



Crimes and Other Legislation Amendment (Omnibus) Act 2023

No. 63, 2023

**An Act to amend legislation relating to the criminal
law and law enforcement, and for related purposes**

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

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	3
Schedule 1—Anti-Money Laundering and Counter-Terrorism Financing Act 2006		4
Part 1—Failure to enrol		4
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>		4
Part 2—Dealing with AUSTRAC information		6
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>		6
Part 3—Computer-assisted decision making		7
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>		7
Schedule 2—Australian Crime Commission Act 2002		10
<i>Australian Crime Commission Act 2002</i>		10
Schedule 3—Crimes Act 1914		11
Part 1—Amendments relating to the definition of judicial officer		11
<i>Crimes Act 1914</i>		11
Part 2—Minor and technical amendments		12
<i>Crimes Act 1914</i>		12
Schedule 4—Criminology Research Act 1971		14
<i>Criminology Research Act 1971</i>		14
Schedule 5—Obtaining foreign materials		16
<i>Foreign Evidence Act 1994</i>		16
Schedule 6—Refusal of consent to international transfer of prisoners		17
<i>International Transfer of Prisoners Act 1997</i>		17
Schedule 7—Grounds to refuse mutual assistance requests		21
<i>Mutual Assistance in Criminal Matters Act 1987</i>		21

Schedule 8—Public interest monitors	22
<i>Telecommunications (Interception and Access) Act 1979</i>	22
Schedule 9—Witness protection	23
Part 1—Past program participants	23
<i>Witness Protection Act 1994</i>	23
Part 2—Suspension of protection and assistance	24
<i>Witness Protection Act 1994</i>	24
Part 3—Minor and technical amendments	29
<i>Witness Protection Act 1994</i>	29
Schedule 10—Amendments relating to the South Australian Independent Commission Against Corruption	30
<i>Crimes Act 1914</i>	30
<i>Criminal Code Act 1995</i>	30
<i>Privacy Act 1988</i>	31
<i>Surveillance Devices Act 2004</i>	31
<i>Telecommunications (Interception and Access) Act 1979</i>	32



Crimes and Other Legislation Amendment (Omnibus) Act 2023

No. 63, 2023

An Act to amend legislation relating to the criminal law and law enforcement, and for related purposes

[Assented to 13 September 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Crimes and Other Legislation Amendment
(Omnibus) Act 2023*.

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 after this Act receives the Royal Assent.	14 September 2023
2. Schedule 1, Part 1	The 28th day after this Act receives the Royal Assent.	11 October 2023
3. Schedule 1, Parts 2 and 3	The day after this Act receives the Royal Assent.	14 September 2023
4. Schedules 2 and 3	The day after this Act receives the Royal Assent.	14 September 2023
5. Schedule 4	The 28th day after this Act receives the Royal Assent.	11 October 2023
6. Schedules 5 to 8	The day after this Act receives the Royal Assent.	14 September 2023
7. Schedule 9	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
8. Schedule 10	The day after this Act receives the Royal Assent.	14 September 2023

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

Schedule 1—Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Part 1—Failure to enrol

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

1 Subsection 51B(1)

Repeal the subsection, substitute:

(1) If:

- (a) a person commences to provide a designated service; and
- (b) the person's name is not entered on the Reporting Entities Roll;

the person must, no later than 28 days after the day on which the person commences to provide the designated service, apply under subsection 51E(1) for enrolment as a reporting entity.

2 After subsection 51B(2)

Insert:

- (2A) Subsection (1) does not apply if, when the person commences to provide the designated service, the person is already required under that subsection to apply for enrolment because of the provision of another designated service.

Continuing obligation to enrol

(2B) If:

- (a) a person is required under subsection (1) of this section to apply for enrolment by a particular time; and
 - (b) the person does not apply for enrolment by that time;
- then the obligation to apply for enrolment continues until:
- (c) the person applies for enrolment; or
 - (d) the person ceases to be a reporting entity;

whichever occurs first.

Multiple contraventions

- (2C) A person who contravenes subsection (1) by failing to apply for enrolment as a reporting entity by a particular time (the ***enrolment deadline***) is taken to commit a separate contravention of that subsection on each day that occurs:
- (a) on or after the day on which the enrolment deadline occurs;
and
 - (b) on or before the day on which the person's obligation to apply for enrolment ends (see subsection (2B)).
- (2D) To avoid doubt, a person does not contravene subsection (1) more than once on any particular day, even if the person commences to provide a designated service more than once on a particular day or during a particular period.

3 Application of amendments

The amendments made by this Part apply in relation to commencing to provide a designated service on or after the commencement of this Part.

Part 2—Dealing with AUSTRAC information

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

4 Subsection 126(3)

Omit “Subsection (1)”, substitute “Subject to subsection (3A), subsection (1)”.

