into force if:

(a) the court confirms the interim control order (with or without variation) under section 104.14 in relation to a person; and

(b) the interim control order had not begun to be in force when it was served personally on the person because of subsection 104.5(1D).

(5) The confirmed control order begins to be in force when all of the following conditions are met:

(a) the relevant interim control order did not begin to be in force when it was served personally on the person because of subsection 104.5(1D);

(b) either of the following events occurs:

(i) the person is released from custody in a prison into the community;

(ii) the extended supervision order or interim supervision order referred to in paragraph 104.5(1D)(b) ceases to be in force in relation to the person;

(c) when the event occurs, the person is in the community without an extended supervision order or interim supervision order being in force in relation to the person.

Note: Persons detained in non-prison custody are taken to be in the community (see section 105A.18AA).

(6) To avoid doubt, the confirmed control order never comes into force if the condition in paragraph (5)(c) is not met.



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## 29 At the end of Subdivision D of Division 104 of the *Criminal Code*

Add:

### 104.17A Cessation of a control order if post-sentence order made

(1) If:

(a) a control order or interim control order has already been served on a person; and

(b) a post-sentence order or interim post-sentence order begins to be in force in relation to the person;

then:

(c) if the control order or interim control order is in force—that order immediately ceases to be in force; and

(d) an AFP member must:

(i) annotate a copy of that order to indicate that it has ceased to be in force or will not come into force (as the case requires); and

(ii) cause an annotated copy to be served personally on the person; and

(iii) if the person is a resident of Queensland, or the court made the order in Queensland—give the Queensland public interest monitor an annotated copy.

## 30 Subsection 104.24(3) of the *Criminal Code*

Repeal the subsection.

## 30A Section 104.27 of the *Criminal Code*

Before "A person", insert "(1)".

## 31 Section 104.27 of the *Criminal Code* (before the penalty)

Insert:

Note: A court that is sentencing a person who has been convicted of an offence against this section may be required to warn the person about continuing detention orders and extended supervision orders (see section 105A.23).



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## 31A At the end of section 104.27 of the *Criminal Code*

Add:

(2) Subsection (1) does not apply if the person contravenes the order because the person is detained in non-prison custody.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3).

## 32 Section 104.27A of the *Criminal Code* (heading)

Omit "**tracking devices**", substitute "**monitoring devices**".

## 33 Paragraph 104.27A(1)(b) of the *Criminal Code*

Omit "tracking device", substitute "monitoring device".

## 34 Paragraph 104.27A(1)(d) of the *Criminal Code*

Omit "tracking device", substitute "monitoring device or any related monitoring equipment".

## 35 After subsection 104.27A(1) of the *Criminal Code* (before the penalty)

Insert:

Note: A court that is sentencing a person who has been convicted of an offence against this subsection may be required to warn the person about continuing detention orders and extended supervision orders (see section 105A.23).

## 36 Paragraph 104.27A(2)(b) of the *Criminal Code*

Omit "tracking device", substitute "monitoring device".

## 37 Paragraph 104.27A(2)(d) of the *Criminal Code*

Omit "tracking device", substitute "monitoring device or any related monitoring equipment".

## 37A Section 104.28B of the *Criminal Code*

Repeal the section, substitute:



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### 104.28B Giving documents to persons detained in custody

(1) A document that is required under this Division to be given to a person (the ***detainee***) personally who is detained in custody is taken to have been given to the detainee at the time referred to in paragraph (3)(b) if the document is given to the following person (the ***recipient***):

(a) the legal representative of the detainee;

(b) if the detainee does not have a legal representative—the chief executive officer (however described) of the prison or other facility in which the person is detained, or a delegate of the chief executive officer.

Note: The obligation to inform the detainee of the matters referred to in paragraphs 104.12(1)(b), 104.17(1)(b) and 104.26(1)(b) and (c) might not apply if it is impracticable for an AFP member to comply with the obligation (see subsections 104.12(3A), 104.17(2A) and 104.26(3A)).

(2) The recipient must, as soon as reasonably practicable, give the document to the detainee personally.

(3) Once the recipient has done so, the recipient must notify the Court and the person who gave the recipient the document, in writing:

(a) that the document has been given to the detainee; and

(b) of the day that document was so given.

## 38 After section 104.28B of the *Criminal Code*

Insert:

### 104.28C Sharing information relating to electronic monitoring

(1) An AFP member may disclose information (including personal information), to a person employed or engaged by a body covered by an arrangement under subsection 104.28D(1), for the purpose of facilitating:

(a) the performance of functions and the exercise of powers relating to the electronic monitoring of persons who are subject to a requirement imposed in accordance with paragraph 104.5(3)(d); or

(b) the performance of any other functions or the exercise of any other powers relating to section 104.5A.



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(2) A person (the ***first person***) employed or engaged by a body covered by an arrangement under subsection 104.28D(1) may disclose information (including personal information) to another person if the first person reasonably believes that the disclosure is authorised by the arrangement.

(3) This section applies despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten).

### 104.28D Arrangements for electronic monitoring and other functions and powers

(1) The Commissioner of the Australian Federal Police may make an arrangement with a State or Territory, or any other body, for:

(a) the performance of functions and the exercise of powers relating to the electronic monitoring of persons who are subject to a requirement imposed in accordance with paragraph 104.5(3)(d); or

(b) the performance of any other functions or the exercise of any other powers relating to section 104.5A.

(2) Without limiting subsection (1), for the purposes of section 104.28C, the arrangement may authorise a person employed or engaged by a body covered by the arrangement to disclose information (including personal information).

(3) The Commissioner of the Australian Federal Police may, in writing, delegate to a senior AFP member the Commissioner's powers under subsection (1).

## 39 Subparagraph 105.7(2)(e)(ii) of the *Criminal Code*

After "the orders)", insert ", and all previous applications for post-sentence orders or interim post-sentence orders,".

## 40 Subparagraph 105.7(2)(e)(iii) of the *Criminal Code*

After "control orders", insert "or of post-sentence orders".

## 41 Subparagraph 105.7(2)(e)(iv) of the *Criminal Code*

Omit "person; and", substitute "person;".



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## 42 At the end of paragraph 105.7(2)(e) of the *Criminal Code*

Add:

(v) the outcomes and particulars of all previous applications for revocations of post-sentence orders or interim post-sentence orders made in relation to the person;

(vi) the particulars of any revocations that occur by operation of this Act of continuing detention orders in relation to the person;

(vii) the outcomes and particulars of all previous applications for review of post-sentence orders made in relation to the person; and

## 43 Subparagraph 105.11(2)(e)(ii) of the *Criminal Code*

After "the orders)", insert ", and all previous applications for post-sentence orders or interim post-sentence orders,".

## 44 Subparagraph 105.11(2)(e)(iii) of the *Criminal Code*

After "control orders", insert "or of post-sentence orders".

## 45 Subparagraph 105.11(2)(e)(iv) of the *Criminal Code*

Omit "person; and", substitute "person;".

## 46 At the end of paragraph 105.11(2)(e) of the *Criminal Code*

Add:

(v) the outcomes and particulars of all previous applications for revocations of post-sentence orders made in relation to the person;

(vi) the particulars of any revocations that occur by operation of this Act of continuing detention orders in relation to the person;

(vii) the outcomes and particulars of all previous applications for review of post-sentence orders made in relation to the person; and

## 47 Subparagraph 105.14A(4)(e)(iii) of the *Criminal Code*

After "control order", insert "or post-sentence order".



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### 47A Paragraph 105.26(5)(b) of the *Criminal Code*

After "custody", insert ", and detained in custody,".

### 48 Subsections 105.35(3) and (4) of the *Criminal Code*

Repeal the subsections, substitute:

(3) In this section:

***family member*** of a person (the ***first person***) means:

(a) the first person's spouse or de facto partner; or

(b) a parent, step-parent or grandparent of the first person; or

(c) any other person who would be a parent, step-parent or grandparent of the first person if the first person were a child (within the meaning of Part VII of the *Family Law Act 1975*) of the other person or a third person; or

(d) a child, step-child or grandchild of the first person; or

(e) any other person who would be a step-child or grandchild of the first person if the other person were a child (within the meaning of Part VII of the *Family Law Act 1975*) of a third person; or

(f) a brother, sister, step-brother or step-sister of the first person; or

(g) any other person who would be a brother, sister, step-brother or step-sister of the first person if the other person were a child (within the meaning of Part VII of the *Family Law Act 1975*) of a third person; or

(h) a guardian or carer of the first person.

### 49 Division 105A of the *Criminal Code* (heading)

Repeal the heading, substitute:

## Division 105A—Post-sentence orders

### 50 Section 105A.1 of the *Criminal Code*

Repeal the section, substitute:



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### 105A.1 Object

The object of this Division is to protect the community from serious Part 5.3 offences by providing that terrorist offenders who pose an unacceptable risk of committing such offences are subject to:

(a) a continuing detention order; or

(b) an extended supervision order.

## 51 Section 105A.2 of the *Criminal Code*

Before "In this Division", insert "(1)".

## 52 Section 105A.2 of the *Criminal Code*

Repeal the following definitions:

(a) the definition of ***continuing detention order decision***;

(b) the definition of ***continuing detention order proceeding***.

## 53 Section 105A.2 of the *Criminal Code*

Insert:

***exemption condition*** has the meaning given by subsection 105A.7C(2).

***extended supervision order*** means an order made under subsection 105A.7A(1).

***interim post-sentence order*** means an interim detention order or an interim supervision order.

***interim supervision order*** means an order made under subsection 105A.9A(4).

***post-sentence order*** means a continuing detention order or an extended supervision order.

***post-sentence order decision*** means:

(a) a decision on an application for a post-sentence order or an interim post-sentence order; or

(b) a decision on an application to vary an extended supervision order or interim supervision order; or



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(c) a decision in a review of a post-sentence order to affirm, revoke or vary the order; or

(d) a decision made under section 105A.15A (when a terrorist offender is unable to engage a legal representative).

Note: See also subsection (2).

***post-sentence order proceeding*** means a proceeding under Subdivision C, CA, CB or D.

***premises*** includes a place, an aircraft, a vehicle and a vessel.

## 53A Section 105A.2 of the *Criminal Code* (definition of *prison*)

Omit "or other place of detention", substitute "or remand centre".

## 54 Section 105A.2 of the *Criminal Code* (definition of *relevant expert*)

Omit "if the offender is released into the community".

## 55 Section 105A.2 (definition of *terrorist offender*)

Repeal the definition, substitute:

***terrorist offender***:

(a) has the meaning given by subsection 105A.3(1); and

(b) includes a person who meets the conditions in paragraphs 105A.3(1)(a) and (c) and:

(i) paragraphs 105A.3A(4)(a) and (b); or

(ii) paragraphs 105A.3A(5)(a) to (e).

Note: This definition is affected by sections 105A.2A and 105A.18.

## 56 At the end of section 105A.2 of the *Criminal Code*

Add:

(2) To avoid doubt, a decision on an application to a Supreme Court of a State or Territory for a post-sentence order or interim post-sentence order is not made until the Court determines the application in accordance with section 105A.6A or subsection 105A.9(1B) or 105A.9A(3).



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## 57 Section 105A.2A of the *Criminal Code*

Repeal the section, substitute:

### 105A.2A Persons who have escaped from custody

For the purposes of this Division (except section 105A.4) if:

(a) a person is detained in custody for a reason (for example, because the person is serving a sentence of imprisonment, on remand or subject to a continuing detention order); and

(b) the person escapes from custody;

the person is taken to be detained in custody for that reason until the person is returned to custody.

Note: For the definition of ***detained in custody***, see subsection 100.1(1).

## 58 Subdivision B of Division 105A of the *Criminal Code* (heading)

Repeal the heading, substitute:

## Subdivision B—Post-sentence orders

## 59 Section 105A.3 of the *Criminal Code*

Repeal the section, substitute:

### 105A.3 Who a post-sentence order may apply to and effect of post-sentence orders

(1) A post-sentence order may be made under section 105A.7 or 105A.7A in relation to a person (the ***terrorist offender***) if:

(a) the person has been convicted of:

(i) an offence against Subdivision A of Division 72 (international terrorist activities using explosive or lethal devices); or

(ii) a serious Part 5.3 offence; or

(iii) an offence against Part 5.5 (foreign incursions and recruitment), except an offence against subsection 119.7(2) or (3) (publishing recruitment advertisements); or



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(iv) an offence against the repealed *Crimes (Foreign Incursions and Recruitment) Act 1978*, except an offence against paragraph 9(1)(b) or (c) of that Act (publishing recruitment advertisements); and

(b) a subsection of section 105A.3A provides that the order may be made in relation to the person; and

(c) the person will be at least 18 years old when the sentence for the conviction referred to in paragraph (a) of this subsection ends.

Note: Before making the order, a Court must be satisfied of certain matters under section 105A.7 or 105A.7A.

*Effect of continuing detention order*

(2) The effect of a continuing detention order is to commit the person to detention in a prison for the period the order is in force.

Note 1: The period must not be more than 3 years (see subsection 105A.7(5)).

Note 2: See also:

(a) section 105A.18C (effect of detention on post-sentence order); and

(b) subsection 105A.21(2) (arrangements with States and Territories); and

(c) section 105A.24 (effect of continuing detention orders on bail or parole laws).

*Effect of an extended supervision order*

(3) The effect of an extended supervision order is to impose on the person, for the period the order is in force, conditions contravention of which is an offence.

Note 1: The period must not be more than 3 years (see paragraph 105A.7A(4)(d)).

Note 2: See also section 105A.18C (effect of detention on post-sentence order).



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### 105A.3A Preconditions for post-sentence orders

*Post-sentence orders—person imprisoned for paragraph 105A.3(1)(a) offence*

(1) A post-sentence order may be made in relation to a person if the person is detained in custody in a prison serving a sentence of imprisonment for an offence referred to in paragraph 105A.3(1)(a).

*Post-sentence orders—continuing detention order in force*

(2) A post-sentence order may be made in relation to a person if a continuing detention order or interim detention order is in force in relation to the person.

*Post-sentence orders—person imprisoned for other offences*

(3) A post-sentence order may be made in relation to a person if:
  (a) the person is detained in custody in a prison serving a sentence of imprisonment for an offence other than an offence referred to in paragraph 105A.3(1)(a); and
  (b) either:
    (i) the person has been continuously detained in custody in a prison since being convicted of the offence referred to in paragraph 105A.3(1)(a); or
    (ii) the person has been continuously detained in custody in a prison since a continuing detention order or interim detention order was in force in relation to the person.

Note: For the definition of ***detained in custody in a prison***, see subsection 100.1(1).

(4) A post-sentence order may be made in relation to a person if:
  (a) the person is detained in custody in a prison serving a sentence of imprisonment for an offence against section 105A.18A or subsection 105A.18B(1) (offences relating to extended supervision orders and interim supervision orders); and
  (b) the person was charged with the offence before the later of:
    (i) the relevant extended supervision order or interim supervision order ceasing to be in force; and



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(ii) the end of 6 months after the conduct constituting the offence; and

(c) the Court making the post-sentence order is satisfied, as a result of the offence referred to in paragraph (a), that the person poses an unacceptable risk of committing a serious Part 5.3 offence.

(5) A post-sentence order may be made in relation to a person if:

(a) the person served a sentence of imprisonment for an offence referred to in paragraph 105A.3(1)(a); and

(b) before the person was released from custody in a prison:

(i) the AFP Minister's consent to a request for an interim control order was sought under section 104.2; or

(ii) a request for an interim control order was made under section 104.6; and

(c) the interim control order was made as a result of the request; and

(d) the person is detained in custody in a prison serving a sentence of imprisonment for an offence against section 104.27 or subsection 104.27A(1) (offences relating to control orders) in relation to:

(i) the interim control order; or

(ii) the control order that resulted from confirming the interim control order; and

(e) the person was charged with the offence referred to in paragraph (d) before the later of:

(i) the order referred to in that paragraph ceased to be in force; and

(ii) the end of 6 months after the conduct constituting the offence; and

(f) the Court making the post-sentence order is satisfied, as a result of the offence referred to in paragraph (d), that the person poses an unacceptable risk of committing a serious Part 5.3 offence.



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*Supervision orders—supervision order in force*

(6) An extended supervision order or interim supervision order may be made in relation to a person if an extended supervision order or interim supervision order is in force in relation to the person.

*Supervision orders—person imprisoned for other offences*

(7) An extended supervision order or interim supervision order may be made in relation to a person if:

(a) the person is detained in custody in a prison serving a sentence of imprisonment for an offence other than the offence referred to in paragraph 105A.3(1)(a); and

(b) at the beginning of the person's detention in custody in a prison, an extended supervision order or interim supervision order was in force in relation to the person.

Note: Paragraph (a)—an offence against section 105A.18A or subsection 105A.18B(1) (relating to an extended supervision order or interim supervision order) is an example of an offence other than the offence referred to in paragraph 105A.3(1)(a).

*Supervision orders—control orders requested before commencement*

(8) An extended supervision order or interim supervision order may be made in relation to a person if:

(a) the person served a sentence of imprisonment for an offence referred to in paragraph 105A.3(1)(a); and

(b) before the person was released from custody in a prison, and before the commencement of this subsection:

(i) the AFP Minister's consent to a request for an interim control order was sought under section 104.2; or

(ii) a request for an interim control order was made under section 104.6; and

(c) either:

(i) the interim control order is in force; or

(ii) the interim control order was confirmed and the confirmed control order is in force.



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*Interpretation*

(9) To avoid doubt, subsection (3) applies:

(a) whether the offence for which the person is serving the sentence of imprisonment is an offence against a law of the Commonwealth, a State or a Territory; and

(b) whether the sentence served for the offence referred to in paragraph 105A.3(1)(a) was served concurrently or cumulatively, or both, with:

(i) the sentence referred to in paragraph (3)(a) of this section; or

(ii) any of the other sentences served by the person since being convicted of the offence referred to in paragraph 105A.3(1)(a) (the ***other sentences***); and

(c) whether the sentence referred to in paragraph (3)(a) of this section or the other sentences were imposed before or after, or at the same time as, the sentence for the offence referred to in paragraph 105A.3(1)(a); and

(d) whether or not the person has been continuously serving a sentence of imprisonment for an offence since being convicted of the offence referred to in paragraph 105A.3(1)(a).

(10) To avoid doubt, subsection (7) applies whether the offence for which the person is serving the sentence of imprisonment is an offence against a law of the Commonwealth, a State or a Territory.

## 59A Subsection 105A.4(1) of the *Criminal Code*

After "detained in", insert "custody in".

## 60 Subdivision C of Division 105A of the *Criminal Code* (heading)

Repeal the heading, substitute:

## Subdivision C—Making post-sentence orders

## 61 Section 105A.5 of the *Criminal Code* (heading)

Repeal the heading, substitute:



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### 105A.5 Applying for a post-sentence order

## 62 Subsection 105A.5(1) of the *Criminal Code*

Repeal the subsection, substitute:

(1) The AFP Minister, or a legal representative of the AFP Minister, (the ***applicant***) may apply to a Supreme Court of a State or Territory for either of the following:

(a) a continuing detention order in relation to a terrorist offender;

(b) an extended supervision order in relation to a terrorist offender.

Note: The court may make an extended supervision order under section 105A.7A even if a continuing detention order is applied for.

## 63 Paragraph 105A.5(2)(a) of the *Criminal Code*

Repeal the paragraph, substitute:

(a) a sentence of imprisonment referred to in subsection 105A.3A(1) or paragraph 105A.3A(3)(a), (4)(a), (5)(d) or (7)(a); or

## 64 Paragraph 105A.5(2)(b) of the *Criminal Code*

Omit "continuing detention order", substitute "post-sentence order".

## 65 At the end of subsection 105A.5(2) of the *Criminal Code*

Add:

; or (c) if subsection 105A.3A(8) applies in relation to the offender—the period the interim control order referred to in subparagraph 105A.3A(8)(c)(i) or confirmed control order referred to in subparagraph 105A.3A(8)(c)(ii) is in force.

## 66 After subsection 105A.5(2) of the *Criminal Code*

Insert:

(2AA) To avoid doubt, if both paragraphs (2)(a) and (b) apply in relation to a terrorist offender, the application may be made in accordance with either paragraph (even though the other paragraph may prevent an application from being made in relation to the offender).



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## 67 Subsection 105A.5(2A) of the *Criminal Code*

Repeal the subsection, substitute:

(2A) The AFP Minister must ensure that reasonable inquiries are made to ascertain any facts known to any Commonwealth law enforcement officer or intelligence or security officer that would reasonably be regarded as supporting a finding that:

(a) if the application is for a continuing detention order—neither a continuing detention order nor an extended supervision order should be made in relation to the offender; or

(b) if the application is for an extended supervision order—the extended supervision order should not be made in relation to the offender.

## 68 Paragraph 105A.5(3)(aa) of the *Criminal Code*

Omit "the order", substitute "the order or orders mentioned in paragraph (2A)(a) or (b) (as the case requires)".

## 69 After paragraph 105A.5(3)(c) of the *Criminal Code*

Insert:

; and (d) if the application is for an extended supervision order—include the following material:

(i) a copy of the proposed conditions;

(ii) an explanation as to why each of the proposed conditions should be imposed on the offender;

(iii) if the AFP Minister is aware of any facts relating to why any of those conditions should not be imposed on the offender—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the AFP Minister or any other person);

(iv) if the offender is subject to an order under a law of a State or Territory that is equivalent to a post-sentence order—a copy of that order; and

(e) if a report was obtained under section 105A.18D in relation to the offender—include a copy of the report.



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## 70 Subsection 105A.5(3) of the *Criminal Code* (note 1)

Repeal the note, substitute:

Note 1: For paragraph (3)(c), the period must not be more than 3 years (see subsection 105A.7(5) and paragraph 105A.7A(4)(d)).

## 71 Subsection 105A.5(3) of the *Criminal Code* (note 3)

Repeal the note, substitute:

Note 3: A copy of the application must be given to the terrorist offender under section 105A.14A.

## 72 Subsections 105A.5(4) to (10) of the *Criminal Code*

Repeal the subsections (including the note at the end of subsection 105A.5(10)).

## 73 Subsection 105A.6(1) of the *Criminal Code*

Omit "continuing detention order is made", substitute "post-sentence order is made under section 105A.5".

## 74 Subsection 105A.6(2) of the *Criminal Code*

Omit "105A.5(4)", substitute "105A.14A(2)".

## 75 Subsection 105A.6(3) of the *Criminal Code*

Omit "continuing detention order", substitute "post-sentence order".

## 76 Paragraph 105A.6(4)(a) of the *Criminal Code*

Omit "if the offender is released into the community".

## 77 Subsection 105A.6(4) of the *Criminal Code* (note)

Repeal the note, substitute:

Note: For giving documents to a terrorist offender who is in custody, see section 105A.15.

## 78 Subsection 105A.6(5A) of the *Criminal Code*

Repeal the subsection, substitute:

(5A) The answer to a question or information given at the assessment, and answering a question or giving information at the assessment, are not admissible in evidence against the offender in:



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(a) any criminal proceedings, except any proceedings relating to sentencing for an offence against Division 104 or this Division (including any appeal in relation to those proceedings); or

(b) any civil proceedings against the offender, except proceedings under Division 104 or this Division (including any appeal in relation to those proceedings).

## 79 Subsection 105A.6(6) of the *Criminal Code*

Repeal the subsection, substitute:

(6) The Court must ensure that the effect of subsections (5), (5A) and (9) is explained to the offender.

## 80 Paragraphs 105A.6(7)(a) and (g) of the *Criminal Code*

Omit "if the offender is released into the community".

## 81 At the end of section 105A.6 of the *Criminal Code*

Insert:

*Assessments conducted for certain purposes*

(9) Without limiting subsection (5A), an assessment of an offender conducted under paragraph (4)(a), and the report of the assessment, may be taken into account in proceedings to make or vary any post-sentence order or interim post-sentence order, or to review any post-sentence order, in relation to the offender.

## 82 After section 105A.6 of the *Criminal Code*

Insert:

### 105A.6A Determining an application for a post-sentence order

*Determining applications for continuing detention orders*

(1) If an application is made under section 105A.5 to the Supreme Court of a State or Territory for a continuing detention order in relation to a terrorist offender, the Court may determine the application by:

(a) making a continuing detention order under section 105A.7; or



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(b) making an extended supervision order under section 105A.7A; or

(c) dismissing the application.

*Determining applications for extended supervision orders*

(2) If an application is made under section 105A.5 to the Supreme Court of a State or Territory for an extended supervision order in relation to a terrorist offender, the Court may determine the application by:

(a) making an extended supervision order under section 105A.7A; or

(b) dismissing the application.

### 105A.6B Matters a Court must have regard to in making a post-sentence order

(1) In deciding whether the Court is satisfied as referred to in paragraph 105A.7(1)(b) or 105A.7A(1)(b) in relation to a terrorist offender, a Supreme Court of a State or Territory must have regard to the following matters:

(a) the object of this Division;

(b) any report of an assessment received from a relevant expert, and the level of the offender's participation in the assessment, under:

(i) section 105A.6; or

(ii) section 105A.18D;

(c) the results of any other assessment conducted by a relevant expert of the risk of the offender committing a serious Part 5.3 offence, and the level of the offender's participation in any such assessment;

(d) any report, relating to the extent to which the offender can reasonably and practicably be managed in the community, that has been prepared by:

(i) the relevant State or Territory corrective services; or

(ii) any other person or body who is competent to assess that extent;



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(e) any treatment or rehabilitation programs in which the offender has had an opportunity to participate, and the level of the offender's participation in any such programs;

(f) the level of the offender's compliance with any obligations to which the offender is or has been subject while:

(i) on release on parole for any offence referred to in paragraph 105A.3(1)(a); or

(ii) subject to a post-sentence order, interim post-sentence order or control order;

(g) the offender's history of any prior convictions for, and findings of guilt made in relation to, any offence referred to in paragraph 105A.3(1)(a);

(h) the views of the sentencing court at the time any sentence for any offence referred to in paragraph 105A.3(1)(a) was imposed on the offender;

(ha) whether the offender is subject to any order under a law of a State or Territory that is equivalent to a post-sentence order, and if so, the conditions of the order;

(i) any other information as to the risk of the offender committing a serious Part 5.3 offence.

(2) Subsection (1) does not prevent the Court from having regard to any other matter the Court considers relevant.

(3) To avoid doubt, section 105A.13 (civil evidence and procedure rules in relation to post-sentence order proceedings) applies to the Court's consideration of the matters referred to in subsections (1) and (2) of this section.

## 83 Paragraph 105A.7(1)(b) of the *Criminal Code*

Repeal the paragraph, substitute:

(b) after having regard to matters in accordance with section 105A.6B, the Court is satisfied to a high degree of probability, on the basis of admissible evidence, that the offender poses an unacceptable risk of committing a serious Part 5.3 offence; and

## 83A Paragraph 105A.7(1)(c) of the *Criminal Code*

Repeal the paragraph, substitute:



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(c) the Court is satisfied that there is no less restrictive measure available under this Part that would be effective in preventing the unacceptable risk.

## 84 Subsection 105A.7(1) of the *Criminal Code* (notes 1 and 2)

Repeal the notes, substitute:

Note 1: The rules of evidence and procedure for civil matters apply when the Court has regard to matters in accordance with section 105A.6B, as referred to in paragraph (1)(b) of this section (see subsection 105A.6B(3) and section 105A.13).

Note 2: For paragraph (1)(c), an example of a less restrictive measure that is available under this Part is an extended supervision order. A court can make an extended supervision order under section 105A.7A even if a continuing detention order was applied for (see subsection 105A.6A(1)).

## 85 Subsection 105A.7(2) of the *Criminal Code*

Repeal the subsection, substitute:

(2) If the Court is not satisfied as mentioned in paragraph (1)(b) or (c) (or both), then the Court must:

(a) seek the following material from the AFP Minister:

(i) a copy of the proposed conditions that would be sought for an extended supervision order in relation to the offender;

(ii) an explanation as to why each of the proposed conditions should be imposed on the offender;

(iii) if the AFP Minister is aware of any facts relating to why any of those conditions should not be imposed on the offender—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the AFP Minister or any other person); and

(b) consider whether to make an extended supervision order under section 105A.7A in relation to the offender.

Note: A copy of the material must be given to the terrorist offender under section 105A.14A.



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## 86 At the end of subsection 105A.7(4) of the *Criminal Code*

Add:

Note: The order may be suspended during the period that it is in force if the offender is detained in custody in a prison other than as a result of the order (see section 105A.18C).

## 87 Section 105A.8 of the *Criminal Code*

Repeal the section, substitute:

### 105A.7A Making an extended supervision order

(1) A Supreme Court of a State or Territory may make a written order under this subsection, in accordance with sections 105A.7B and 105A.7C, if:

(a) any of the following applies:

(i) an application is made in accordance with section 105A.5 for an extended supervision order in relation to a terrorist offender;

(ii) an application is made in accordance with section 105A.5 for a continuing detention order in relation to a terrorist offender, and the Court is not satisfied as mentioned in paragraph 105A.7(1)(b) or (c) (or both);

(iii) the Court has reviewed under section 105A.12 a continuing detention order in relation to a terrorist offender and the Court is not satisfied as mentioned in paragraph 105A.12(4)(a); and

(b) after having regard to matters in accordance with section 105A.6B, the Court is satisfied on the balance of probabilities, on the basis of admissible evidence, that the offender poses an unacceptable risk of committing a serious Part 5.3 offence; and

(c) the Court is satisfied on the balance of probabilities that:

(i) each of the conditions; and

(ii) the combined effect of all of the conditions;

to be imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from that unacceptable risk.



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*Determining whether conditions are reasonably necessary, appropriate and adapted*

(2) For the purposes of paragraph (1)(c), in determining whether each of the conditions to be imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, the Court must take into account, as a paramount consideration in all cases, the object of this Division (see section 105A.1).

*Onus of satisfying Court*

(3) The AFP Minister bears the onus of satisfying the Court of the matters referred to in paragraphs (1)(b) and (c).

*Content of order*

(4) The order must:
  (a) state that the Court is satisfied of the matters mentioned in paragraphs (1)(b) and (c); and
  (b) specify the name of the offender to whom the order relates; and
  (c) specify all of the conditions, and any exemption conditions, that are to be imposed in accordance with section 105A.7B or 105A.7C on the offender by the order; and
  (d) specify the period during which the order is to be in force, which must be a period of no more than 3 years that the Court is satisfied is reasonably necessary to prevent the unacceptable risk; and
  (e) state that the offender's lawyer may request a copy of the order.

Note: The order may be suspended during the period that it is in force if the offender is detained in custody in a prison (see section 105A.18C).

*Court may make successive extended supervision orders*

(5) To avoid doubt, paragraph (4)(d) does not prevent a Supreme Court of a State or Territory making an extended supervision order in relation to a terrorist offender that begins to be in force immediately after a previous extended supervision order, or continuing detention order, in relation to the offender ceases to be in force.



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*Automatic revocation of continuing detention orders etc.*

(6) A continuing detention order or interim detention order that is in force in relation to a terrorist offender is revoked by force of this subsection if:

(a) a Court makes an extended supervision order in relation to the offender; and

(b) the continuing detention order or interim detention order is in force immediately before the extended supervision order begins to be in force.

### 105A.7B Conditions of extended supervision orders and interim supervision orders

(1) The conditions that a Court may impose on a terrorist offender by an extended supervision order or interim supervision order are:

(a) any conditions that the Court is satisfied; and

(b) those conditions whose combined effect the Court is satisfied;

on the balance of probabilities, are reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from the unacceptable risk of the offender committing a serious Part 5.3 offence.

Note: The Court may, under section 105A.7C, specify conditions from which exemptions may be granted.

(1A) If the terrorist offender is subject to an order under a law of a State or Territory that is equivalent to a post-sentence order, the Court must consider the conditions under that State or Territory order in imposing conditions in accordance with subsection (1).

*General rules about conditions*

(2) To avoid doubt, without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, a condition imposed under this section may:

(a) prohibit or restrict specified conduct of the offender, or impose obligations on the offender; or



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(b) impose restrictions and obligations on the offender in relation to classes of conduct, and prohibit other classes of that conduct; or

(c) impose different restrictions, obligations and prohibitions in relation to different classes of conduct; or

(d) for conduct that is prohibited by a condition described in a paragraph of subsection (3)—impose restrictions and obligations on the offender in relation to that conduct instead of prohibiting that conduct; or

(e) for conduct described in a paragraph of subsection (3) or (5)—impose different restrictions, obligations and prohibitions in relation to that conduct.

(2A) A condition imposed under this section must not require the offender to remain at specified premises for more than 12 hours within any 24 hours.

*General conditions*

(3) Without limiting this section, the conditions that the Court may impose in accordance with subsection (1) include conditions relating to the following:

(a) that the offender not be present at one or more of the following:

(i) specified areas or places;

(ii) specified classes of areas or places;

(iii) any area or place determined by a specified authority;

(b) that the offender reside at specified premises, and not begin to reside at any other premises without the prior permission of a specified authority;

(c) that the offender remain at specified premises between specified times each day, or on specified days, subject to subsection (2A);

(d) that the offender not leave Australia, or the State or Territory in which the offender's residence is located;

(e) that the offender provide a specified authority with the offender's passport (or passports) while the order is in force;

(f) that the offender not change the offender's name, or use any name that is not specified in the order;



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(g) that the offender not apply for one or more of the following:
  (i) any Australian travel document;
  (ii) any travel document of a foreign country;
  (iii) any licence to operate equipment, machinery, a heavy vehicle or a weapon, or any licence to possess a weapon;
(h) that the offender not communicate or associate by any means (including through third parties) with one or more of the following:
  (i) specified individuals;
  (ii) specified classes of individuals;
  (iii) any individuals determined by a specified authority;
(i) that the offender not access or use specified forms of telecommunication or other technology (including the internet);
(j) that the offender not possess or use specified articles or substances;
(k) that the offender not carry out specified activities;
(l) that the offender not engage in one or more of the following:
  (i) specified work;
  (ii) specified classes of work;
  (iii) specified activities relating to specified work or classes of work;
(m) that the offender not in engage in any training or education without the prior permission of a specified authority;
(n) that the offender do any or all of the following:
  (i) attend and participate in treatment, rehabilitation or intervention programs or activities;
  (ii) undertake psychological or psychiatric assessment or counselling;

  as specified in the order or as directed by a specified authority;
(o) that the offender attend and participate in interviews and assessments (including for the purposes of paragraph (n)) as specified in the order or as directed by a specified authority;



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(p) that the offender allow the results of the interviews and assessments referred to in paragraph (o), and any other specified information, to be disclosed to a specified authority;

(q) that the offender provide specified information to a specified authority within a specified period or before a specified event;

(r) that the offender comply with any reasonable direction given to the offender by a specified authority in relation to any specified condition (whether or not the condition is imposed in accordance with this subsection).

Note: See also subsection (8) and sections 100.1 and 105A.2 in relation to references to premises, reside or residence, and work.

(4) If a condition of the order authorises a specified authority to give a direction, the specified authority may give a direction only if the specified authority is satisfied that the direction is reasonable in all the circumstances to give effect to:

(a) the condition; or

(b) the object of this Division (see section 105A.1).

*Conditions relating to monitoring and enforcement*

(5) Without limiting this section, the conditions that the Court may impose in accordance with subsection (1) include conditions relating to the following:

(a) that the offender submit to testing by a specified authority in relation to the possession or use of specified articles or substances;

(b) that the offender allow himself or herself to be photographed by a specified authority;

(c) that the offender allow impressions of the offender's fingerprints to be taken by a specified authority;

(d) that the offender be subject to electronic monitoring (for example, by wearing a monitoring device at all times), and comply with directions given by a specified authority in relation to electronic monitoring;

(e) a condition that:

(i) the person carry at all times a specified mobile phone; and



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(ii) the person be available to answer any call from a specified authority or, as soon as reasonably practicable, return a call that the person was unable to answer; and

(iii) the person comply with specified directions, or any directions given by a specified authority, in relation to the condition in subparagraph (i) or (ii);

(f) that the offender attend at places, and report to persons, at times, specified:

(i) in the order; or

(ii) by a specified authority;

(g) that the offender allow visits at specified premises from, and entry to specified premises by, a specified authority at any time for the purpose of ensuring the offender's compliance with a condition imposed in accordance with paragraph (3)(c);

(h) that the offender provide a specified authority with a schedule setting out the offender's proposed movements for a specified period and comply with that schedule during the period;

(i) that the offender allow any police officer to enter specified premises and:

(i) search the offender; and

(ii) search the offender's residence or any premises which the offender intends to be the offender's residence; and

(iii) search any other premises under the offender's control; and

(iv) seize any item found during those searches, including to allow the item to be examined forensically;

(j) that the offender facilitate access (including by providing passwords or in any other way) to one or more of the following:

(i) electronic equipment or technology;

(ii) any data held within, or accessible from, any electronic equipment or technology;

owned or controlled by the offender, for the purposes of a police officer searching and seizing any such equipment or accessing such data (or both).



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Note 1: For paragraphs (5)(b) and (c), restrictions apply to the use of photographs or impressions of fingerprints (see section 105A.7D).

Note 2: For paragraph (5)(d), see also section 105A.7E (obligations relating to monitoring devices).

(6) A power exercised under a condition imposed in accordance with subsection (5) (other than a power to give a direction) may be exercised only if the person exercising the power is satisfied that it is reasonably necessary to do so in order to:

(a) give effect to the order; or

(b) facilitate or monitor compliance with the order.

*Access to lawyers*

(7) This section does not affect the offender's right to contact, communicate or associate with the offender's lawyer unless the offender's lawyer is a specified individual, or an individual in a specified class of individuals, as mentioned in paragraph (3)(h). If the offender's lawyer is so specified, the offender may contact, communicate or associate with any other lawyer who is not so specified.

*References to work*

(8) In subsection (3), a reference to work includes a reference to voluntary work.

### 105A.7C Conditions where exemptions may be granted

(1) A Supreme Court of a State or Territory that makes an extended supervision order or interim supervision order in relation to a terrorist offender may specify conditions included in the order that are to be exemption conditions.

(2) An ***exemption condition*** is a condition specified in the order from which the offender may apply for a temporary exemption.

(3) The Court may make provision in relation to applications for temporary exemptions.

(4) The offender may apply, in writing, to a specified authority for an exemption from an exemption condition. The application must:



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(a) include a reason for the exemption; and
(b) comply with any other requirements provided for under subsection (3).

(5) If the offender so applies, the specified authority may:
(a) require further information to be provided by the offender before making a decision in relation to the application; and
(b) either:
(i) grant or refuse the exemption; or
(ii) grant the exemption subject to any reasonable directions specified in writing by the specified authority.

### 105A.7D Treatment of photographs and impressions of fingerprints

(1) A photograph, or an impression of fingerprints, taken of or from a terrorist offender as mentioned in paragraph 105A.7B(5)(b) or (c) must be used only for the purpose of ensuring compliance with an extended supervision order or interim supervision order relating to the offender.

(2) The photograph or the impression must be destroyed if:
(a) no extended supervision order or interim supervision order has been in force in relation to the offender for 12 months; and
(b) either:
(i) no proceedings relating to an extended supervision order or interim supervision order relating to the offender were on foot in that 12-month period; or
(ii) proceedings relating to an extended supervision order or interim supervision order relating to the offender were discontinued or completed within that 12-month period.

(3) A person commits an offence if:
(a) the person engages in conduct; and
(b) the conduct contravenes subsection (1).

Penalty: Imprisonment for 2 years.



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## 105A.7E Obligations relating to monitoring devices

*Additional obligations on terrorist offender*

(1) If the Court imposes a condition under paragraph 105A.7B(5)(d) in an extended supervision order or interim supervision order that a terrorist offender wear a monitoring device, then:

(a) the condition must require the offender to wear the monitoring device at all times; and

(b) the order must include the condition referred to in paragraph 105A.7B(5)(e); and

(c) the order must include a condition that the offender do all of the following:

(i) allow a specified authority to enter the offender's residence at any reasonable time for any purpose relating to the electronic monitoring of the offender;

(ii) allow a specified authority to install, repair or fit the monitoring device or any related monitoring equipment;

(iii) take the steps specified in the order (if any) and any other reasonable steps to ensure that the monitoring device and any related monitoring equipment are or remain in good working order;

(iv) if the offender becomes aware that the monitoring device and any related monitoring equipment are not in good working order—notify a specified authority as soon as reasonably practicable;

(v) allow a specified authority, police officer or corrective services officer to remove the monitoring device;

(vi) allow a police officer to remove any related monitoring equipment.

*Powers of specified authorities and others*

(2) After including the condition under paragraph 105A.7B(5)(d) in the order, the Court must also include in the order an authorisation for:

(a) one or more specified authorities to enter the offender's residence as specified in the order at any reasonable time for any purpose relating to the electronic monitoring of the offender; and



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(b) one or more specified authorities to install, repair or fit the monitoring device and any related monitoring equipment; and

(c) one or more specified authorities or police officers to take the steps specified in the order to ensure that the device and any related monitoring equipment are or remain in good working order; and

(d) one or more specified authorities, police officers or corrective services officers to remove the monitoring device; and

(e) one or more police officers to remove any related monitoring equipment.

(3) If:

(a) a monitoring device is installed on the terrorist offender; and

(b) any of the following events occurs:

(i) the condition under paragraph 105A.7B(5)(d) is removed from the order;

(ii) the order ceases to be in force;

(iii) the offender is detained in custody;

the device and any related monitoring equipment may be removed in accordance with paragraph (2)(d) or (e) even though:

(c) for subparagraph (b)(i) or (ii)—no authorisation under subsection (2) is in force; or

(d) for subparagraph (b)(iii)—the offender is not required to comply with a condition of the order because of section 105A.18C.

Note: For the definition of ***detained in custody***, see subsection 100.1(1).

*Powers relating to monitoring devices and related electronic equipment*

(4) Before exercising a power referred to in paragraph (2)(a), (b), (d) or (e), or subsection (3), a specified authority, police officer or corrective services officer must inform the offender:

(a) that the device and equipment are to be installed, repaired, fitted or removed (as the case requires); and

(b) of the proposed timing of the taking of the action; and

(c) that the offender may consent to the taking of the action; and



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(d) that if consent is not given, reasonable force may be used to take the action, or to enter the offender's residence in order to take the action.

(5) If the offender does not give consent, reasonable force may be used by a police officer to take the action, or to enter the offender's residence in order to take the action.

### 105A.7F Copy of an extended supervision order etc. must be given to terrorist offender's lawyer

(1) A copy of an extended supervision order or interim supervision order that is made under section 105.7A in relation to a terrorist offender must be given to the offender's lawyer as soon as practicable after being requested by the lawyer.

(2) This section does not entitle the lawyer to request, or be given a copy of, a document other than the order.

## 88 Before section 105A.9 of the *Criminal Code*

Insert:

## Subdivision CA—Making interim post-sentence orders

## 89 Before subsection 105A.9(1A) of the *Criminal Code*

Insert:

*Determining the application*

## 90 After subsection 105A.9(1A) of the *Criminal Code*

Insert:

(1B) The Court may determine the application by:
(a) making an interim detention order under subsection (2); or
(b) making an interim supervision order under section 105A.9A; or
(c) dismissing the application.



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*Making an interim detention order*

## 91 Subparagraphs 105A.9(2)(a)(i) and (ia) of the *Criminal Code*

Repeal the subparagraphs, substitute:

(i) if subsection 105A.3A(1), (3), (4) or (5) applies—the sentence of imprisonment referred to in subsection 105A.3A(1) or paragraph 105A.3A(3)(a), (4)(a) or (5)(d);

## 92 At the end of subsection 105A.9(4) of the *Criminal Code*

Add:

Note: The order may be suspended during the period that it is in force if the offender is detained in custody in a prison other than as a result of the order (see section 105A.18C).

## 93 At the end of subsection 105A.9(6) of the *Criminal Code*

Add ", unless the Court is satisfied that there are exceptional circumstances".

## 94 At the end of section 105A.9 of the *Criminal Code*

Add:

*When Court does not make interim detention order*

(8) If the Court is not satisfied as mentioned in paragraph (2)(b), then the Court must:

(a) seek the following material from the AFP Minister:

(i) a copy of the proposed conditions that would be sought for an interim supervision order;

(ii) an explanation as to why each of the proposed conditions should be imposed on the offender;

(iii) if the AFP Minister is aware of any facts relating to why any of those conditions should not be imposed on the offender—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the AFP Minister or any other person); and



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(b) consider whether to make an interim supervision order under section 105A.9A.

Note: A copy of the material must be given to the terrorist offender under section 105A.14A.

## 95 After section 105A.9 of the *Criminal Code*

Insert:

### 105A.9A Interim supervision orders

(1) The AFP Minister, or a legal representative of the AFP Minister, may apply to a Supreme Court of a State or Territory for an interim supervision order in relation to a terrorist offender if an application has been made to the Court for an extended supervision order in relation to the offender.

(2) On receiving the application for the interim supervision order, the Court must hold a hearing to determine whether to make the order.

*Determining the application*

(3) The Court may determine the application by:
(a) making an interim supervision order under subsection (4); or
(b) dismissing the application.

*Making an interim supervision order*

(4) The Court may make a written order under this subsection, in accordance with sections 105A.7B and 105A.7C, if:
(a) either:
(i) an application is made in accordance with subsection (1) for an interim supervision order in relation to a terrorist offender; or
(ii) an application is made in accordance with section 105A.9 for an interim detention order in relation to a terrorist offender and the Court is not satisfied as mentioned in paragraph 105A.9(2)(b); and
(b) the Court is satisfied that any of the following relating to the offender will end before the application for the continuing



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detention order or extended supervision order has been determined:

(i) a sentence of imprisonment referred to in subsection 105A.3A(1) or paragraph 105A.3A(3)(a), (4)(a), (5)(d) or (7)(a);

(ii) the period for which a post-sentence order or interim post-sentence order is in force;

(iii) the period for which the interim control order referred to in subparagraph 105A.3A(8)(c)(i) or confirmed control order referred to in subparagraph 105A.3A(8)(c)(ii) is in force; and

(c) the Court is satisfied that there are reasonable grounds for considering that an extended supervision order will be made in relation to the offender; and

(d) the Court is satisfied that there are reasonable grounds for considering that each of the conditions to be imposed on the offender by the order under this subsection is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from the unacceptable risk of the terrorist offender committing a serious Part 5.3 offence.

Note: A series of interim supervision orders can be made in relation to a person (see subsection (8)).

(5) For the purposes of paragraph (4)(d), in determining whether each of the conditions to be imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, the Court must take into account, as a paramount consideration in all cases, the object of this Division (see section 105A.1).

*Effect of an interim supervision order*

(6) The effect of an interim supervision order is to impose on the offender, for the period the order is in force, conditions contravention of which may be an offence.

*Content of order*

(7) The order must specify:



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(a) that the Court is satisfied of the matters mentioned in paragraphs (4)(b) to (d); and
(b) the matters mentioned in paragraphs 105A.7A(4)(b), (c) and (e); and
(c) the period during which the order is in force, which must be a period of no more than 28 days that the Court is satisfied is reasonably necessary to determine the application for the continuing detention order or extended supervision order.

Note: The order may be suspended during the period that it is in force if the offender is detained in custody in a prison (see section 105A.18C).

(8) The total period of all interim supervision orders made in relation to the offender before the Court makes a decision on the application for the continuing detention order or extended supervision order must not be more than 3 months, unless the Court is satisfied that there are exceptional circumstances.

## Subdivision CB—Varying an extended supervision order or interim supervision order

### 105A.9B Application for variations of extended supervision orders and interim supervision orders

*Requirement to apply for variation*

(1A) If the AFP Minister is satisfied that a condition in an extended supervision order or interim supervision order in relation to a terrorist offender is no longer reasonably necessary, or reasonably appropriate and adapted, for the purpose of protecting the community from the unacceptable risk of the offender committing a serious Part 5.3 offence, the Minister or a legal representative of the Minister must apply to a Supreme Court of a State or Territory to vary, under section 105A.9C, the order by:
(a) removing the condition; or
(b) varying the condition.

Note 1: The AFP Minister or legal representative may also apply under subsection (1) for other variations of the order, including adding conditions.

Note 2: A copy of the application must be given to the offender under section 105A.14A.



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*Who may otherwise apply*

(1) Any of the following persons (the ***applicant***) may (subject to subsection (1A)) apply to a Supreme Court of a State or Territory to vary, under section 105A.9C, an extended supervision order or interim supervision order in relation to a terrorist offender, by adding, varying or removing one or more conditions mentioned in section 105A.7B:

(a) the AFP Minister or a legal representative of the AFP Minister;

(b) the terrorist offender or a legal representative of the terrorist offender.

Note: If the application is made by or on behalf of the AFP Minister, a copy of the application must be given to the offender under section 105A.14A.

(2) An application under subsection (1A) or (1) must be made to the Supreme Court of the State or Territory where the offender resides.

Note: See section 100.1 for the definition of ***reside***.

*Contents of application*

(3) An application under subsection (1A) or (1) must include:

(a) a copy of the conditions as sought to be varied; and

(b) if the applicant is the AFP Minister or a legal representative or the AFP Minister—the following material:

(i) an explanation as to why each condition that is sought to be added or varied should be added or varied;

(ii) if the AFP Minister is aware of any facts relating to why any of those conditions should not be added or varied—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the AFP Minister or any other person);

(iii) the outcomes and particulars of all previous applications made under this section (whether by or on behalf of the AFP Minister or the terrorist offender) for variations of the order; and

(c) if the applicant is the terrorist offender or a legal representative of the terrorist offender—the outcomes and



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particulars of all previous applications made under this section by or on behalf of the terrorist offender for variations of the order; and

(d) if a report was obtained under section 105A.18D in relation to the terrorist offender for the purposes of determining whether to apply for the variation—a copy of the report.

(4) If the applicant is the terrorist offender or a legal representative of the terrorist offender, the applicant:

(a) may also include in the application an explanation as to why each condition that is sought to be varied or removed should be varied or removed; and

(b) must cause a copy of the application to be served on the AFP Minister within 2 business days after the application is made.

*Adducing additional evidence*

(5) The following persons may adduce additional evidence (including by calling witnesses or producing material), or make additional submissions, to the Court in relation to the application to vary the order:

(a) the AFP Minister;

(b) one or more AFP members;

(c) the terrorist offender;

(d) one or more representatives of the offender.

(6) Subsection (5) does not otherwise limit the power of the Court to control proceedings in relation to an application to vary an extended supervision order.

### 105A.9C Varying an extended supervision order or interim supervision order (other than by consent)

(1) If an application is made in accordance with subsection 105A.9B(1A) or (1), and subsection (2), to a Supreme Court of a State or Territory to vary an extended supervision order or interim supervision order in relation to a terrorist offender, the Court may vary the order, but only if:

(a) for an application for the order to be varied by adding or varying conditions—the Court is satisfied on the balance of



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probabilities that each of the conditions being added or varied is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from the unacceptable risk of the offender committing a serious Part 5.3 offence; and

(b) for an application for the order to be varied by removing conditions—the Court is not satisfied on the balance of probabilities that each of the conditions being removed is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from the unacceptable risk of the offender committing a serious Part 5.3 offence.

Note: See section 105A.9E for the terms of a varied extended supervision order or interim supervision order.

(2) For the purposes of subsection (1), in determining whether each of the conditions to be added, varied or removed by the order is reasonably necessary, and reasonably appropriate and adapted, the Court must take into account, as a paramount consideration in all cases, the object of this Division (see section 105A.1).

(3) The AFP Minister bears the onus of satisfying the Court of the matters referred to in subsection (1).

*Relevant experts*

(4) The Court may appoint one or more relevant experts for the purposes of the proceedings relating to the application. If the Court does so, subsections 105A.6(4) to (7) apply in relation to the proceedings.

(5) The AFP Minister, the offender, or a legal representative of the AFP Minister or offender, may nominate one or more relevant experts for the purposes of subsection (4).

(6) Subsection (4) does not prevent the AFP Minister, the offender, or a legal representative of the AFP Minister or offender, from calling another relevant expert as a witness in the proceedings.



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### 105A.9D Varying extended supervision order or interim supervision order by consent

(1) Any of the following persons (the ***applicant***) may apply to a Supreme Court of a State or Territory to vary an extended supervision order or interim supervision order in relation to a terrorist offender by varying or removing one or more conditions mentioned in section 105A.7B:

(a) the AFP Minister or a legal representative of the AFP Minister;

(b) the terrorist offender or a legal representative of the terrorist offender.

(2) The application must be made to the Court of the State or Territory where the offender resides.

Note: See section 100.1 for the definition of ***reside***.

(3) The Court may vary the order if the Court is satisfied that:

(a) written consent to the variation has been given by:

(i) if the applicant is the AFP Minister or a legal representative of the AFP Minister—the offender; or

(ii) if the applicant is the terrorist offender or a legal representative of the terrorist offender—the AFP Minister; and

(b) the variation does not involve adding any conditions to the order; and

(c) the variation is appropriate in the circumstances.

### 105A.9E Terms of a varied extended supervision order or interim supervision order

An extended supervision order or interim supervision order in relation to a person that is varied under section 105A.9C, 105A.9D or 105A.12A must:

(a) state that the Court is satisfied:

(i) for a variation under subsection 105A.9C(1) or 105A.9D(3)—of the matters mentioned in that subsection; or



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(ii) for a variation under section 105A.12A—of the matters mentioned in subsection 105A.12A(1), (3) or (4) (as the case requires); and

(b) specify the variations to the conditions that are to be made; and

(c) state the period during which the order, as varied, is in force; and

(d) state that the offender's lawyer may request a copy of the order.

### 96 Subdivision D of Division 105A of the *Criminal Code* (heading)

Omit "**continuing detention order**", substitute "**post-sentence order**".

### 97 Section 105A.10 of the *Criminal Code* (heading)

Omit "**continuing detention order**", substitute "**post-sentence order**".

### 98 Before subsection 105A.10(1A) of the *Criminal Code*

Insert:

*When application for review must be made*

### 99 Subsection 105A.10(1A) of the *Criminal Code*

Omit "continuing detention order", substitute "post-sentence order".

### 100 Subsection 105A.10(1A) of the *Criminal Code* (note)

Omit "Note", substitute "Note 1".

### 101 At the end of subsection 105A.10(1A) of the *Criminal Code*

Add:

Note 2: A copy of the application must be given to the terrorist offender under section 105A.14A.

### 102 Subsection 105A.10(1B) of the *Criminal Code*

Repeal the subsection, substitute:

(1B) The application must be made:



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(a) before the end of 12 months after the order began to be in force (unless paragraph (b) or (c) applies); or

(b) if the order has been reviewed under this Subdivision by a Supreme Court of a State or Territory—before the end of 12 months after the most recent review ended (unless paragraph (c) applies); or

(c) if paragraph (a) or (b) would otherwise apply and, at the time described in that paragraph, the post-sentence order is suspended under section 105A.18C because the offender is detained in custody in a prison—on or before the day the offender's detention in a prison ends.

(1C) Despite subsection (1A), an application for a review is not required if an application for a new post-sentence order in relation to the offender has been made and not withdrawn.

*Review must be conducted before end of period*

## 103 Subsection 105A.10(1) of the *Criminal Code* (note)

Omit "continuing detention order", substitute "post-sentence order".

## 104 Subsections 105A.10(2) and (3) of the *Criminal Code*

Repeal the subsections, substitute:

*Where application must be made*

(3) The application must be made to the Court of the State or Territory where:

(a) for a continuing detention order—the prison in which the offender is detained is located; or

(b) for an extended supervision order—the offender resides.

Note: See section 100.1 for the definition of ***reside***.

*Order ceases to be in force if application not made*

## 105 Section 105A.11 of the *Criminal Code* (heading)

Omit "**continuing detention order**", substitute "**post-sentence order**".



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## 106 Subsection 105A.11(1) of the *Criminal Code*

Repeal the subsection, substitute:

(1) The following persons may apply to a Supreme Court of a State or Territory for review of a post-sentence order:

(a) the AFP Minister or a legal representative of the AFP Minister;

(b) a terrorist offender, or a legal representative of a terrorist offender, in relation to whom the post-sentence order is in force.

Note 1: For the process for reviewing a post-sentence order, see section 105A.12.

Note 2: A copy of the application must be given to the terrorist offender under section 105A.14A.

(1A) The application must include a copy of any report obtained under section 105A.18D for the purposes of determining whether an application for a review of the extended supervision order should be made.

## 107 Subsection 105A.11(4) of the *Criminal Code*

Repeal the subsection, substitute:

(4) The application must be made to the Court of the State or Territory where:

(a) for a continuing detention order—the prison in which the offender is detained is located; or

(b) for an extended supervision order—the offender resides.

Note: See section 100.1 for the definition of ***reside***.

## 108 Section 105A.12 of the *Criminal Code* (heading)

Omit "**continuing detention order**", substitute "**post-sentence order**".

## 109 Subsection 105A.12(1) of the *Criminal Code*

Omit "continuing detention order", substitute "post-sentence order".

## 110 Subsections 105A.12(4) and (5) of the *Criminal Code*

Repeal the subsections, substitute:



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*Affirming or revoking the order*

(4) The Court may affirm the order (including affirm the order with variations made under section 105A.12A) if, after having regard to the matters in section 105A.6B, the Court is satisfied that the Court:

(a) for a continuing detention order—could have made the order under section 105A.7; or

(b) for an extended supervision order—could have made the order under section 105A.7A, or could have made the order disregarding paragraph 105A.7A(1)(c).

Note: The rules of evidence and procedure for civil matters apply when the Court has regard to matters in accordance with section 105A.6B, as referred to in subsection (4) of this section (see subsection 105A.6B(3) and section 105A.13).

(5) If the review is of a continuing detention order, and the Court does not affirm the order under subsection (4), the Court must:

(a) consider making an extended supervision order in relation to the offender under section 105A.7A; and

(b) seek the following material from the AFP Minister:

(i) a copy of the proposed conditions that would be sought for an extended supervision order;

(ii) an explanation as to why each of the proposed conditions should be imposed on the offender;

(iii) if the AFP Minister is aware of any facts relating to why any of those conditions should not be imposed on the offender—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the AFP Minister or any other person); and

(c) if the court does not make an extended supervision order in relation to the offender—revoke the continuing detention order.

Note: If the Court makes an extended supervision order in relation to the offender, the continuing detention order is revoked under subsection 105A.7A(6).



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(5AA) If the Court does not affirm an extended supervision order under subsection (4), the Court must revoke the order.

## 111 Subsection 105A.12(6) of the *Criminal Code*

Omit "subsection (4)", substitute "section 105A.7 or 105A.7A".

## 112 Subsection 105A.12(6A) of the *Criminal Code*

Omit all the words from and including "a finding that" to the end of the subsection, substitute:

a finding that:

(c) the order should not be affirmed, or should not be affirmed in the terms in which the order is made; or

(d) if the court is considering making an extended supervision order under subsection (5)—an extended supervision order should not be made.

## 113 Subsection 105A.12(7) of the *Criminal Code*

Repeal the subsection.

## 114 At the end of Subdivision D of Division 105A of the *Criminal Code*

Add:

### 105A.12A Varying post-sentence orders after review

*Varying the period specified by a post-sentence order*

(1) A Supreme Court of a State or Territory must vary a post-sentence order in relation to a terrorist offender to specify a shorter period for which the order will be in force if:

(a) the Court affirms the order under subsection 105A.12(4); and

(b) the Court is not satisfied that the period currently specified is reasonably necessary to prevent the unacceptable risk of the offender committing a serious Part 5.3 offence.

The shorter period must be a period that the Court is satisfied is reasonably necessary to prevent the unacceptable risk.

Note: See section 105A.9E for the terms of a varied extended supervision order.



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*Varying or removing conditions*

(2) A Supreme Court of a State or Territory must vary, or remove, a condition imposed by an extended supervision order if:
  (a) the Court affirms the order under subsection 105A.12(4); and
  (b) the Court is not satisfied that the condition is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from the unacceptable risk of the offender committing a serious Part 5.3 offence.

(3) The Court must be satisfied that a condition that is varied under subsection (2) is (after the variation) reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from the unacceptable risk of the offender committing a serious Part 5.3 offence.

*Varying to add conditions*

(4) The Court may vary an extended supervision order to add one or more conditions if the Court is satisfied that the conditions are reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from the unacceptable risk of the offender committing a serious Part 5.3 offence.

*Object of this Division*

(5) For the purposes of subsections (3) and (4), in determining whether a condition to be varied or imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, the Court must take into account, as a paramount consideration in all cases, the object of this Division (see section 105A.1).

*Onus of satisfying court*

(6) The AFP Minister bears the onus of satisfying the Court of the matters referred to in subsection (1), (3) or (4).

## 115 Subdivision E of Division 105A of the *Criminal Code*

Omit "**continuing detention order**", substitute "**post-sentence order**".



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## 116 Section 105A.13 of the *Criminal Code* (heading)

Omit "**continuing detention order**", substitute "**post-sentence order**".

## 117 Subsection 105A.13(1) of the *Criminal Code*

Omit "continuing detention order", substitute "post-sentence order".

## 118 Paragraph 105A.13(2)(a) of the *Criminal Code*

Repeal the paragraph, substitute:

(a) the level of the offender's compliance with any conditions (however described) to which he or she is or has been subject while:

(i) on release on parole for any offence; or

(ii) subject to an extended supervision order, interim supervision order or control order; and

## 119 Section 105A.14 of the *Criminal Code*

Omit "continuing detention order", substitute "post-sentence order".

## 120 After section 105A.14 of the *Criminal Code*

Insert:

### 105A.14A Giving copies of applications etc. to terrorist offenders

(1) This section applies if the AFP Minister, or a legal representative of the AFP Minister, (the ***applicant***) applies to a Supreme Court of a State or Territory for:

(a) a post-sentence order or interim post-sentence order; or

(b) a variation of an extended supervision order or interim supervision order under section 105A.9B; or

(c) a review of a post-sentence order;

in relation to a terrorist offender.

(2) Within 2 business days after the application is made, the applicant must (subject to sections 105A.14B to 105A.14D) give a copy of the application to the offender personally, and to the offender's legal representative.

Note: For giving documents to a terrorist offender who is in prison, see section 105A.15.



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(3) If the Court seeks material from the AFP Minister under paragraph 105A.7(2)(a), 105A.9(8)(a) or 105A.12(5)(b), within 2 business days after the material is provided to the Court, the applicant must (subject to sections 105A.14B to 105A.14D) give a copy of the material to the offender personally, and to the offender's legal representative.

(4) If:

(a) the post-sentence order or interim post sentence order is made or varied; and

(b) neither the offender nor a legal representative of the offender is present during the proceedings in which the order is made or varied;

the applicant must (subject to sections 105A.14B to 105A.14D), within 2 business days after the order is made or varied, give to the offender personally, and the offender's legal representative, a copy of the order that is made, or of the order as varied.

### 105A.14B Information excluded from application or material—national security information

(1) This section applies if the AFP Minister, or a legal representative of the AFP Minister, (the ***applicant***) gives a copy of an application or material to a terrorist offender, or a terrorist offender's legal representative, (the ***recipient***) under subsection 105A.14A(2) or (3).

(2) The applicant is not required to include any information in the application or material if a Minister (the ***decision-maker***) is likely to take:

(a) any actions in relation to the information under the *National Security Information (Criminal and Civil Proceedings) Act 2004*; or

(b) seek an order of a court preventing or limiting disclosure of the information.

(3) However, the applicant must (subject to subsection (4)) give the recipient personally a complete copy of the application or material if any of the following events occurs:



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(a) the decision-maker decides not to take any of the actions referred to in paragraph (2)(a) or (b);
(b) a Minister gives a certificate under Subdivision C of Division 2 of Part 3A of the *National Security Information (Criminal and Civil Proceedings) Act 2004*;
(c) a court makes an order in relation to any action taken by the decision-maker under paragraph (2)(a) or (b).

(4) Subsection (3) is subject to:
(a) the certificate referred to in paragraph (3)(b); or
(b) any order made by a court.

(5) The copy of the application or material must be given under subsection (3):
(a) within 2 business days of the event referred to in subsection (3); and
(b) within a reasonable period before:
(i) if the application is for a post-sentence order—the preliminary hearing referred to in section 105A.6; or
(ii) if the application is for an interim detention order—the hearing referred to in subsection 105A.9(1A); or
(iii) if the application is for an interim supervision order—the hearing referred to in subsection 105A.9A(2); or
(iv) if the application is for a variation or review of a post-sentence order, or for a variation of an interim post-sentence order—the hearing on the application.

### 105A.14C Information excluded from application or material—public interest immunity

(1) This section applies if:
(a) the AFP Minister, or a legal representative of the AFP Minister, (the ***applicant***) gives a copy of an application or material to a terrorist offender, or a terrorist offender's legal representative, under subsection 105A.14A(2) or (3); and
(b) information (however described) is excluded from the application or material on the basis of public interest immunity.



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(2) The applicant must give written notice to the offender, and the offender's legal representative, personally stating that the information has been excluded on the basis of public interest immunity. The notice must be given at the time that a copy of the application or material is given to the offender or legal representative.

(3) To avoid doubt, nothing in this section imposes an obligation on the offender to satisfy the Court that a claim of public interest immunity should not be upheld.

Note: The offender may seek to access any information, material or facts that are likely to be protected by public interest immunity (for example, through a subpoena). Under the law of public interest immunity, the person claiming the immunity must make and substantiate the claim, and satisfy the Court that the claim should be upheld.

### 105A.14D Information excluded from application and material—terrorism material

(1) This section applies if:

(a) the AFP Minister, or a legal representative of the AFP Minister, (the ***applicant***) is required to give a copy of an application or material to a terrorist offender, or a terrorist offender's legal representative, under subsection 105A.14A(2) or (3); and

(b) the application or material contains other material (***terrorism material***) that:

(i) advocates support for engaging in any terrorist acts or violent extremism; or

(ii) relates to planning or preparing for, or engaging in, any terrorist acts or violent extremism; or

(iii) advocates joining or associating with a terrorist organisation.

(2) The applicant may apply to the Supreme Court of a State or Territory referred to in subsection 105A.14A(1) for an order in relation to the manner in which the terrorism material is to be dealt with.



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(3) The Court may make an order in relation to the manner in which the terrorism material is to be dealt with, including that the terrorism material:
  (a) be provided to the offender's legal representative; or
  (b) be available for inspection by the offender at specified premises.

### 121 Section 105A.15 of the *Criminal Code* (heading)

Repeal the heading, substitute:

**105A.15 Giving documents to terrorist offenders who are in custody**

### 121A Subsection 105A.15(1) of the *Criminal Code*

Omit "in a prison", substitute "in custody".

### 121B Paragraph 105A.15(1)(b) of the *Criminal Code*

After "prison", insert "or other facility in which the offender is detained".

### 122 Paragraph 105A.15A(1)(a) of the *Criminal Code*

Omit "continuing detention order", substitute "post-sentence order".

### 123 Section 105A.16 of the *Criminal Code*

Omit "continuing detention order" (wherever occurring), substitute "post-sentence order".

### 124 At the end of section 105A.16 of the *Criminal Code*

Add:

Note: See also subsection 105A.2(2) for when a Court makes a post-sentence order decision.

### 125 Paragraphs 105A.17(1)(a) and (2)(a) of the *Criminal Code*

Omit "continuing detention order", substitute "post-sentence order".

### 126 Paragraph 105A.17(2)(b) of the *Criminal Code*

Repeal the paragraph.



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### 126A Section 105A.18 of the *Criminal Code* (heading)

Omit "**release of terrorist offender**", substitute "**sentences ending or orders ceasing to be in force**".

### 127 Subsection 105A.18(1) of the *Criminal Code*

Omit "continuing detention order" (first occurring), substitute "post-sentence order".

### 128 Subparagraphs 105A.18(1)(a)(i), (iii) and (v) of the *Criminal Code*

Omit "continuing detention order", substitute "post-sentence order".

### 129 Paragraph 105A.18(1)(b) of the *Criminal Code*

Omit ", the offender is released from custody because", substitute "one of the following events occurs".

### 130 Subparagraphs 105A.18(1)(b)(i) to (ii) of the *Criminal Code*

Repeal the subparagraphs, substitute:

(i) a sentence of imprisonment referred to in subsection 105A.3A(1) or paragraph 105A.3A(3)(a), (4)(a), (5)(d) or (7)(a) ends;

(ii) a post-sentence order or interim post-sentence order in relation to the offender ceases to be in force;

(iia) the interim control order referred to in subparagraph 105A.3A(8)(c)(i) or confirmed control order referred to in subparagraph 105A.3A(8)(c)(ii) in relation to the offender ceases to be in force;

### 131 Subparagraph 105A.18(1)(b)(iii) of the *Criminal Code*

Omit "continuing detention order", substitute "post-sentence order".

### 132 Subsection 105A.18(2) of the *Criminal Code*

Repeal the subsection, substitute:

(2) For the purposes of the post-sentence order proceeding, the offender is taken to remain a terrorist offender:



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(a) who is detained in custody in a prison serving a sentence of imprisonment; or
(b) in relation to whom a post-sentence order, interim post-sentence order or control order is in force;

despite the event in subsection (1) occurring.

## 132A After section 105A.18 of the *Criminal Code*

Insert:

### 105A.18AA Persons in non-prison custody taken to be in the community

A person who is detained in non-prison custody is, for the purposes of this Part, taken to be in the community.

## 133 After Subdivision E of Division 105A of the *Criminal Code*

Insert:

## Subdivision EA—Offences relating to extended supervision orders and interim supervision orders

### 105A.18A Offence for contravening an extended supervision order or an interim supervision order

(1) A person commits an offence if:
(a) an extended supervision order or an interim supervision order is in force in relation to the person, and not suspended under section 105A.18C; and
(b) the person engages in conduct; and
(c) the conduct contravenes a condition the order imposes; and
(d) if the condition is an exemption condition—there is no exemption in force at the time the conduct is engaged in that exempts the offender from the application of the condition.

Note: A court that is sentencing a person who has been convicted of an offence against this section may be required to warn the person about continuing detention orders and extended supervision orders (see section 105A.23).



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Penalty: Imprisonment for 5 years.

(2) A person commits an offence if:

(a) an extended supervision order or an interim supervision order is in force in relation to the person, and not suspended under section 105A.18C; and

(b) the order includes an exemption condition; and

(c) an exemption is in force in relation to the condition; and

(d) a direction is specified in relation to the exemption condition under subparagraph 105A.7C(5)(b)(ii); and

(e) the person engages in conduct; and

(f) the conduct contravenes the direction.

Note: A court that is sentencing a person who has been convicted of an offence against this section may be required to warn the person about continuing detention orders and extended supervision orders (see section 105A.23).

Penalty: Imprisonment for 5 years.

(3) Subsection (1) or (2) does not apply if the contravention of the condition or direction occurs because the person is detained in non-prison custody.

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

### 105A.18B Offence relating to monitoring devices

(1) A person commits an offence if:

(a) an extended supervision order or interim supervision order is in force in relation to the person, and not suspended under section 105A.18C; and

(b) the order requires the person to wear a monitoring 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 monitoring device or any related monitoring equipment.

Note: A court that is sentencing a person who has been convicted of an offence against this subsection may be required to warn the person



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about continuing detention orders and extended supervision orders (see section 105A.23).

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, an extended supervision order or interim supervision order is in force in relation to another person; and

(b) the order is not suspended under section 105A.18C; and

(c) the perpetrator knows that, or is reckless as to whether, the order requires the other person to wear a monitoring device; and

(d) the perpetrator engages in conduct; and

(e) the conduct results in interference with, or disruption or loss of, a function of the monitoring device or any related monitoring equipment.

Penalty: Imprisonment for 5 years.

(3) Strict liability applies in relation to paragraph (2)(b).

## 134 Before section 105A.19 of the *Criminal Code*

Insert:

### 105A.18C Effect of prison detention on post-sentence order

*Effect of prison detention on post-sentence orders*

(1) A continuing detention order or interim detention order in relation to a terrorist offender is suspended during the period that the offender is detained in custody in a prison other than as a result of the order.

Note: For the definition of ***detained in custody in a prison***, see subsection 100.1(1).

(2) An extended supervision order or interim supervision order in relation to a terrorist offender is suspended during the period that the offender is detained in custody in a prison.



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*Effect of suspension*

(3) A post-sentence order or interim post-sentence order continues to be in force during the period in which the order is suspended.

(4) However, the offender is not required to comply with any condition in an extended supervision order or interim supervision order during the period that the order is suspended.

### 105A.18D AFP Minister may direct terrorist offenders to be assessed

(1) The AFP Minister may direct any of the following terrorist offenders to be subject to an assessment of the risk of the person committing a serious Part 5.3 offence:

(a) a terrorist offender in relation to whom an application for a post-sentence order could be made;

(b) a terrorist offender in relation to whom a post-sentence order is in force.

(2) The AFP Minister may appoint a relevant expert to conduct the assessment, and provide a report, for the purposes of determining whether:

(a) an application for a post-sentence order or interim post-sentence order in relation to the offender should be made; or

(b) an application for a variation or review of a post-sentence order or interim post-sentence order in relation to the offender should be made.

(3) The relevant expert who is appointed must:

(a) conduct an assessment of the risk of the offender committing a serious Part 5.3 offence; and

(b) provide a report of the expert's assessment to the AFP Minister.

Note: For giving documents to a terrorist offender who is in prison, see section 105A.15.

*Attendance and participation at assessment*

(4) The offender must attend the assessment.



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Note: The assessment may be conducted over a number of sessions.

(5) The answer to a question or information given at the assessment, and answering a question or giving information at the assessment, are not admissible in evidence against the offender in:

(a) any criminal proceedings, except any proceedings relating to sentencing for an offence against Division 104 or this Division (including any appeal in relation to those proceedings); or

(b) any civil proceedings against the offender, except proceedings under Division 104 or this Division (including any appeal in relation to those proceedings).

(6) The AFP Minister must ensure that the effect of subsections (4), (5) and (8) is explained to the offender.

*Contents of report*

(7) The expert's report may include any one or more of the following matters:

(a) the expert's assessment of the risk of the offender committing a serious Part 5.3 offence;

(b) reasons for that assessment;

(c) the pattern or progression to date of behaviour on the part of the offender in relation to serious Part 5.3 offences, and an indication of the nature of any likely future behaviour on the offender's part in relation to serious Part 5.3 offences;

(d) efforts made to date by the offender to address the causes of the offender's behaviour in relation to serious Part 5.3 offences, including whether the offender has actively participated in any rehabilitation or treatment programs;

(e) if the offender has participated in any rehabilitation or treatment programs—whether or not this participation has had a positive effect on the offender;

(f) any relevant background of the offender, including developmental and social factors;

(g) factors that might increase or decrease any risks that have been identified of the offender committing a serious Part 5.3 offence;

(h) any other matters the expert considers relevant.



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*Assessments conducted for certain purposes*

(8) Without limiting subsection (5), an assessment of an offender conducted under paragraph (3)(a), and the report of the assessment, may be taken into account:

(a) by the Minister in determining whether to make any application for a post-sentence order or interim post-sentence order, or any application for a variation or review of a post-sentence order or interim post-sentence order, in relation to the offender; and

(b) by the Court in proceedings to make or vary any post-sentence order or interim post-sentence order, or to review any post-sentence order, in relation to the offender.

## 135 Subsection 105A.19(1) of the *Criminal Code*

After "information", insert "(including personal information)".

## 136 After subsection 105A.19(2) of the *Criminal Code*

Insert:

(2A) Despite any law of the Commonwealth, a State or a Territory (whether written or unwritten), the person may provide the information to the AFP Minister.

## 137 After section 105A.19 of the *Criminal Code*

Insert:

### 105A.19A Sharing information relating to supervision orders

(1) An AFP member may disclose information (including personal information), to a person employed or engaged by a body covered by an arrangement under subsection 105A.21A(1), for the purpose of facilitating the performance of any functions or the exercise of any powers in relation to extended supervision orders or interim supervision orders.

(2) A person (the ***first person***) employed or engaged by a body covered by an arrangement under subsection 105A.21A(1) may disclose information (including personal information) to another



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person if the first person reasonably believes that the disclosure is authorised by the arrangement.

(3) This section applies despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten).

## 138 Subsection 105A.21(2) of the *Criminal Code*

Omit "at", substitute "in".

## 139 After section 105A.21 of the *Criminal Code*

Insert:

### 105A.21A Arrangements by Australian Federal Police Commissioner for functions and powers relating to supervision orders

(1) The Commissioner of the Australian Federal Police may make an arrangement with a State or Territory, or any other body, for the performance of any functions or the exercise of any powers in relation to extended supervision orders or interim supervision orders.

(2) Without limiting subsection (1), for the purposes of section 105A.19A, the arrangement may authorise a person employed or engaged by a body covered by the arrangement to disclose information (including personal information).

(3) The Commissioner of the Australian Federal Police may, in writing, delegate to a senior AFP member the Commissioner's powers under subsection (1).

## 140 Paragraph 105A.22(2)(a) of the *Criminal Code*

Omit "continuing detention orders", substitute "each kind of post-sentence order".

## 141 Paragraph 105A.22(2)(b) of the *Criminal Code*

Omit "interim detention orders", substitute "each kind of interim post-sentence order".



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### 142 Paragraph 105A.22(2)(c) of the *Criminal Code*

Omit "continuing detention orders", substitute "each kind of post-sentence order".

### 143 Paragraph 105A.22(2)(d) of the *Criminal Code*

Omit "interim detention orders", substitute "each kind of interim post-sentence order".

### 144 Paragraph 105A.22(2)(e) of the *Criminal Code*

Omit "continuing detention orders", substitute "each kind of post-sentence order".

### 145 After paragraph 105A.22(2)(e) of the *Criminal Code*

Insert:

(ea) applications for review of each kind of post-sentence order made by the AFP Minister, or a legal representative of the AFP Minister, during the year;

### 146 Paragraphs 105A.22(2)(f) and (g) of the *Criminal Code*

Omit "continuing detention orders", substitute "each kind of post-sentence order".

### 147 Paragraph 105A.22(2)(h) of the *Criminal Code*

Omit "continuing detention orders revoked", substitute "post-sentence orders revoked (including by operation of this Act)".

### 148 Section 105A.23 of the *Criminal Code* (heading)

Omit "**continuing detention orders**", substitute "**post-sentence orders**".

### 149 Subsection 105A.23(1) of the *Criminal Code*

Repeal the subsection, substitute:

(1) This section applies if:

(a) a court is sentencing a person who has been convicted of:

(i) an offence referred to in paragraph 105A.3(1)(a); or



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(ii) an offence against section 105A.18A or subsection 105A.18B(1) if paragraph 105A.3A(4)(b) applies in relation to the person; or

(b) both of the following apply:

(i) a court is sentencing a person who has been convicted of an offence referred to in section 104.27 or subsection 104.27A(1);

(ii) the Director of Public Prosecutions informs the court that a warning must be given under this section.

(1A) The court must:

(a) warn the person that an application may be made under this Division for:

(i) a continuing detention order requiring the person to be detained in custody in a prison after the end of the person's sentence; or

(ii) an extended supervision order imposing conditions on the person after the end of the person's sentence, a contravention of which is an offence; and

(b) inform the person that the application may be made:

(i) if paragraph (1)(a) applies—before the end of the sentence for that offence, or before the end of any later sentence if the person is continuously detained in custody in a prison; or

(ii) if paragraph (1)(b) applies—before the end of the sentence for the offence referred to in that paragraph.

## 150 Section 105A.25 of the *Criminal Code*

Repeal the section, substitute:

### 105A.25 Sunset provision

A post-sentence order, and an interim post-sentence order, cannot be applied for, affirmed or made, after 7 December 2026.

## 151 In the appropriate position in Division 106 of the *Criminal Code*

Insert:



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## 106.11 Application provision for certain amendments in the *Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Act 2021*

*Amendments relating to control orders*

(1) The following apply in relation to any interim control order or confirmed control order (whether in force before or after this section commences):

(a) the amendments of subsections 104.5(3), (3A) and (3B) made by Schedule 1 to the *Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Act 2021*;

(b) sections 104.5A, 104.28C and 104.28D as inserted by that Schedule.

(1A) The amendments of section 104.27 made by Schedule 1 to the *Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Act 2021* apply in relation to conduct occurring after this section commences.

*Arrangements for electronic monitoring*

(2) Section 104.28D does not affect the validity of:

(a) any agreement in relation to the electronic monitoring of persons under control orders that was in force immediately before this section commences; or

(b) any actions taken under or for the purposes of such an agreement before this section commences.

(3) The amendments of Division 105A made by Schedule 1 to the *Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Act 2021* apply (subject to this section) in relation to:

(a) any person who, on the day this section commences, is detained in custody in a prison; and

(b) any person who, on or after that day, begins a sentence of imprisonment for an offence referred to in:

(i) paragraph 105A.3(1)(a) of this Code; or

(ii) paragraph 105A.3A(5)(d) of this Code;

(whether the conviction for the offence occurred before, on or after that day); and



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(c) any person who meets the conditions in subsection 105A.3A(8) of this Code on the day this section commences.

Note: For the definition of ***detained in custody in a prison***, see subsection 100.1(1).

(4) To avoid doubt, the amendments of Division 105A made by Schedule 1 to the *Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Act 2021* apply in relation to a person referred to in paragraph (3)(a) or (c), or subparagraph (3)(b)(ii), of this section whose sentence of imprisonment for an offence referred to in paragraph 105A.3(1)(a) of this Code ended before the day this section commences.

*Continuing applications on foot at commencement*

(5) An application for:

(a) a continuing detention order or interim detention order; or

(b) a review of a continuing detention order;

made under Division 105A before this section commences that has not been finally determined at that time is taken to be an application made under that Division as amended by the *Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Act 2021*.

*Assessments of terrorist offenders*

(6) Subsection 105A.6(5A), as in force immediately after this section commences, applies in relation to assessments undertaken after that time.

(7) Subsection 105A.6(9), as in force immediately after this section commences, applies in relation to assessments undertaken before or after that time.

*Photographs and impressions of fingerprints*

(8) Section 105A.7D applies in relation to photographs and impressions of fingerprints taken after this section commences.



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*Providing applications and material*

(9) Sections 105A.14A to 105A.14D apply in relation to applications made after this section commences.

*AFP Minister may direct terrorist offenders to be assessed*

(10) Section 105A.18D applies in relation to any terrorist offender who is described in subsection 105A.18D(1) at the time, or any time after, this section commences.

*Annual reports*

(11) The amendments of section 105A.22 apply in relation to any 30 June that occurs after this section commences.

*Sentencing warning*

(12) Section 105A.23 applies in relation to any sentence imposed after this section commences.

*Other amendments*

(13) The amendments of sections 105A.11, 105A.12 and 105A.12A, and section 105A.18C, apply in relation to:

(a) any post-sentence order that is in force when this section commences; or

(b) any post-sentence order that is made after that time.

## 152 Subsection 117.1(2) of the *Criminal Code* (note)

After "continuing detention orders", insert "and extended supervision orders".



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# Part 2—Main consequential amendments

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

### 153 After paragraph (dac) of Schedule 1

Insert:

(dad) decisions of the AFP Minister under Division 105A of the *Criminal Code*;

## *Australian Security Intelligence Organisation Act 1979*

### 154 Subsection 35(2)

Repeal the subsection, substitute:

(2) To avoid doubt, none of the following is prescribed administrative action:

(a) an obligation, prohibition or restriction imposed on a person by a control order made under Division 104 of the *Criminal Code* (control orders);

(b) a condition imposed on a person by an extended supervision order or interim supervision order under Division 105A of the *Criminal Code* (post-sentence orders);

(c) action covered by any of subsections 105A.7E(2) to (5) of the *Criminal Code* (actions relating to electronic monitoring).

## *Crimes Act 1914*

### 155 Part IAAB (heading)

Omit "**control orders**", substitute "**Part 5.3 supervisory orders**".

### 156 Section 3ZZJA

Repeal the section, substitute:



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## 3ZZJA Simplified outline of this Part

A Part 5.3 supervisory order is any one of the following orders made under Part 5.3 of the Criminal Code:

(a) an interim control order;
(b) a confirmed control order;
(c) an interim supervision order;
(d) an extended supervision order.

If a Part 5.3 supervisory 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 Part 5.3 supervisory 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 (most of which are called Part 5.3 objects):

(a) the protection of the public from a terrorist act;
(b) the prevention of the provision of support for, or the facilitation of, a terrorist act;
(c) the prevention of the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country;
(d) the protection of the community from the unacceptable risk of a terrorist offender committing a serious Part 5.3 offence;
(e) determining whether the Part 5.3 supervisory order has been, or is being, complied with.



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## 157 Section 3ZZJB

Insert:

***extended supervision order*** has the meaning given by section 105A.2 of the *Criminal Code*.

***interim supervision order*** has the meaning given by section 105A.2 of the *Criminal Code*.

***Part 5.3 object*** means:

(a) in relation to a control order—any of the following:

(i) the protection of the public from a terrorist act;

(ii) the prevention of the provision of support for, or the facilitation of, a terrorist act;

(iii) the prevention of the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or

(b) in relation to an extended supervision order or interim supervision order—the protection of the community from the unacceptable risk of a terrorist offender committing a serious Part 5.3 offence.

***Part 5.3 supervisory order*** means:

(a) a control order; or

(b) an extended supervision order or interim supervision order.

***serious Part 5.3 offence*** has the meaning given by section 105A.2 of the *Criminal Code*.

***terrorist offender*** has the meaning given by section 105A.2 of the *Criminal Code*.

## 158 Paragraph 3ZZKA(1)(a)

Omit "control order", substitute "Part 5.3 supervisory order".

## 159 Subsection 3ZZKA(1)

Omit "any of", substitute "either of".

## 160 Paragraphs 3ZZKA(1)(c) to (f)

Repeal the paragraphs, substitute:



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(c) achieving a Part 5.3 object;
(d) determining whether the Part 5.3 supervisory order has been, or is being, complied with.

### 161 Paragraphs 3ZZKC(3)(a) to (d)

Repeal the paragraphs, substitute:

(a) a Part 5.3 object; or
(b) determining whether the relevant Part 5.3 supervisory order has been, or is being, complied with.

### 162 Paragraphs 3ZZKE(2)(a) to (d)

Repeal the paragraphs, substitute:

(a) achieving a Part 5.3 object; or
(b) determining whether the relevant Part 5.3 supervisory order has been, or is being, complied with.

### 163 Paragraphs 3ZZKE(3)(c) to (f)

Repeal the paragraphs, substitute:

(c) achieving a Part 5.3 object; or
(d) determining whether the relevant Part 5.3 supervisory order has been, or is being, complied with.

### 164 Division 3 of Part IAAB (heading)

Omit "**control orders**", substitute "**Part 5.3 supervisory orders**".

### 165 Subsection 3ZZLA(1)

Omit "control order" (first occurring), substitute "Part 5.3 supervisory order".

### 166 Subsection 3ZZLA(1)

Omit "any of", substitute "either of".

### 167 Paragraphs 3ZZLA(1)(a) to (d)

Repeal the paragraphs, substitute:

(a) achieving a Part 5.3 object;
(b) determining whether the Part 5.3 supervisory order has been, or is being, complied with.



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## 168 Section 3ZZNH (heading)

Omit "**control order**", substitute "**Part 5.3 supervisory order**".

## 169 Paragraph 3ZZNH(1)(b)

Omit "control order", substitute "Part 5.3 supervisory order".

## 170 Paragraph 3ZZOA(2)(a)

Omit "control order", substitute "Part 5.3 supervisory order".

## 171 Subparagraphs 3ZZOA(2)(c)(iv) to (vii)

Repeal the subparagraphs, substitute:

(iv) achieving a Part 5.3 object; or

(v) determining whether the Part 5.3 supervisory order has been, or is being, complied with.

## 172 Paragraphs 3ZZOA(4)(a) to (f)

Repeal the paragraphs, substitute:

(a) in relation to a control order:

(i) the possibility that the person has engaged, is engaging, or will engage, in a terrorist act;

(ii) the possibility that the person has provided, is providing, or will provide, support for a terrorist act;

(iii) the possibility that the person has facilitated, is facilitating, or will facilitate, a terrorist act;

(iv) the possibility that the person has provided, is providing, or will provide, support for the engagement in a hostile activity in a foreign country;

(v) the possibility that the person has facilitated, is facilitating, or will facilitate, the engagement in a hostile activity in a foreign country;

(b) in relation to an extended supervision order or interim supervision order—the possibility that the person has committed, is committing, or will commit, a serious Part 5.3 offence;

(f) in relation to any Part 5.3 supervisory order—the possibility that the person has contravened, is contravening, or will contravene, the order;



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## 173 Paragraphs 3ZZOA(5)(i) and (k)

Omit "control order", substitute "Part 5.3 supervisory order".

## 174 Paragraph 3ZZOA(5)(l)

Repeal the paragraph, substitute:

(l) state whether the Part 5.3 supervisory order is:

(i) an interim control order; or

(ii) a confirmed control order; or

(iii) an interim supervision order; or

(iv) an extended supervision order; and

## 175 Paragraphs 3ZZOA(5)(m) and (n)

Omit "control order", substitute "Part 5.3 supervisory order".

## 176 Paragraphs 3ZZOA(5)(o) to (q)

Repeal the paragraphs, substitute:

(o) if the Part 5.3 supervisory order is an interim control order—specify the date the order was served on the person; and

(p) if the Part 5.3 supervisory order is an extended supervision order or an interim supervision order—specify when the order comes into force; and

(q) if the Part 5.3 supervisory order is a confirmed control order, an extended supervision order or an interim supervision order—specify the end of the period during which the order is in force; and

(r) if the warrant is issued for the purposes of determining whether the Part 5.3 supervisory order has been, or is being, complied with—include, in an attachment to the warrant, a copy of the order.

## 177 Paragraph 3ZZOB(2)(a)

Omit "control order", substitute "Part 5.3 supervisory order".

## 178 Subparagraphs 3ZZOB(2)(b)(iii) to (vi)

Repeal the subparagraphs, substitute:

(iii) achieving a Part 5.3 object; or



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(iv) determining whether the Part 5.3 supervisory order has been, or is being, complied with.

## 179 Paragraphs 3ZZOB(4)(a) to (f)

Repeal the paragraphs, substitute:

(a) in relation to a control order:

(i) the possibility that the person has engaged, is engaging, or will engage, in a terrorist act;

(ii) the possibility that the person has provided, is providing, or will provide, support for a terrorist act;

(iii) the possibility that the person has facilitated, is facilitating, or will facilitate, a terrorist act;

(iv) the possibility that the person has provided, is providing, or will provide, support for the engagement in a hostile activity in a foreign country;

(v) the possibility that the person has facilitated, is facilitating, or will facilitate, the engagement in a hostile activity in a foreign country;

(b) in relation to an extended supervision order or interim supervision order—the possibility that the person has committed, is committing, or will commit, a serious Part 5.3 offence;

(c) in relation to any Part 5.3 supervisory order—the possibility that the person has contravened, is contravening, or will contravene, the order;

## 180 Paragraphs 3ZZOB(5)(h) and (i)

Omit "control order", substitute "Part 5.3 supervisory order".

## 181 Paragraph 3ZZOB(5)(j)

Repeal the paragraph, substitute:

(j) state whether the Part 5.3 supervisory order is:

(i) an interim control order; or

(ii) a confirmed control order; or

(iii) an interim supervision order; or

(iv) an extended supervision order; and



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## 182 Paragraphs 3ZZOB(5)(k) and (l)

Omit "control order", substitute "Part 5.3 supervisory order".

## 183 Paragraphs 3ZZOB(5)(m) to (o)

Repeal the paragraphs, substitute:

(m) if the Part 5.3 supervisory order is an interim control order—specify the date the order was served on the person; and

(n) if the Part 5.3 supervisory order is an extended supervision order or an interim supervision order—specify when the order comes into force; and

(o) if the Part 5.3 supervisory order is a confirmed control order, an extended supervision order or an interim supervision order—specify the end of the period during which the order is in force; and

(p) if the warrant is issued for the purposes of determining whether the Part 5.3 supervisory order has been, or is being, complied with—include, in an attachment to the warrant, a copy of the order.

## 184 Section 3ZZOD (heading)

Omit "**control order**", substitute "**Part 5.3 supervisory order**".

## 185 Paragraph 3ZZOD(1)(a)

Omit "control order", substitute "Part 5.3 supervisory order".

## 186 Paragraph 3ZZOD(1)(b)

Repeal the paragraph, substitute:

(b) any of the following happens:

(i) the Part 5.3 supervisory order is a control order that is revoked;

(ii) the Part 5.3 supervisory order is an extended supervision order or interim supervision order in relation to a terrorist offender that is revoked and no further extended supervision order or interim supervision order is made in relation to the terrorist offender;

(iii) the Part 5.3 supervisory order is an interim control order that a court declares to be void;



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(iv) a court varies the Part 5.3 supervisory order by removing one or more obligations, prohibitions, restrictions or conditions imposed on the person by the order;

### 187 Paragraphs 3ZZRC(2)(a) to (d)

Repeal the paragraphs, substitute:

(a) achieving a Part 5.3 object;

(b) determining whether the relevant Part 5.3 supervisory order has been, or is being, complied with.

### 188 Paragraphs 3ZZRD(a) to (d)

Repeal the paragraphs, substitute:

(a) achieving a Part 5.3 object;

(b) determining whether the relevant Part 5.3 supervisory order has been, or is being, complied with;

## *Intelligence Services Act 2001*

### 188A After paragraph 29(1)(bb)

Insert:

(bbaaa) to commence a review, within the period of 12 months after the Independent National Security Legislation Monitor completes a review under subsection 6(1C) of the *Independent National Security Legislation Monitor Act 2010*, into the operation, effectiveness and implications of Division 105A of the *Criminal Code* (which provides for post-sentence orders in relation to terrorism) and any other provision of the *Criminal Code Act 1995* as it relates to that Division; and

### 188B Paragraph 29(1)(cb)

Repeal the paragraph.



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

### 189 Section 7

Insert:

***CDO*** or ***continuing detention order*** means a continuing detention order made under Division 105A of the *Criminal Code*.

***control order*** has the meaning given by section 100.1 of the *Criminal Code*.

***Division 105A ESO proceeding*** means a proceeding under Division 105A of the *Criminal Code* in relation to an application:

(a) for an extended supervision order in relation to a terrorist offender; or

(b) for a variation of an extended supervision order in relation to a terrorist offender; or

(c) for a review of an extended supervision order in relation to a terrorist offender; or

(d) to a Supreme Court of a State or Territory for a continuing detention order in relation to a terrorist offender if, in the proceeding:

(i) the Court is not satisfied as mentioned in paragraph 105A.7(1)(b) or (c) of the Code; and

(ii) the Court is considering making an extended supervision order as mentioned in paragraph 105A.7(2)(b).

Note: See also the definition of ***ESO*** or ***extended supervision order*** in this section.

***ESO*** or ***extended supervision order*** means:

(a) an order made under subsection 105A.7A(1) of the *Criminal Code*; or

(b) an interim supervision order made under Division 105A of the *Criminal Code*.

***terrorist offender*** has the meaning given by section 105A.2 of the *Criminal Code*.



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## 190 Paragraph 38I(1)(b)

Repeal the paragraph, substitute:

(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:

(i) in a proceeding under Division 104 of the *Criminal Code* (about control orders); or

(ii) in a Division 105A ESO proceeding;

when the information is disclosed to the court at that hearing.

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

Omit "Note", substitute "Note 1".

## 192 At the end of subsection 38I(1)

Add:

Note 2: The court may not make an order under subsection 38J(2), (3) or (4) if the proceeding under Division 105A of the *Criminal Code* relates to an application for a CDO (see subsections 38J(1) and (1A) of this Act, and the definition of ***Division 105A ESO proceeding*** in section 7 of this Act). If the court decides not to make the CDO and hears evidence in a closed hearing in relation to an ESO, the court could reconsider whether to make the CDO. However, the court could not take that evidence into account in determining whether to make the CDO.

## 193 Paragraph 38I(3A)(b)

Repeal the paragraph, substitute:

(b) the proceeding is:

(i) under Division 104 of the *Criminal Code* (about control orders); or

(ii) a Division 105A ESO proceeding; and

## 194 Section 38J (heading)

After "**control order**", insert "**or extended supervision order**".

## 195 Paragraph 38J(1)(a)

Repeal the paragraph, substitute:



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(a) the court has held a hearing required by subsection 38G(1) or 38H(6) about the disclosure of information in:

(i) 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***); or

(ii) a Division 105A ESO proceeding relating to an application (the ***relevant application***) to make, vary or review an extended supervision order in relation to a terrorist offender (the ***relevant person***); or

(iii) a Division 105A ESO proceeding relating to an application (the ***relevant application***) for a continuing detention order in relation to a terrorist offender (the ***relevant person***); and

## 196 Paragraph 38J(1)(c)

After "request", insert "or relevant application".

## 197 At the end of subsection 38J(1)

Add:

Note: For the definition of ***Division 105A ESO proceeding***, see section 7.

## 198 After subsection 38J(1)

Insert:

(1A) To avoid doubt, the court may not make an order under subsection (2), (3) or (4) if the proceeding mentioned in subparagraph (1)(a)(iii) is a proceeding:

(a) relating to an application for a continuing detention order if:

(i) the court is considering whether to make the order under section 105A.7 of the *Criminal Code*; or

(ii) the court is considering whether to make an interim supervision order under section 105A.9A of the Code as mentioned in paragraph 105A.9(8)(b) of the Code; or

(b) relating to an application for an interim detention order under section 105A.9 of the Code.



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## 199 Subsections 38L(1) and (6) (at the end of the note)

Add "or in Division 105A ESO proceedings".

## 200 Subdivision C of Division 3 of Part 3A (heading)

After "**control order**", insert "**or extended supervision order**".

## 201 Paragraph 38PA(1)(a)

Repeal the paragraph, substitute:

(a) the proceeding is:

(i) 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; or

(ii) a Division 105A ESO proceeding to make, vary or review an extended supervision order in relation to the party; or

(iii) a Division 105A ESO proceeding relating to an application for a continuing detention order in relation to the party; and

## 202 Subsection 38PA(1) (note)

Omit "Note", substitute "Note 1".

## 203 At the end of subsection 38PA(1)

Add:

Note 2: For the definition of ***Division 105A ESO proceeding***, see section 7.

## 204 Subparagraph 38PE(3)(b)(i)

Repeal the subparagraph, substitute:

(i) the applicant in the proceedings for the control order, or the applicant's legal representative, except if the applicant is or would be the subject of the control order; or

(ia) the applicant in the Division 105A ESO proceedings, or the applicant's legal representative, except if the applicant is or would be the subject of the extended supervision order; or



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## 205 Subparagraph 38PF(2)(a)(ii)

Repeal the subparagraph, substitute:

(ii) the applicant in the proceedings for the control order, or the applicant's legal representative, except if the applicant is or would be the subject of the control order; or

(iia) the applicant in the Division 105A ESO proceedings, or the applicant's legal representative, except if the applicant is or would be the subject of the extended supervision order; or

## 206 Paragraph 38PF(6)(a)

Repeal the paragraph, substitute:

(a) the applicant in the proceedings for the control order or the Division 105A ESO proceedings, or the applicant's legal representative, except if the applicant is or would be the subject of the control order or extended supervision order; or

## 207 Section 46H (heading)

After "**control order**", insert "**or extended supervision order**".

## 208 Paragraphs 47(c) and (d)

Repeal the paragraphs, substitute:

(c) states the number of orders made under section 38J (about special court orders in a proceeding under Division 104 of the *Criminal Code* or a Division 105A ESO proceeding); and

(d) identifies the proceedings under Division 104 of the *Criminal Code* or the Division 105A ESO proceedings to which the orders relate; and

## 209 Paragraph 47(f)

Repeal the paragraph, substitute:

(f) identifies the proceedings under Division 104 of the *Criminal Code* or the Division 105A ESO proceedings in relation to which the special advocates were appointed.



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### 210 Application of amendments

The amendments of section 47 of the *National Security Information (Criminal and Civil Proceedings) Act 2004* made by this Part apply in relation to each 30 June that occurs after this item commences.

## *Surveillance Devices Act 2004*

### 211 Paragraphs 3(aa) to (ab)

Repeal the paragraphs, substitute:

(aac) to establish procedures for law enforcement officers to obtain warrants for the installation and use of surveillance devices, or for access to data held in computers, in cases where the use of the device or the access to the data would be likely to assist in determining whether to apply for a post-sentence order; and

(aad) to establish procedures for law enforcement officers to obtain warrants for the installation and use of surveillance devices, or for access to data held in computers, in cases where a Part 5.3 supervisory order is in force, and the use of the device or the access to the data would be likely to substantially assist in:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with; and

(aae) to establish procedures for law enforcement officers to obtain tracking device authorisations for the use of tracking devices in cases where a Part 5.3 supervisory 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 either of the following purposes:

(i) achieving a Part 5.3 object;

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with; and

### 212 Subsections 4(5) to (6)

Repeal the subsections, substitute:



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(5) To avoid doubt, it is intended that a warrant may be issued under this Act for the installation, use, maintenance or retrieval of a surveillance device, or for access to data held in a computer, if:

(a) consideration is being given, will be given, or is likely to be given, as to whether to apply for a post-sentence order, and the use of the device or the access to the data would be likely to assist in determining whether to apply for the order; or

(b) a Part 5.3 supervisory order is in force, and the use of the device or the access to the data would be likely to substantially assist in:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with.

(6) To avoid doubt, a tracking device authorisation may be given under this Act for the use of a tracking device to obtain information relating to a person if:

(a) a Part 5.3 supervisory order is in force in relation to the person; and

(b) the use is for either of the following purposes:

(i) achieving a Part 5.3 object;

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with.

## 213 Subsection 6(1)

Insert:

***AFP Minister*** has the meaning given by section 100.1 of the *Criminal Code*.

## 214 Subsection 6(1)

Repeal the following definitions:

(a) definition of ***control order access warrant***;

(b) definition of ***control order information***;

(c) definition of ***control order warrant***.



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## 215 Subsection 6(1)

Insert:

***detained in custody in a prison*** has the meaning given by section 100.1 of the *Criminal Code*.

***extended supervision order*** has the meaning given by section 105A.2 of the *Criminal Code*.

***interim supervision order*** has the meaning given by section 105A.2 of the *Criminal Code*.

***Part 5.3 information*** has the meaning given by subsection 50A(6).

***Part 5.3 object*** means:

(a) in relation to a control order—any of the following:
  (i) the protection of the public from a terrorist act;
  (ii) the prevention of the provision of support for, or the facilitation of, a terrorist act;
  (iii) the prevention of the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or

(b) in relation to an extended supervision order or interim supervision order in relation to a person—the protection of the community from the unacceptable risk of the person committing a serious Part 5.3 offence.

***Part 5.3 supervisory order*** means:

(a) a control order; or

(b) an extended supervision order or an interim supervision order.

Note: In Part 5.3 of the *Criminal Code*, a control order means an interim control order or a confirmed control order (see subsection 100.1(1) of the *Criminal Code*).

***Part 5.3 warrant*** means a surveillance device warrant or computer access warrant:

(a) issued to determine whether to apply for a post-sentence order; or

(b) issued in relation to a Part 5.3 supervisory order that is or was in force.



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***post-sentence detention law*** means any of the following laws:

(a) Part 3 of the *Terrorism (High Risk Offenders) Act 2017* (NSW);

(b) Parts 5 and 6 of the *Serious Offenders Act 2018* (Vic.);

(c) Part 3 of the *Criminal Law (High Risk Offenders) Act 2015* (SA);

(d) any other law, or part of a law, of a State or Territory prescribed by the regulations.

***post-sentence order*** means a continuing detention order, an interim detention order, an extended supervision order, or an interim supervision order, under Division 105A of the *Criminal Code*.

***post-sentence supervision law*** means any of the following laws:

(a) Part 2 of the *Terrorism (High Risk Offenders) Act 2017* (NSW);

(b) Parts 3 and 4 of the *Serious Offenders Act 2018* (Vic.);

(c) Part 2 of the *Criminal Law (High Risk Offenders) Act 2015* (SA);

(d) any other law, or part of a law, of a State or Territory prescribed by the regulations.

## 216 Subsection 6(1) (paragraph (oa) of the definition of *relevant proceeding*)

Omit "continuing detention orders", substitute "post-sentence orders".

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

Add:

; or (s) a proceeding under, or a proceeding relating to a matter arising under, a post-sentence detention law or a post-sentence supervision law.

## 218 Subsection 6(1)

Insert:

***serious Part 5.3 offence*** has the meaning given by section 105A.2 of the *Criminal Code*.



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## 219 Subsection 6(1) (definition of *succeeding control order*)

Repeal the definition.

## 220 Subsection 6(1)

Insert:

***succeeding Part 5.3 supervisory order*** has the meaning given by section 6D.

***terrorist offender*** has the meaning given by section 105A.2 of the *Criminal Code*.

## 221 Sections 6C and 6D

Repeal the sections, substitute:

### 6C When a Part 5.3 supervisory order is taken to be in force

For the purposes of this Act, a Part 5.3 supervisory order is taken to be in force in relation to a person if:

(a) the order is a control order that has been made but has not yet come into force because:

(i) it has not been served on the person; or

(ii) the person is detained in custody in a prison; or

(b) the order is an extended supervision order or an interim supervision order that has been made but the period specified in the order under paragraph 105A.7A(4)(d) or 105A.9A(7)(c) of the *Criminal Code* has not yet begun.

### 6D Succeeding Part 5.3 supervisory orders

(1) If 2 or more successive control orders are made in relation to the same person, each later control order is a ***succeeding Part 5.3 supervisory order*** in relation to each earlier control order.

Note: If an interim control order is confirmed, the confirmed control order is a succeeding Part 5.3 supervisory order in relation to the interim control order (see the definition of ***control order*** in section 6).

(2) If an interim supervision order is made in relation to a person, any later extended supervision order in relation to the person is a



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***succeeding Part 5.3 supervisory order*** in relation to an earlier interim supervision order.

(3) If 2 or more successive extended supervision orders or interim supervision orders are made in relation to the same person, each later extended supervision order or interim supervision order is a ***succeeding Part 5.3 supervisory order*** in relation to each earlier extended supervision order or interim supervision order.

## 222 After subsection 14(3B)

Insert:

*Warrants sought for post-sentence order applications*

(3BA) A law enforcement officer (or another person on the officer's behalf) may apply for the issue of a surveillance device warrant if:

(a) a person is a terrorist offender in relation to whom an application for a post-sentence order could be made; and

(b) the person is detained in custody in a prison; and

(c) the officer suspects on reasonable grounds that there is an appreciable risk of the person committing a serious Part 5.3 offence; and

(d) consideration is being given, will be given, or is likely to be given, by the AFP Minister (or a person on behalf of the AFP Minister), as to whether to apply for a post-sentence order in relation to the person; and

(e) the officer suspects on reasonable grounds that the use of a surveillance device to obtain information would be likely to assist in determining whether to apply for the post-sentence order.

## 223 Subsection 14(3C) (heading)

Repeal the heading, substitute:

*Warrants sought for Part 5.3 supervisory orders*

## 224 Paragraph 14(3C)(a)

Omit "control order", substitute "Part 5.3 supervisory order".



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## 225 Paragraph 14(3C)(b)

Repeal the paragraph, substitute:

(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) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with.

## 226 Subsection 14(3C) (note)

Repeal the note, substitute:

Note: For Part 5.3 supervisory orders that have been made but not come into force, see section 6C.

## 227 Subsection 14(4)

After "(3B)", insert ", (3BA)".

## 228 Paragraph 16(1)(bc)

Repeal the paragraph, substitute:

(bba) in the case of a warrant sought to determine whether to apply for a post-sentence order—that the conditions in paragraphs 14(3BA)(a), (b) and (d) are met, and that there are reasonable grounds for the suspicions founding the application for the warrant (as mentioned in paragraphs 14(3BA)(c) and (e)); and

(bc) in the case of a warrant sought in relation to a Part 5.3 supervisory order that is in force in relation to a person—that the order is in force in relation to the person, and that there are reasonable grounds for the suspicion founding the application for the warrant (as mentioned in paragraph 14(3C)(b)); and

## 229 Subsection 16(1) (note)

Repeal the note, substitute:

Note: For Part 5.3 supervisory orders that have been made but not come into force, see section 6C.



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## 230 Paragraphs 16(2)(eb) to (g)

Repeal the paragraphs, substitute:

(f) in the case of a warrant sought in relation to a relevant offence or a recovery order—any previous warrant sought or issued under this Division in connection with the same alleged offence or the same recovery order.

## 231 At the end of section 16

Add:

(3) In addition to the matters in subsection (2), in determining whether to issue a surveillance device warrant sought to determine whether to apply for a post-sentence order in relation to a person, the eligible Judge or nominated AAT member must have regard to:

(a) the likely value of the information sought to be obtained in determining whether to apply for the post-sentence order; and

(b) any previous application for a surveillance device warrant sought or issued to determine whether to apply for a post-sentence order in relation to the person.

(4) In addition to the matters in subsection (2), in determining whether to issue a surveillance device warrant sought in a case where a Part 5.3 supervisory order is in force in relation to a person, the eligible Judge or nominated AAT member must have regard to:

(a) the likely value of the information sought to be obtained, in:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with; and

(b) 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

(c) if the order is a control order:

(i) the possibility that the person has engaged, is engaging, or will engage, in a terrorist act; or

(ii) the possibility that the person has provided, is providing, or will provide, support for a terrorist act; or



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(iii) the possibility that the person has facilitated, is facilitating, or will facilitate, a terrorist act; or

(iv) the possibility that the person has provided, is providing, or will provide, support for the engagement in a hostile activity in a foreign country; or

(v) the possibility that the person has facilitated, is facilitating, or will facilitate, the engagement in a hostile activity in a foreign country; and

(d) if the order is an extended supervision order or interim supervision order—the possibility that the person has committed, is committing, or will commit, a serious Part 5.3 offence; and

(e) in relation to any Part 5.3 supervisory order—the possibility that the person has contravened, is contravening, or will contravene, the order or a succeeding Part 5.3 supervisory order; and

(f) any previous surveillance device warrant sought or issued on the basis of a Part 5.3 supervisory order that is or was in force in relation to the person.

## 232 Paragraph 17(1)(a)

Omit "subsection 16(2)", substitute "subsections 16(2), (3) and (4) (as the case requires)".

## 233 Subsection 17(1AA)

Repeal the subsection, substitute:

(1AA) If a surveillance device warrant is issued to determine whether to apply for a post-sentence order in relation to a person, the warrant must also specify the name of the person.

(1AB) If a warrant is issued on the basis of a Part 5.3 supervisory order that is in force in relation to a person, the warrant must also specify the following details in relation to the order:

(a) the name of the person;

(b) the date the order was made;

(c) if (disregarding section 6C) the order is not already in force and the order is not an interim control order—when the order comes into force;



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(d) whether the order is:
(i) an interim control order; or
(ii) a confirmed control order; or
(iii) an interim supervision order; or
(iv) an extended supervision order.

## 234 After subsection 17(1A)

Insert:

(1B) To avoid doubt, a warrant issued on the basis that a Part 5.3 supervisory order is in force remains in force for the period mentioned in paragraph (1A)(a) even if the order ceases to be in force, provided that the order is replaced by a succeeding Part 5.3 supervisory order.

Note 1: If there is no succeeding Part 5.3 supervisory order, the warrant must be revoked (see section 21).

Note 2: A control order is not a succeeding Part 5.3 supervisory order in relation to an extended supervision order, and vice versa (see section 6D).

## 235 Subsection 19(4)

Omit "subsection 16(2)", substitute "subsections 16(2), (3) and (4) (as the case requires)".

## 236 Subsection 20(2)

Omit "paragraphs 21(2)(a) and (b), 21(3)(a) and (b), 21(3A)(a) and (b), 21(3B)(a) and (b), 21(3C)(a) and (b) or 21(3D)(a) and (b) apply in relation to a surveillance device warrant—", substitute "subsection 21(2) or (3) apply in relation to a surveillance device warrant,".

## 237 Subsections 21(2) to (3D)

Repeal the subsections, substitute:

*Obligations on chief officers*

(2) If:
(a) the surveillance device warrant has been sought by or on behalf of a law enforcement officer; and



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(b) the chief officer of the law enforcement agency to which the law enforcement officer belongs or is seconded is satisfied that:

(i) the use of a surveillance device under the warrant is no longer required for the purpose for which it was sought; or

(ii) without limiting subparagraph (i), if the warrant was sought for the purposes of an integrity operation—the integrity authority for the integrity operation is no longer in effect; and

(c) the warrant was not issued to determine whether to apply for a post-sentence order;

the chief officer must (subject to subsection (3)), 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.

(3) The chief officer is required to take steps under subsection (2) in relation to a surveillance device warrant that is issued on the basis of a Part 5.3 supervisory order that was in force in relation to a person only if neither the Part 5.3 supervisory order, nor any succeeding Part 5.3 supervisory order, is in force in relation to the person.

Note: A control order is not a succeeding Part 5.3 supervisory order in relation to an extended supervision order, and vice versa (see section 6D).

## 238 Subsection 21(4)

Omit "he or she", substitute "the chief officer".

## 239 Subsections 21(5) and (6)

Repeal the subsections, substitute:

*Obligations on law enforcement officers to whom warrants are issued etc.*

(5) If the law enforcement officer to whom the warrant is issued, or who is primarily responsible for executing the warrant, believes that:

(a) use of a surveillance device under the warrant is no longer required for the purpose for which the warrant was issued; or

(b) without limiting paragraph (a), if the warrant was sought for the purposes of an integrity operation—the integrity authority for the integrity operation is no longer in effect;

the officer must (subject to subsection (6)) immediately inform the chief officer of the law enforcement agency to which the officer belongs or is seconded.

(6) If the law enforcement officer to whom a warrant is issued, or who is primarily responsible for executing a warrant issued, on the basis that a Part 5.3 supervisory order was in force in relation to a person believes that neither that order, nor any succeeding Part 5.3 supervisory order, is in force in relation to the person, the officer must immediately inform the chief officer of the law enforcement agency to which the officer belongs or is seconded.

## 240 Subsection 27A(6)

Repeal the subsection, substitute:

*Warrants sought for post-sentence order applications*

(5A) A law enforcement officer (or another person on the officer's behalf) may apply for the issue of a computer access warrant if:

(a) a person is a terrorist offender in relation to whom an application for a post-sentence order could be made; and

(b) the person is detained in custody in a prison; and

(c) the officer suspects on reasonable grounds that there is an appreciable risk of the person committing a serious Part 5.3 offence; and

(d) consideration is being given, will be given, or is likely to be given, by the AFP Minister (or a person on behalf of the AFP Minister), as to whether to apply for a post-sentence order in relation to the person; and

(e) the officer suspects on reasonable grounds that access to data held in a computer (the ***target computer***) would be likely to assist in determining whether to apply for the post-sentence order.



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*Warrants sought for Part 5.3 supervisory orders*

(6) A law enforcement officer (or another person on the officer's behalf) may apply for the issue of a computer access warrant if:

(a) a Part 5.3 supervisory order is in force in relation to a person; and

(b) the officer suspects on reasonable grounds that access to data held in a computer (the ***target computer***) to obtain information relating to the person would be likely to substantially assist in:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with.

Note: For Part 5.3 supervisory orders that have been made but not come into force, see section 6C.

## 241 Subsection 27A(7)

After "(5)", insert ", (5A)".

## 242 Subsection 27A(13) (heading)

Omit "*control order access warrants*", substitute "*warrants sought for Part 5.3 supervisory orders*".

## 243 Subsection 27A(15)

After "(5)", insert ", (5A)".

## 244 Paragraph 27C(1)(e)

Repeal the paragraph, substitute:

(da) in the case of a computer access warrant sought to determine whether to apply for a post-sentence order—that the conditions in paragraphs 27A(5A)(a), (b) and (d) are met, and there are reasonable grounds for the suspicions founding the application for the warrant (as mentioned in paragraphs 27A(5A)(c) and (e)); and

(e) in the case of a computer access warrant sought in relation to a Part 5.3 supervisory order that is in force in relation to a person—that the order is in force in relation to the person, and there are reasonable grounds for the suspicion founding



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the application for the warrant (as mentioned in paragraph 27A(6)(b)); and

## 245 Subsection 27C(1) (note)

Repeal the note, substitute:

Note: For Part 5.3 supervisory orders that have been made but not come into force, see section 6C.

## 246 Paragraphs 27C(2)(g) to (k)

Repeal the paragraphs, substitute:

(j) in the case of a warrant sought in relation to a relevant offence or a recovery order—any previous warrant sought or issued under this Division in connection with the same alleged offence or the same recovery order.

## 247 At the end of section 27C

Add:

(3) In addition to the matters in subsection (2), in determining whether to issue a computer access warrant sought to determine whether to apply for a post-sentence order in relation to a person, the eligible Judge or nominated AAT member must have regard to:

(a) the likely value of the information sought to be obtained in determining whether to apply for the post-sentence order; and

(b) any previous application for a computer access warrant sought or issued to determine whether to apply for a post-sentence order in relation to the person.

(4) In addition to the matters in subsection (2), in determining whether to issue a computer access warrant sought in a case where a Part 5.3 supervisory order is in force in relation to a person, the eligible Judge or nominated AAT member must have regard to:

(a) the likely value of the information sought to be obtained, in:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with; and

(b) whether the access to the data in accordance with the warrant would be the means of obtaining the evidence or information



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sought to be obtained, that is likely to have the least interference with any person's privacy; and

(c) if the order is a control order:

(i) the possibility that the person has engaged, is engaging, or will engage, in a terrorist act; or

(ii) the possibility that the person has provided, is providing, or will provide, support for a terrorist act; or

(iii) the possibility that the person has facilitated, is facilitating, or will facilitate, a terrorist act; or

(iv) the possibility that the person has provided, is providing, or will provide, support for the engagement in a hostile activity in a foreign country; or

(v) the possibility that the person has facilitated, is facilitating, or will facilitate, the engagement in a hostile activity in a foreign country; and

(d) if the order is an extended supervision order or interim supervision order—the possibility that the person has committed, is committing, or will commit, a serious Part 5.3 offence; and

(e) in relation to any Part 5.3 supervisory order—the possibility that the person has contravened, is contravening, or will contravene, the order or a succeeding Part 5.3 supervisory order; and

(f) any previous computer access warrant sought or issued on the basis of a Part 5.3 supervisory order that is or was in force in relation to the person.

## 248 Paragraph 27D(1)(a)

Omit "subsection 27C(2)", substitute "subsections 27C(2), (3) and (4) (as the case requires)".

## 249 Subsection 27D(2)

Repeal the subsection, substitute:

(1A) If a computer access warrant is issued to determine whether to apply for a post-sentence order in relation to a person, the warrant must also specify the name of the person.



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(2) If a computer access warrant is issued on the basis of a Part 5.3 supervisory order that is in force in relation to a person, the warrant must also specify the following details:

(a) the name of the person;

(b) the date the Part 5.3 supervisory order was made;

(c) if (disregarding section 6C) the order is not already in force and the order is not an interim control order—when the order comes into force;

(d) whether the order is:

(i) an interim control order; or

(ii) a confirmed control order; or

(iii) an interim supervision order; or

(iv) an extended supervision order.

## 250 After subsection 27D(3)

Insert:

(3A) To avoid doubt, a warrant issued on the basis that a Part 5.3 supervisory order is in force remains in force for the period mentioned in paragraph (3)(a) even if the order ceases to be in force, provided that the order is replaced by a succeeding Part 5.3 supervisory order.

Note 1: If there is no succeeding Part 5.3 supervisory order, the warrant must be revoked (see section 27H).

Note 2: A control order is not a succeeding Part 5.3 supervisory order in relation to an extended supervision order, and vice versa (see section 6D).

## 251 Paragraph 27E(4)(e)

Repeal the paragraph, substitute:

(da) in the case of a warrant sought to determine whether to apply for a post-sentence order—access to the data would be likely to assist as described in paragraph 27A(5A)(e); or

(e) in the case of a warrant issued on the basis of a Part 5.3 supervisory order that is in force in relation to a person—access to the data would be likely to substantially assist as described in paragraph 27A(6)(b).



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## 252 Subsection 27F(4)

Omit "subsection 27C(2)", substitute "subsections 27C(2), (3) and (4) (as the case requires)".

## 253 Subsection 27G(2)

Omit "paragraphs 27H(2)(a) and (b), 27H(3)(a) and (b), 27H(4)(a) and (b), 27H(5)(a) and (b), 27H(6)(a) and (b) or 27H(7)(a) and (b)", substitute "subsection 27H(2) or (3)".

## 254 Subsections 27H(2) to (7)

Repeal the subsections, substitute:

*Obligations on chief officers*

(2) If:

(a) the computer access warrant has been sought by or on behalf of a law enforcement officer; and

(b) the chief officer of the law enforcement agency to which the law enforcement officer belongs or is seconded is satisfied that:

(i) access to data under the warrant is no longer required for the purpose for which it was sought; or

(ii) without limiting subparagraph (i), if the warrant was sought for the purposes of an integrity operation—the integrity authority for the integrity operation is no longer in effect; and

(c) the warrant was not issued to determine whether to apply for a post-sentence order;

the chief officer must (subject to subsection (3)), in addition to revoking the warrant under section 27G, take the steps necessary to ensure that access to data authorised by the warrant is discontinued.

(3) The chief officer is required to take steps under subsection (2) in relation to a surveillance device warrant that is issued on the basis of a Part 5.3 supervisory order that was in force in relation to a person only if neither the Part 5.3 supervisory order, nor any succeeding Part 5.3 supervisory order, is in force in relation to the person.



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Note: A control order is not a succeeding Part 5.3 supervisory order in relation to an extended supervision order, and vice versa (see section 6D).

## 255 Subsection 27H(8)

Omit "the eligible Judge or nominated AAT member", substitute "the chief officer".

## 256 Subsections 27H(9) and (10)

Repeal the subsections, substitute:

*Obligations on law enforcement officers to whom warrants are issued etc.*

(9) If the law enforcement officer to whom the warrant is issued, or who is primarily responsible for executing the warrant, believes that:

(a) access to data under the warrant is no longer necessary for the purpose for which it was sought; or

(b) without limiting paragraph (a), if the warrant was sought for the purposes of an integrity operation—the integrity authority for the integrity operation is no longer in effect;

the law enforcement officer must (subject to subsection (10)) immediately inform the chief officer of the law enforcement agency to which the law enforcement officer belongs or is seconded.

(10) If the law enforcement officer to whom a warrant is issued, or who is primarily responsible for executing a warrant issued, on the basis that a Part 5.3 supervisory order was in force in relation to a person believes that neither the Part 5.3 supervisory order, nor any succeeding Part 5.3 supervisory order, is in force in relation to the person, the officer must immediately inform the chief officer of the law enforcement agency to which the officer belongs or is seconded.

## 257 Subsection 37(4)

Omit "control order" (first occurring), substitute "Part 5.3 supervisory order".



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### 258 Subsection 37(4)

Omit "any of", substitute "either of".

### 259 Paragraphs 37(4)(a) to (d)

Repeal the paragraphs, substitute:

(a) achieving a Part 5.3 object;

(b) determining whether the Part 5.3 supervisory order has been, or is being, complied with;

### 260 Subsection 38(3A)

Omit "control order" (first occurring), substitute "Part 5.3 supervisory order".

### 261 Subsection 38(3A)

Omit "any of", substitute "either of".

### 262 Paragraphs 38(3A)(a) to (d)

Repeal the paragraphs, substitute:

(a) achieving a Part 5.3 object;

(b) determining whether the Part 5.3 supervisory order has been, or is being, complied with;

### 263 Subparagraph 38(3A)(f)(ii)

Omit "control order", substitute "Part 5.3 supervisory order".

### 264 Paragraph 38(6)(a)

Omit "control order", substitute "Part 5.3 supervisory order".

### 265 Paragraph 38(6)(b)

Omit "any of", substitute "either of".

### 266 Subparagraphs 38(6)(b)(i) to (iv)

Repeal the subparagraphs, substitute:

(i) achieving a Part 5.3 object;

(ii) determining whether the Part 5.3 supervisory order has been, or is being, complied with;



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## 267 Subsection 39(3B)

Omit "control order" (first occurring), substitute "Part 5.3 supervisory order".

## 268 Subsection 39(3B)

Omit "any of", substitute "either of".

## 269 Paragraphs 39(3B)(a) to (d)

Repeal the paragraphs, substitute:

(a) achieving a Part 5.3 object;

(b) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with.

## 270 Paragraph 40(1)(db)

Repeal the paragraph, substitute:

(db) if the authorisation is given on the basis of a Part 5.3 supervisory order that is in force in relation to a person—the following details:

(i) the name of the person;

(ii) the date the order was made;

(iii) if (disregarding section 6C) the order is not already in force and the order is not an interim control order—when the order comes into force;

(iv) whether the order is an interim control order, a confirmed control order, an interim supervision order or an extended supervision order; and

## 271 Paragraph 45(5)(c)

Repeal the paragraph, substitute:

(c) a relevant proceeding (not including a relevant proceeding in respect of a relevant offence referred to in paragraph (d) or (i)) or a State or Territory relevant proceeding;

## 272 Paragraph 45(5)(j)

Repeal the paragraph, substitute:



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(ia) 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:
(i) Division 104 (control orders) or Division 105A (post-sentence orders) of the *Criminal Code*; or
(ii) a post-sentence detention law or a post-sentence supervision law;

(j) in the case of information:
(i) obtained under a warrant issued on the basis of a Part 5.3 supervisory order that is or was in force; or
(ii) relating to an application for, the issue of, the existence of, or the expiration of, such a warrant; or
(iii) that is likely to enable the identification of a person, object or premises specified in such a warrant;

determining whether the order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with;

## 273 Paragraph 45(5)(k)

Omit "control order" (wherever occurring), substitute "Part 5.3 supervisory order".

## 274 After subsection 45(5)

Insert:

(5A) To avoid doubt, paragraphs (5)(ia) and (j) do not limit paragraph (5)(c).

Note: Under paragraph (5)(c), protected information obtained under a warrant or authorisation may be used for the purposes of any proceedings relating to a post-sentence order.

## 275 Subsection 45(6)

Omit ", (j) and (k)", substitute "and (ia) to (k)".

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

Add:



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; or (j) a proceeding under, or a proceeding relating to a matter arising under, a post-sentence detention law or a post-sentence supervision law.

## 277 Section 46A (heading)

Omit "**control order**", substitute "**Part 5.3 supervisory order**".

## 278 Subparagraph 46A(1)(b)(i)

Repeal the subparagraph, substitute:

(i) a surveillance device warrant; or

## 279 Paragraph 46A(1)(b)

Omit "control order" (second occurring), substitute "Part 5.3 supervisory order".

## 280 Paragraph 46A(1)(c)

Repeal the paragraph, substitute:

(c) in the case of a surveillance device warrant issued on the basis that a Part 5.3 supervisory order was in force—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 order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with; and

## 281 Paragraph 46A(1)(d)

Omit "control order" (wherever occurring), substitute "Part 5.3 supervisory order".

## 282 Paragraphs 46A(1)(e) and (f)

Repeal the paragraphs, substitute:

(e) the use of the surveillance device occurred when the Part 5.3 supervisory order had been made, but had not come into force; 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 achieving a Part 5.3 object;

## 283 Paragraph 46A(1A)(b)

Omit "a control order access warrant issued on the basis of a control order", substitute "a computer access warrant issued on the basis of a Part 5.3 supervisory order".

## 284 Paragraph 46A(1A)(c)

Omit "control order" (wherever occurring), substitute "Part 5.3 supervisory order".

## 285 Paragraphs 46A(1A)(d) and (e)

Repeal the paragraphs, substitute:

(d) access to the data occurred when the Part 5.3 supervisory order had been made, but had not come into force; and

(e) the chief officer of the agency is satisfied that none of the information obtained from accessing the data is likely to assist in connection with achieving a Part 5.3 object;

## 286 Subparagraph 49(2)(b)(xb)

Omit "control order warrant", substitute "Part 5.3 warrant".

## 287 Paragraph 49(2A)(a)

Repeal the paragraph, substitute:

(aa) if the warrant was issued to determine whether to apply for a post-sentence order—the benefit of the use of the device in determining whether to make the application; and

(a) if the warrant was issued on the basis of a Part 5.3 supervisory order that is or was in force in relation to a person—the benefit of the use of the device in:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order has been, or is being, complied with; and

## 288 Paragraph 49(2B)(b)(ix)

Omit "control order access warrant", substitute "Part 5.3 warrant".

## 289 Paragraph 49(2C)(a)

Repeal the paragraph, substitute:



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(aa) if the warrant was issued to determine whether to apply for a post-sentence order—the benefit of obtaining access to data held in the computer in determining whether to make the application; and

(a) if the warrant was issued on the basis of a Part 5.3 supervisory order that is or was in force in relation to a person—the benefit of obtaining access to data held in the computer in:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order has been, or is being, complied with; and

## 290 Section 49A

Repeal the section, substitute:

### 49A Notification to Ombudsman in relation to Part 5.3 warrants

(1) Within 6 months after a Part 5.3 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 the Ombudsman a copy of the warrant.

(2) As soon as practicable after the law enforcement agency, or a law enforcement officer of the 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 the warrant;

(b) any of the following provisions, to the extent that they relate to the warrant:

(i) subsection 20(2);

(ii) subsection 27G(2);

(iii) section 45;

(iv) subsection 46(1);

(c) section 46A;

(d) subsection 50A(4).

(3) A failure to comply with subsection (1) or (2) does not affect the validity of the warrant.



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(4) This section applies in relation to a tracking device authorisation given on the basis of a Part 5.3 supervisory order that is or was in force in the same way as this section applies in relation to a surveillance device warrant or computer access warrant.

### 291 Subsections 50A(2) and (3)

Omit "control order", substitute "Part 5.3".

### 292 Paragraphs 50A(4)(c) and (d)

Omit "control order", substitute "Part 5.3".

### 293 Subsection 50A(5)

Omit "control order", substitute "Part 5.3".

### 294 Subsection 50A(6)

Repeal the subsection, substitute:

*Definitions*

(6) In this section:

***Part 5.3 information*** means information that, if made public, could reasonably be expected to enable a reasonable person to conclude that:

(a) a surveillance device warrant issued in response to an application under subsection 14(3BA) or (3C) authorising:
  (i) the use of a surveillance device on particular premises; or
  (ii) the use of a surveillance device in or on a particular object or class of object; or
  (iii) 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; or

(b) a computer access warrant issued in response to an application under subsection 27A(5A) or (6) authorising:
  (i) access to data held in a particular computer; or
  (ii) access to data held in a computer on particular premises; or



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(iii) access to data held in a computer associated with, used by or likely to be used by, a particular person;

is likely to be, or is not likely to be, in force.

### 295 Subparagraphs 53(2)(c)(iiic) and (iiid)

Repeal the subparagraphs, substitute:

(iiic) if the warrant is a surveillance device warrant or computer access warrant issued on the basis of a Part 5.3 supervisory order that was in force—the date the order was made; and

### 296 Subsection 55(2A)

Omit "control order warrants etc.", substitute "Part 5.3 warrants".

### 297 Subsection 61(4) (heading)

Omit "*Control order*", substitute "*Part 5.3*".

### 298 Subsection 61(4)

Omit "control order", substitute "Part 5.3".

### 299 Paragraphs 61(6)(c) and (d)

Omit "control order", substitute "Part 5.3".

### 300 Section 61A (heading)

Omit "**control order warrants etc.**", substitute "**Part 5.3 warrants**".

### 301 Subsection 61A(1)

Omit "control order warrants etc.", substitute "Part 5.3 warrants".

### 302 Subsection 64A(6) (heading)

Repeal the heading, substitute:

*Part 5.3 warrants*

### 303 Subsection 64A(6)

Omit "computer access warrant issued on the basis of a control order", substitute "Part 5.3 warrant that is a computer access warrant".



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## 304 Paragraph 64A(6)(a)

Repeal the paragraph, substitute:

(a) there are reasonable grounds for suspecting that access to the data held in the computer would be likely to substantially assist in:

(i) if the computer access warrant was issued to determine whether to apply for a post-sentence order—determining whether to apply for the post-sentence order; or

(ii) if the computer access warrant was issued on the basis of a Part 5.3 supervisory order that is in force—achieving a Part 5.3 object, or determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with; and

## 305 Subparagraph 64A(6)(b)(i)

Repeal the subparagraph, substitute:

(ia) if the warrant was issued to determine whether to apply for a post-sentence order—the person to whom the application relates; or

(i) if the warrant was issued in relation to a Part 5.3 supervisory order that is in force—the subject of the Part 5.3 supervisory order; or

## 306 Subsection 65A(1) (heading)

Repeal the heading, substitute:

*Surveillance device warrant issued for control order*

## 307 Paragraph 65A(1)(a)

Omit "control order warrant", substitute "surveillance device warrant".

## 308 Subsection 65A(2A) (heading)

Repeal the heading, substitute:



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*Computer access warrant issued for control order*

### 309 Paragraph 65A(2A)(a)

Omit "control order access warrant", substitute "computer access warrant".

### 310 Section 65B (heading)

Omit "**control order warrant, control order access warrant, tracking device authorisation etc.**", substitute "**warrant or authorisation etc.**".

### 311 Subparagraph 65B(1)(a)(i)

Omit "control order warrant", substitute "surveillance device warrant".

### 312 Subparagraph 65B(1)(a)(ia)

Omit "control order access", substitute "computer access".

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

### 313 Subsection 5(1)

Insert:

***AFP Minister*** has the meaning given by section 100.1 of the *Criminal Code*.

### 314 Subsection 5(1)

Repeal the following definitions:

(a) definition of ***control order warrant***;

(b) definition of ***control order warrant agency***.

### 315 Subsection 5(1)

Insert:

***detained in custody in a prison*** has the meaning given by section 100.1 of the *Criminal Code*.

***extended supervision order*** has the meaning given by section 105A.2 of the *Criminal Code*.



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***interim supervision order*** has the meaning given by section 105A.2 of the *Criminal Code*.

***Part 5.3 object*** means:

(a) in relation to a control order—any of the following:

(i) the protection of the public from a terrorist act;

(ii) the prevention of the provision of support for, or the facilitation of, a terrorist act;

(iii) the prevention of the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or

(b) in relation to an extended supervision order or interim supervision order—the protection of the community from the unacceptable risk of a terrorist offender committing a serious Part 5.3 offence.

***Part 5.3 supervisory order*** means:

(a) a control order; or

(b) an extended supervision order or interim supervision order.

***Part 5.3 warrant*** means a warrant issued:

(a) under subsection 46(4) or (7) or 46A(2A) or (2C); or

(b) under section 48 in the circumstances mentioned in subsection 46(4) or (7).

***Part 5.3 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 Part 5.3 warrants (see section 38A).

## 316 Subsection 5(1) (subparagraph (b)(v) of the definition of *permitted purpose*)

Omit "of the *Criminal Code*", substitute "(control orders) or Division 105A (post-sentence orders) of the *Criminal Code*".

## 317 Subsection 5(1) (subparagraph (b)(vii) of the definition of *permitted purpose*)

Repeal the subparagraph, substitute:

(vii) a post-sentence detention law or a post-sentence supervision law; or

(viii) the making of a decision whether to apply for a post-sentence order, or for a variation or review of a post-sentence order, under Division 105A of the *Criminal Code* in relation to a person; or

(ix) the making of a decision whether to apply for an order, or make any other application in relation to an order, under a post-sentence detention law or a post-sentence supervision law in relation to a person; or

## 318 Subsection 5(1) (subparagraph (c)(iva) of the definition of *permitted purpose*)

Repeal the subparagraph.

## 319 Subsection 5(1) (subparagraph (c)(vi) of the definition of *permitted purpose*)

Omit "of the *Criminal Code* (Control orders)", substitute "(control orders) or Division 105A (post-sentence orders) of the *Criminal Code*".

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

Add:

(viii) a post-sentence detention law or a post-sentence supervision law; or

(ix) the making of a decision whether to apply for a post-sentence order, or for a variation or review of a post-sentence order, under Division 105A of the *Criminal Code* in relation to a person; or

(x) the making of a decision whether to apply for an order, or make any other application in relation to an order, under a post-sentence detention law or a post-sentence supervision law in relation to a person; or

## 321 Subsection 5(1)

Insert:

***post-sentence detention law*** means any of the following laws:



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(a) Part 3 of the *Terrorism (High Risk Offenders) Act 2017* (NSW);
(b) Parts 5 and 6 of the *Serious Offenders Act 2018* (Vic.);
(c) Part 3 of the *Criminal Law (High Risk Offenders) Act 2015* (SA);
(d) any other law, or part of a law, of a State or Territory prescribed by the regulations.

***post-sentence order*** means:
(a) a continuing detention order or interim detention order made under Division 105A of the *Criminal Code*; or
(b) an extended supervision order or interim supervision order.

***post-sentence supervision law*** means any of the following laws:
(a) Part 2 of the *Terrorism (High Risk Offenders) Act 2017* (NSW);
(b) Parts 3 and 4 of the *Serious Offenders Act 2018* (Vic.);
(c) Part 2 of the *Criminal Law (High Risk Offenders) Act 2015* (SA);
(d) any other law, or part of a law, of a State or Territory prescribed by the regulations.

***serious Part 5.3 offence*** has the meaning given by section 105A.2 of the *Criminal Code*.

## 322 Subsection 5(1) (definition of *succeeding control order*)

Repeal the definition.

## 323 Subsection 5(1)

Insert:

***succeeding Part 5.3 supervisory order*** has the meaning given by section 6U.

***terrorist offender*** has the meaning given by section 105A.2 of the *Criminal Code*.

## 324 Paragraph 5B(1)(bb)

Repeal the paragraph, substitute:



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(bb) a proceeding under, or a proceeding relating to a matter arising under, Division 104 (control orders) or Division 105A (post-sentence orders) of the *Criminal Code*; or

## 325 Paragraph 5B(1)(bd)

Repeal the paragraph, substitute:

(bd) a proceeding under, or a proceeding relating to a matter arising under, a post-sentence detention law or a post-sentence supervision law; or

## 326 After subparagraph 5D(1)(e)(v)

Insert:

(va) section 105A.18A of the *Criminal Code*; or

## 327 Paragraphs 6H(a) and (b)

Repeal the paragraphs, substitute:

(a) in the case of a warrant under section 48—paragraphs 46(1)(c) and (d), 46(4)(c), (d) and (e), or 46(7)(c) to (h), as the case requires; or

(b) in the case of any other Part 2-5 warrant—paragraphs 46(1)(c) and (d), 46(4)(c), (d) and (e), 46(7)(c) to (h), 46A(1)(c) and (d), 46A(2A)(c), (d) and (e) or 46A(2C)(c) to (h), as the case requires; or

## 328 Sections 6T and 6U

Repeal the sections, substitute:

### 6T When a Part 5.3 supervisory order is taken to be in force

For the purposes of this Act, a Part 5.3 supervisory order is taken to be in force in relation to a person if:

(a) the order is a control order that has been made but has not yet come into force because:

(i) it has not been served on the person; or

(ii) the person is detained in custody in a prison (within the meaning of Part 5.3 of the *Criminal Code*); or

(b) the order is an extended supervision order or an interim supervision order that has been made but the period specified



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in the order under paragraph 105A.7A(4)(d) or 105A.9A(7)(c) of the *Criminal Code* has not yet begun.

### 6U Succeeding Part 5.3 supervisory orders

(1) If 2 or more successive control orders are made in relation to the same person, each later control order is a ***succeeding Part 5.3 supervisory order*** in relation to each earlier control order.

Note: If an interim control order is confirmed, the confirmed control order is a succeeding Part 5.3 supervisory order in relation to the interim control order (see the definition of ***control order*** in section 5).

(2) If an interim supervision order is made in relation to a person, any later extended supervision order in relation to the person is a ***succeeding Part 5.3 supervisory order*** in relation to an earlier interim supervision order.

(3) If 2 or more successive extended supervision orders or interim supervision orders are made in relation to the same person, each later extended supervision order or interim supervision order is a ***succeeding Part 5.3 supervisory order*** in relation to each earlier extended supervision order or interim supervision order.

## 329 Subsection 7(9) (paragraph (b) of the note)

Omit "control order", substitute "Part 5.3 supervisory order or an application for a post-sentence order".

## 330 Section 34 (note)

Omit "control order", substitute "Part 5.3".

## 331 Section 38A (heading)

Omit "**control order**", substitute "**Part 5.3**".

## 332 Subsections 38A(2) and (3)

Omit "control order", substitute "Part 5.3".

## 333 Subsection 38A(4) (heading)

Omit "*control order*", substitute "*Part 5.3*".



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### 334 Subsections 38A(5) and (6)

Omit "control order", substitute "Part 5.3".

### 335 Subsection 38A(7)

Omit "control order", substitute "Part 5.3".

### 336 Paragraph 44A(2)(a)

Omit "or 46(5)(a) to (f)", substitute ", 46(5)(a) to (f) or 46(8)(a) to (e)".

### 337 Paragraph 44A(2)(b)

Omit "or 46A(2B)(a) to (f)", substitute ", 46A(2B)(a) to (f) or 46A(2D)(a) to (e)".

### 338 Paragraph 45(2)(a)

Omit "or 46(5)(a) to (f)", substitute ", 46(5)(a) to (f) or 46(8)(a) to (e)".

### 339 Paragraph 45(2)(b)

Omit "or 46A(2B)(a) to (f)", substitute ", 46A(2B)(a) to (f) or 46A(2D)(a) to (e)".

### 340 Subsection 46(4) (heading)

Repeal the heading, substitute:

*Warrant sought for Part 5.3 supervisory order*

### 341 Subsection 46(4)

Omit "control order" (first occurring), substitute "Part 5.3".

### 342 Subparagraphs 46(4)(d)(i) and (ii)

Omit "control order", substitute "Part 5.3 supervisory order".

### 343 Paragraph 46(4)(e)

Repeal the paragraph, substitute:

(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:



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(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with; and

## 344 Subsection 46(4) (note 2)

Repeal the note, substitute:

Note 2: For Part 5.3 supervisory orders that have been made but not come into force, see section 6T.

## 345 Paragraphs 46(5)(b) to (e)

Repeal the paragraphs, substitute:

(b) how much the information referred to in paragraph (4)(e) would be likely to assist in connection with:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with; and

(c) to what extent methods for:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory 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) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with; and

(e) how much the use of such methods would be likely to prejudice:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with;



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whether because of delay or for any other reason; and

## 346 Paragraph 46(5)(g)

Omit "the possibility that the person in relation to whom the control order is in force", substitute "in relation to a Part 5.3 supervisory order that is a control order—the possibility that the person in relation to whom the control order is in force".

## 347 Subparagraph 46(5)(g)(v)

Omit "country; or", substitute "country; and".

## 348 Subparagraphs 46(5)(g)(vi) and (vii)

Repeal the subparagraphs.

## 349 After paragraph 46(5)(g)

Insert:

(ga) in relation to a Part 5.3 supervisory order that is an extended supervision order or interim supervision order—the possibility that the person in relation to whom the order is in force has committed, is committing, or will commit a serious Part 5.3 offence; and

(gb) in relation to any Part 5.3 supervisory order—the possibility that the person in relation to whom the order is in force:

(i) has contravened, is contravening or will contravene the Part 5.3 supervisory order; or

(ii) will contravene a succeeding Part 5.3 supervisory order; and

## 350 Paragraph 46(6)(a)

Omit "control order", substitute "Part 5.3 supervisory order".

## 351 At the end of section 46

Add:

*Warrant sought for post-sentence order application*

(7) If a Part 5.3 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



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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) the person is a terrorist offender in relation to whom an application for a post-sentence order could be made; and

(e) the person is detained in custody in a prison; and

(f) there are reasonable grounds to suspect that there is an appreciable risk of the person committing a serious Part 5.3 offence; and

(g) consideration is being given, will be given, or is likely to be given, by the AFP Minister (or a person on behalf of the AFP Minister), as to whether to apply for a post-sentence order in relation to the person; and

(h) information that would be likely to be obtained by intercepting under a warrant communications made to or from the service would be likely to assist in determining whether to apply for the post-sentence order; and

(i) having regard to the matters referred to in subsection (8), 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 the Judge's or member's discretion, issue such a warrant.

(8) For the purposes of subsection (7), 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 (7); and



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(b) how much the information referred to in paragraph (7)(h) would be likely to assist in determining whether to apply for the post-sentence order; and

(c) to what extent methods of determining whether to apply for the post-sentence order that do not involve so intercepting communications have been used by, or are available to, the AFP Minister (or a legal representative of the AFP Minister); and

(d) how much the use of such methods would be likely to assist in determining whether to apply for the post-sentence order; and

(e) how much the use of such methods would be likely to prejudice determining whether to apply for the post-sentence order, whether because of delay or for any other reason; and

(f) 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

(g) 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.

## 352 Subsection 46A(2A) (heading)

Repeal the heading, substitute:

*Warrant for Part 5.3 supervisory order*

## 353 Subsection 46A(2A)

Omit "control order" (first occurring), substitute "Part 5.3".

## 354 Paragraph 46A(2A)(d)

Omit "control order", substitute "Part 5.3 supervisory order".

## 355 Subparagraphs 46A(2A)(e)(iii) to (vi)

Repeal the subparagraphs, substitute:

(iii) achieving a Part 5.3 object; or

(iv) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with; and



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## 356 Subsection 46A(2A) (note 2)

Repeal the note, substitute:

Note 2: For Part 5.3 supervisory orders that have been made but not come into force, see section 6T.

## 357 Paragraphs 46A(2B)(b) to (e)

Repeal the paragraphs, substitute:

(b) how much the information referred to in paragraph (2A)(e) would be likely to assist in connection with:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory 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) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory 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) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with; and

(e) how much the use of such methods would be likely to prejudice:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with;

whether because of delay or for any other reason; and



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## 358 Paragraph 46A(2B)(g)

Omit "the possibility that the person in relation to whom the control order is in force", substitute "in relation to a Part 5.3 supervisory order that is a control order—the possibility that the person in relation to whom the order is in force".

## 359 Subparagraph 46A(2B)(g)(v)

Omit "country; or", substitute "country; and".

## 360 Subparagraphs 46A(2B)(g)(vi) and (vii)

Repeal the subparagraphs.

## 361 After paragraph 46A(2B)(g)

Insert:

(ga) in relation to a Part 5.3 supervisory order that is an extended supervision order or interim supervision order—the possibility that the person in relation to whom the order is in force has committed, is committing, or will commit a serious Part 5.3 offence; and

(gb) in relation to any Part 5.3 supervisory order—the possibility that the person in relation to whom the order is in force:

(i) has contravened, is contravening, or will contravene, the Part 5.3 supervisory order; or

(ii) will contravene a succeeding Part 5.3 supervisory order; and

## 362 After subsection 46A(2B)

Insert:

*Warrant sought for post-sentence order application*

(2C) If a Part 5.3 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



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(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) the person is a terrorist offender in relation to whom an application for a post-sentence order could be made; and

(e) the person is detained in custody in a prison; and

(f) there are reasonable grounds to suspect that there is an appreciable risk of the person committing a serious Part 5.3 offence; and

(g) consideration is being given, will be given, or is likely to be given, by the AFP Minister (or a person on behalf of the AFP Minister), as to whether to apply for a post-sentence order in relation to the person; and

(h) 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 assist in determining whether to apply for the post-sentence order; and

(i) having regard to the matters referred to in subsection (2D), 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 the Judge's or member's discretion, issue such a warrant.

(2D) For the purposes of subsection (2C), 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:



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(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; and

(b) how much the information referred to in paragraph (2C)(h) would be likely to assist in connection with determining whether to apply for the post-sentence order; and

(c) to what extent methods (including the use of a warrant issued under section 46) for determining whether to apply for a post-sentence order that do not involve so intercepting communications have been used by, or are available to, the AFP Minister (or a legal representative of the AFP Minister); and

(d) how much the use of such methods would be likely to assist in determining whether to apply for the post-sentence order; and

(e) how much the use of such methods would be likely to prejudice determining whether to apply for the post-sentence order, whether because of delay or for any other reasons; and

(f) 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

(g) 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.

## 363 Subsection 48(1) (note)

Repeal the note, substitute:

Note: Only a Part 5.3 warrant agency may apply for a warrant under section 46 in the circumstances mentioned in subsection 46(4) or (7).

## 364 Before subsection 49(3)

Insert:



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*Period of warrant*

## 365 After subsection 49(6)

Insert:

(6A) To avoid doubt, a warrant issued on the basis that a Part 5.3 supervisory order is in force remains in force for the period mentioned in subsection (3) even if the order ceases to be in force, provided that the order is replaced by a succeeding Part 5.3 supervisory order.

Note 1: If there is no succeeding Part 5.3 supervisory order, the warrant must be revoked (see section 57).

Note 2: A control order is not a succeeding Part 5.3 supervisory order in relation to an extended supervision order, and vice versa (see section 6U).

*Particulars of serious offences*

## 366 Before subsection 49(8)

Insert:

*Content of warrants issued for Part 5.3 supervisory orders*

## 367 Subsection 49(8)

Omit "control order warrant", substitute "warrant issued for a Part 5.3 supervisory order that is in force".

## 368 Paragraphs 49(8)(a) and (c)

Omit "control order", substitute "Part 5.3 supervisory order".

## 369 Paragraph 49(8)(d)

Repeal the paragraph, substitute:

(d) state whether the Part 5.3 supervisory order is:

(i) an interim control order; or

(ii) a confirmed control order; or

(iii) an interim supervision order; or

(iv) an extended supervision order.



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## 370 At the end of section 49

Add:

*Warrants issued for post-sentence order applications*

(9) A warrant issued to determine whether to make an application for a post-sentence order in relation to a person must:
(a) state that the warrant is issued on that basis; and
(b) specify the name of the person.

## 371 Subsection 57(6)

Omit "control order" (wherever occurring), substitute "Part 5.3 supervisory order".

## 372 Section 59B

Repeal the section, substitute:

### 59B Notification to Ombudsman by Commonwealth agencies in relation to Part 5.3 warrants

(1) Within 6 months after a Part 5.3 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 the warrant under subsection 49(2);
(b) the following provisions, to the extent that they apply to the warrant:
(i) paragraph 57(1)(b);
(ii) subsection 63(1);
(iii) subsection 63(2);
(iv) section 79;



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(c) section 79AA;
(d) subsection 103B(4).

(3) A failure to comply with subsection (1) or (2) does not affect the validity of the warrant.

## 373 Subparagraphs 65A(2)(b)(i) to (iv)

Repeal the subparagraphs, substitute:

(i) achieving a Part 5.3 object;
(ii) determining whether a Part 5.3 supervisory order has been, or is being, complied with;

## 374 Subparagraph 65A(2)(b)(v)

Omit "Division 104 of the *Criminal Code* (Control orders)", substitute "Division 104 (control orders) or Division 105A (post-sentence orders) of the *Criminal Code*".

## 375 At the end of paragraph 65A(2)(b)

Add:

; (vii) 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, a post-sentence detention law or a post-sentence supervision law.

## 376 Paragraph 67(1C)(b)

Repeal the paragraph, substitute:

(b) if the information was obtained under a Part 5.3 warrant issued on the basis that a Part 5.3 supervisory order was in force in relation to a person—any of the following:
(i) achieving a Part 5.3 object;
(ii) determining whether the Part 5.3 supervisory order has been, or is being, complied with; or

(c) if the information was obtained under any Part 5.3 warrant—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:
(i) Division 104 (control orders) or Division 105A (post-sentence orders) of the *Criminal Code*; or



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(ii) a post-sentence detention order or a post-sentence supervision order; or

(iii) a preventative detention order law.

### 377 Section 79AA (heading)

Omit "**control order**", substitute "**Part 5.3 supervisory order**".

### 378 Paragraphs 79AA(1)(b) and (c)

Omit "control order" (wherever occurring), substitute "Part 5.3 supervisory order".

### 379 Paragraphs 79AA(1)(d) and (e)

Repeal the paragraphs, substitute:

(d) the interception occurred when the Part 5.3 supervisory order had been made but had not come into force; 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 achieving a Part 5.3 object;

### 380 Paragraphs 81A(2)(h) and 81C(2)(h)

Repeal the paragraphs, substitute:

(h) in the case of a Part 5.3 warrant—the name of the person to whom the relevant Part 5.3 supervisory order or application relates.

### 381 Subsection 83(3)

Omit "control order", substitute "Part 5.3".

### 382 Section 85A (heading)

Omit "**control order**", substitute "**Part 5.3**".

### 383 Subsection 85A(1)

Omit "control order", substitute "Part 5.3".

### 384 Subsections 103B(2) and (3)

Omit "control order", substitute "Part 5.3".



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### 385 Paragraphs 103B(4)(a) and (b)

Omit "control order", substitute "Part 5.3".

### 386 Subsection 103B(5)

Omit "control order", substitute "Part 5.3".

### 387 Subsection 103B(6) (definition of *control order information*)

Repeal the definition.

### 388 Subsection 103B(6)

Insert:

***Part 5.3 information*** means information that, if made public, could reasonably be expected to enable a reasonable person to conclude that:

(a) a Part 5.3 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 Part 5.3 warrant is likely to be, or is not likely to be, in force in relation to a particular person.

### 389 Subsections 139(1) and 139A(1)

Omit ", 139B(2) or 139C(2)", substitute "or 139B(2)".

### 390 Sections 139B and 139C

Repeal the sections, substitute:

### 139B Dealing for purposes relating to Part 5.3 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.



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(2) The purposes are purposes connected with 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:

(a) Division 104 (control orders) or Division 105A (post-sentence orders) of the *Criminal Code*; or

(b) a post-sentence detention law or a post-sentence supervision law.

## 391 Section 142

Omit ", 139B or 139C", substitute "or 139B".

## 392 Paragraph 150(1)(b)

Omit ", 139B(2) or 139C(2)", substitute "or 139B(2)".



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# Part 3—Other consequential amendments

## *Crimes Act 1914*

### 393 Subsection 16F(1) (note)

After "continuing detention orders", insert "and extended supervision orders".

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

### 394 Subparagraphs 180D(2)(b)(ia) and (c)(ia)

Omit "continuing detention orders", substitute "post-sentence orders".

### 395 Subparagraphs 181B(3)(b)(iia) and (6)(b)(iaa)

Omit "continuing detention orders", substitute "post-sentence orders".

### 396 Subparagraphs 182(2)(a)(iiia) and (3)(a)(iia)

Omit "continuing detention orders", substitute "post-sentence orders".

### 397 Subparagraph 182B(b)(iva)

Omit "continuing detention orders", substitute "post-sentence orders".

# Schedule 2—Contingent amendments

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

### 1 Clause 1 of Schedule 1

Omit:

> (b) the monitoring of a person subject to a control order, so as to protect the public from terrorist acts, prevent support for terrorist acts and hostile acts overseas and detect breaches of the control order; or

substitute:

> (b) the monitoring of a person subject to a Part 5.3 supervisory order, so as to achieve a Part 5.3 object; or

### 2 Clause 2 of Schedule 1 (definition of *control order IPO agency*)

Repeal the definition.

### 3 Clause 2 of Schedule 1

Insert:

> ***Part 5.3 IPO agency*** means a Part 5.3 warrant agency to the extent that the agency applies for warrants issued in relation to Part 5.3 supervisory orders in force in relation to persons.

### 4 Clause 2 of Schedule 1 (paragraph (d) of the definition of *relevant agency*)

Repeal the paragraph, substitute:

(d) a Part 5.3 IPO agency.

### 5 Part 3 of Schedule 1 (heading)

Omit "**control orders**", substitute "**Part 5.3 supervisory orders**".

### 6 Clause 51 of Schedule 1

Omit:

| |
|---|
| • If a control order is in force in relation to a person, an international production order may be issued for purposes in connection with the monitoring of the person, so as to protect the public from terrorist acts, prevent support for terrorist acts and hostile acts overseas and detect breaches of the control order. |

substitute:

| |
|---|
| • If a Part 5.3 supervisory order is in force in relation to a person, an international production order may be issued for purposes in connection with the monitoring of the person, so as to achieve a Part 5.3 object. |

## 7 Clause 51 of Schedule 1

Omit:

| |
|---|
| • An international production order may be issued in response to an application made by a control order IPO agency. |

substitute:

| |
|---|
| • An international production order may be issued in response to an application made by a Part 5.3 IPO agency. |

## 8 Clause 51 of Schedule 1

Omit:

| |
|---|
| • If an international production order is issued in relation to an application made by a control order IPO agency, the agency must notify the international production order to the Ombudsman. |

substitute:



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- If an international production order is issued in relation to an application made by a Part 5.3 IPO agency, the agency must notify the international production order to the Ombudsman.

### 9 Division 2 of Part 3 of Schedule 1 (heading)

Omit "**control orders**", substitute "**Part 5.3 supervisory orders**".

### 10 Clause 52 of Schedule 1 (heading)

Omit "**control order**", substitute "**Part 5.3 supervisory order**".

### 11 Subclauses 52(1), (3) and (4) and 53(2) and (3) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 12 Clause 54 of Schedule 1

Omit "control order", substitute "Part 5.3".

### 13 Subclauses 55(1), (3) and (4) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 14 Paragraph 56(a) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 15 Clause 58 of Schedule 1 (heading)

Omit "**control order**", substitute "**Part 5.3**".

### 16 Subclause 58(1) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 17 Paragraph 58(3)(a) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 18 Clause 59 of Schedule 1 (heading)

Omit "**control order**", substitute "**Part 5.3**".



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### 19 Subclause 59(1) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 20 Paragraph 59(3)(a) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 21 Clause 60 of Schedule 1 (heading)

Omit "**control order**", substitute "**Part 5.3 supervisory order**".

### 22 Subclause 60(1) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 23 Subparagraphs 60(2)(g)(i) and (ii) and (h)(i) and (ii) of Schedule 1

Omit "control order", substitute "Part 5.3 supervisory order".

### 24 Subparagraphs 60(2)(i)(i) to (iv) of Schedule 1

Repeal the subparagraphs, substitute:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with; and

### 25 Subparagraphs 60(2)(j)(i) to (iv) of Schedule 1

Repeal the subparagraphs, substitute:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with;

### 26 Paragraphs 60(2)(k) and (l) of Schedule 1

Omit "control order" (wherever occurring), substitute "Part 5.3".

### 27 Subclause 60(2) of Schedule 1 (note 3)

Repeal the note, substitute:

Note 3: Sections 104.27 and 105A.18A of the *Criminal Code* create offences for contravening Part 5.3 supervisory orders.



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## 28 Subparagraphs 60(5)(b)(i) to (iv), (c)(i) to (iv), (d)(i) to (iv) and (e)(i) to (iv) of Schedule 1

Repeal the subparagraphs, substitute:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with;

## 29 Paragraph 60(5)(g) of Schedule 1

Repeal the paragraph, substitute:

(g) in relation to a Part 5.3 supervisory order that is a control order—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;

(ga) in relation to a Part 5.3 supervisory order that is an extended supervision order or an interim supervision order—the possibility that the person in relation to whom the order is in force has committed, is committing, or will commit, a serious Part 5.3 offence;

(gb) in relation to any Part 5.3 supervisory order—the possibility that the person in relation to whom the Part 5.3 supervisory order is in force:

(i) has contravened, is contravening, or will contravene, the Part 5.3 supervisory order; or

(ii) will contravene a succeeding Part 5.3 supervisory order;

## 30 Paragraphs 60(5)(h) and (i) of Schedule 1

Omit "control order", substitute "Part 5.3".



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## 31 Subparagraphs 60(6)(b)(i) to (iv), (c)(i) to (iv), (d)(i) to (iv) and (e)(i) to (iv) of Schedule 1

Repeal the subparagraphs, substitute:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with;

## 32 Paragraph 60(6)(g) of Schedule 1

Repeal the paragraph, substitute:

(g) in relation to a Part 5.3 supervisory order that is a control order—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;

(ga) in relation to a Part 5.3 supervisory order that is an extended supervision order or an interim supervision order—the possibility that the person in relation to whom the order is in force has committed, is committing, or will commit, a serious Part 5.3 offence;

(gb) in relation to any Part 5.3 supervisory order—the possibility that the person in relation to whom the Part 5.3 supervisory order is in force:

(i) has contravened, is contravening, or will contravene, the Part 5.3 supervisory order; or

(ii) will contravene a succeeding Part 5.3 supervisory order;

## 33 Paragraphs 60(6)(h) and (i) of Schedule 1

Omit "control order", substitute "Part 5.3".



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### 34 Paragraph 60(7)(a) of Schedule 1

Omit "control order IPO agency", substitute "Part 5.3 IPO agency".

### 35 Paragraph 60(7)(a) of Schedule 1

Omit "control order referred", substitute "Part 5.3 supervisory order referred".

### 36 Paragraph 60(8)(a) of Schedule 1

Omit "control order IPO agency", substitute "Part 5.3 IPO agency".

### 37 Paragraph 60(8)(a) of Schedule 1

Omit "control order referred", substitute "Part 5.3 supervisory order referred".

### 38 Subclause 61(1) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 39 Paragraph 61(3)(b) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 40 Paragraph 61(3)(f) of Schedule 1

Omit "control order", substitute "Part 5.3 supervisory order".

### 41 Paragraph 61(3)(h) of Schedule 1

Repeal the paragraph, substitute:

(h) a statement to the effect that the Part 5.3 supervisory order is:

(i) an interim control order; or

(ii) a confirmed control order; or

(iii) an interim supervision order; or

(iv) an extended supervision order.

### 42 Paragraphs 61(4)(b), (5)(a) and (b), (6)(b) and (7)(a) and (b) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 43 Subclause 61(8) of Schedule 1

Omit "control order", substitute "Part 5.3".



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### 44 Paragraphs 61(9)(a) and (b) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 45 Subclause 61(10) of Schedule 1 (example)

Omit "control order", substitute "Part 5.3".

### 46 Division 3 of Part 3 of Schedule 1 (heading)

Omit "**control orders**", substitute "**Part 5.3 supervisory orders**".

### 47 Clause 63 of Schedule 1 (heading)

Omit "**control order**", substitute "**Part 5.3 supervisory order**".

### 48 Subclauses 63(1), (3) and (4) and 64(2) and (3) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 49 Paragraphs 65(a) and 67(a) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 50 Clause 69 of Schedule 1 (heading)

Omit "**control order**", substitute "**Part 5.3 supervisory order**".

### 51 Subclause 69(1) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 52 Paragraph 69(2)(a) of Schedule 1

Omit "control order", substitute "Part 5.3 supervisory order".

### 53 Subparagraphs 69(2)(e)(i) to (iv) of Schedule 1

Repeal the subparagraphs, substitute:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order has been, or is being, complied with;

### 54 Paragraphs 69(2)(g) and (3)(a) of Schedule 1

Omit "control order", substitute "Part 5.3".



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## 55 Subparagraphs 69(3)(b)(i) to (iv) and (c)(i) to (iv) of Schedule 1

Repeal the subparagraphs, substitute:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order has been, or is being, complied with;

## 56 Paragraph 69(3)(c) of Schedule 1

Omit "control order IPO", substitute "Part 5.3 IPO".

## 57 Subparagraphs 69(3)(d)(i) to (iv) and (e)(i) to (iv) of Schedule 1

Repeal the subparagraphs, substitute:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order has been, or is being, complied with;

## 58 Subclause 70(1) of Schedule 1

Omit "control order", substitute "Part 5.3".

## 59 Paragraph 70(3)(b) of Schedule 1

Omit "control order", substitute "Part 5.3".

## 60 Paragraph 70(3)(e) of Schedule 1

Omit "control order", substitute "Part 5.3 supervisory order".

## 61 Paragraph 70(3)(g) of Schedule 1

Repeal the paragraph, substitute:

(g) a statement to the effect that the Part 5.3 supervisory order is:

(i) an interim control order; or

(ii) a confirmed control order; or

(iii) an interim supervision order; or

(iv) an extended supervision order.

## 62 Subclause 70(4) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 63 Paragraphs 70(5)(a) and (b) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 64 Subclause 70(6) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 65 Paragraphs 70(7)(a) and (b) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 66 Division 4 of Part 3 of Schedule 1 (heading)

Omit "**control orders**", substitute "**Part 5.3 supervisory orders**".

### 67 Clause 72 of Schedule 1 (heading)

Omit "**control order**", substitute "**Part 5.3 supervisory order**".

### 68 Subclauses 72(1) and (3) and 73(2) and (3) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 69 Paragraphs 74(a) and 76(a) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 70 Clause 78 of Schedule 1 (heading)

Omit "**control order**", substitute "**Part 5.3 supervisory order**".

### 71 Subclause 78(1) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 72 Paragraph 78(2)(a) of Schedule 1

Omit "control order", substitute "Part 5.3 supervisory order".

### 73 Subparagraphs 78(2)(e)(i) to (iv) of Schedule 1

Repeal the subparagraphs, substitute:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with;

## 74 Subparagraphs 78(5)(b)(i) to (iv) and (c)(i) to (iv) of Schedule 1

Repeal the subparagraphs, substitute:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with;

## 75 Paragraph 78(5)(c) of Schedule 1

Omit "control order IPO", substitute "Part 5.3 IPO".

## 76 Subparagraphs 78(5)(d)(i) to (iv) and (e)(i) to (iv) of Schedule 1

Repeal the subparagraphs, substitute:

(i) achieving a Part 5.3 object; or

(ii) determining whether the Part 5.3 supervisory order, or any succeeding Part 5.3 supervisory order, has been, or is being, complied with;

## 77 Subclause 79(1) of Schedule 1

Omit "control order", substitute "Part 5.3".

## 78 Paragraph 79(3)(b) of Schedule 1

Omit "control order", substitute "Part 5.3".

## 79 Paragraph 79(3)(e) of Schedule 1

Omit "control order", substitute "Part 5.3 supervisory order".

## 80 Paragraph 79(3)(g) of Schedule 1

Repeal the paragraph, substitute:

(g) a statement to the effect that the Part 5.3 supervisory order is:

(i) an interim control order; or

(ii) a confirmed control order; or

(iii) an interim supervision order; or

(iv) an extended supervision order.



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### 81 Subclause 79(4) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 82 Paragraphs 79(5)(a) and (b) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 83 Subclause 79(6) of Schedule 1 (example)

Omit "control order", substitute "Part 5.3".

### 84 Division 5 of Part 3 of Schedule 1 (heading)

Omit "**control order**", substitute "**Part 5.3**".

### 85 Clause 81 of Schedule 1 (heading)

Omit "**control order**", substitute "**Part 5.3**".

### 86 Subclauses 81(1) and (2) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 87 Subclause 114(3) of Schedule 1

Omit "control order" (wherever occurring), substitute "Part 5.3 supervisory order".

### 88 Paragraph 132(2)(b) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 89 Subclause 132(3) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 90 Paragraphs 132(4)(a) and (b) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 91 Subclause 132(5) of Schedule 1

Omit "control order", substitute "Part 5.3".

### 92 Paragraph 132(6)(b) of Schedule 1

Omit "control order", substitute "Part 5.3".

## 93 Subclause 132(7) of Schedule 1

Omit "control order", substitute "Part 5.3".

## 94 Paragraphs 132(8)(a) and (b) of Schedule 1

Omit "control order", substitute "Part 5.3".

## 95 Subclause 132(9) of Schedule 1

Omit "control order", substitute "Part 5.3".

## 96 Subclause 132(10) of Schedule 1 (definition of *control order information*)

Repeal the definition.

## 97 Subclause 132(10) of Schedule 1

Insert:

***Part 5.3 information*** means information that, if made public, could reasonably be expected to enable a reasonable person to conclude that:

(a) an international production order is likely to be, or is not likely to be, in force under Part 3 of this Schedule in relation to:

(i) an individual carriage service used, or likely to be used, by a particular person; or

(ii) an individual message/call application service used, or likely to be used, by a particular person; or

(iii) stored communications that consist of communications that a particular person has made has made using an individual carriage service; or

(iv) stored communications that consist of messages that a particular person has sent or received using an individual message/call application service; or

(v) stored communications that consist of recordings of voice calls that a particular person has made or received using an individual message/call application service; or

(vi) stored communications that consist of recordings of video calls that a particular person has made or received using an individual message/call application service; or



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(vii) stored communications that consist of material that a particular person has uploaded for storage or back-up by a storage/back-up service; or

(viii) stored communications that consist of material that a particular person has posted to a general electronic content service; or

(ix) telecommunications data that relates to communications that a particular person has made using an individual carriage service; or

(x) telecommunications data that relates to an individual carriage service used, or likely to be used, by a particular person; or

(xi) telecommunications data that relates to messages sent or received by a particular person using an individual message/call application service; or

(xii) telecommunications data that relates to voice calls made or received by a particular person using an individual message/call application service; or

(xiii) telecommunications data that relates to video calls made or received by a particular person using an individual message/call application service; or

(xiv) telecommunications data that relates to an individual message/call application service used, or likely to be used, by a particular person; or

(xv) telecommunications data that relates to material that has been uploaded by a particular person for storage or back-up by a storage/back-up service; or

(xvi) telecommunications data that relates to material that has been posted by a particular person on a general electronic content service; or

(b) an international production order is likely to be, or is not likely to be, in force under Part 3 of this Schedule in relation to a particular person.

## 98 Paragraph 139(2)(o) of Schedule 1

Omit "control order—the name of the person to whom the control order relates", substitute "Part 5.3 supervisory order—the name of the person to whom the Part 5.3 supervisory order relates".



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## 99 Paragraph 153(1)(i) of Schedule 1

Omit "of the *Criminal Code* (control orders)", substitute "(control orders) or Division 105A (post-sentence orders) of the *Criminal Code*".

## 100 Paragraph 153(1)(k) of Schedule 1

Repeal the paragraph, substitute:

(k) a post-sentence detention law or a post-sentence supervision law;

(ka) the making of a decision whether to apply for a post-sentence order, or for a variation or review of a post-sentence order, under Division 105A of the *Criminal Code* in relation to a person;

(kb) the making of a decision whether to apply for an order, or make any other application in relation to an order, under a post-sentence detention law or a post-sentence supervision law in relation to a person;

## 101 Paragraph 153(4)(a) of Schedule 1

Omit "control order", substitute "Part 5.3".

## 102 Subclauses 163(2), 164(2) and 165(2) of Schedule 1

Omit "control order", substitute "Part 5.3".

## 103 Paragraphs 166(2)(b) and (3)(b) of Schedule 1

Omit "control order", substitute "Part 5.3".

## 104 Clause 177 of Schedule 1 (heading)

Omit "**control order**", substitute "**Part 5.3**".

## 105 Subclauses 177(1), (3) and (5) of Schedule 1

Omit "control order", substitute "Part 5.3".



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[*Minister's second reading speech made in—*
*House of Representatives on 3 September 2020*
*Senate on 21 October 2021*]

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