5 After subsection 126(3)

Insert:

- (3A) Subsection (3) does not apply if the AUSTRAC information:
- (a) was obtained under section 41 (reports of suspicious matters); or
 - (b) was obtained under section 49 (further information to be given to the AUSTRAC CEO etc.), in so far as that section relates to a communication under section 41; or
 - (c) was obtained under section 16 of the *Financial Transaction Reports Act 1988* (reports of suspect transactions).

6 Application of amendments

Subsection 126(3A) of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, as inserted by this Part, applies to disclosures of AUSTRAC information that occur on or after the commencement of this item, whether the AUSTRAC information was obtained before, on or after that commencement.

Part 3—Computer-assisted decision making

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

7 Section 5

Insert:

administrative action: see subsection 228A(9).

8 Section 208

After:

- The AUSTRAC CEO's functions include the compilation and analysis of AUSTRAC information.

insert:

- The AUSTRAC CEO may arrange for the use of computer programs for any purposes for which the AUSTRAC CEO may take certain administrative action under this Act, the AML/CTF Rules or other instruments made under this Act.

9 After Division 6 of Part 16

Insert:

Division 6A—AUSTRAC CEO may use computers to take administrative action

228A AUSTRAC CEO may use computers to take administrative action

- (1) The AUSTRAC CEO may, in writing, arrange for the use, under the AUSTRAC CEO's control, of computer programs for any purposes for which the AUSTRAC CEO may or must take administrative action under a provision prescribed by the AML/CTF Rules for the purposes of this subsection.

- (2) The AML/CTF Rules may prescribe a provision for the purposes of subsection (1) if the provision is any of the following:
 - (a) a provision of Part 3A of this Act (Reporting Entities Roll);
 - (b) a provision of Part 6 of this Act (the Remittance Sector Register);
 - (c) a provision of Part 6A of this Act (the Digital Currency Exchange Register);
 - (d) a provision of the AML/CTF Rules made for the purposes of a provision of this Act mentioned in paragraph (a), (b) or (c) of this subsection;
 - (e) a provision of an instrument made under a provision of this Act mentioned in paragraph (a), (b) or (c) of this subsection.
- (3) The AUSTRAC CEO must take reasonable steps to ensure that administrative action taken by the operation of a computer program under such an arrangement is consistent with the objects of this Act.
- (4) Administrative action taken by the operation of a computer program under such an arrangement is, for the purposes of this Act, the AML/CTF Rules and any other instrument made under this Act, taken to be administrative action taken by the AUSTRAC CEO.

Substituted decisions

- (5) The AUSTRAC CEO may substitute a decision for a decision the AUSTRAC CEO is taken to have made under subsection (4) if the AUSTRAC CEO is satisfied that the decision made by the operation of the computer program is not the correct or preferable decision.
- (6) The AUSTRAC CEO does not have a duty to consider whether to exercise the power under subsection (5) in respect of any decision, whether the AUSTRAC CEO is requested to do so by an applicant or by any other person, or in any other circumstances.
- (7) To avoid doubt, if:
 - (a) the AUSTRAC CEO is taken under subsection (4) to have made a decision under a provision of this Act, the AML/CTF

Rules or an instrument made under this Act (the ***original provision***); and

- (b) the AUSTRAC CEO substitutes a decision (the ***substitute decision***) under subsection (5) for that decision;

then, for the purposes of this Act, the AML/CTF Rules and any other instrument made under this Act, the AUSTRAC CEO is taken to have made the substitute decision under the original provision.

Arrangement not a legislative instrument

- (8) An arrangement made under subsection (1) is not a legislative instrument.

Meaning of administrative action

- (9) Each of the following constitutes taking ***administrative action***:
- (a) making a decision;
 - (b) exercising any power or complying with any obligation;
 - (c) doing anything else related to making a decision or exercising a power or complying with an obligation.

Schedule 2—Australian Crime Commission Act 2002

Australian Crime Commission Act 2002

1 At the end of subsection 19A(4)

Add:

Penalty: 10 penalty units or imprisonment for 6 months.

2 Subsection 19A(8) (penalty)

Repeal the penalty.

Schedule 3—Crimes Act 1914

Part 1—Amendments relating to the definition of judicial officer

Crimes Act 1914

1 Subsection 23B(1) (definition of *judicial officer*)

Repeal the definition.

2 Subsections 23B(3) and 23C(3)

Omit “judicial officer”, substitute “bail authority”.

3 Paragraph 23C(8)(a)

Omit “judicial officer”, substitute “bail authority”.

4 Subsection 23DB(4)

Omit “judicial officer”, substitute “bail authority”.

5 Paragraph 23DB(12)(a)

Omit “judicial officer”, substitute “bail authority”.

6 Application of amendments

The amendments made by this Part apply in relation to arrests made on or after the commencement of this Part in relation to conduct constituting the offence concerned engaged in before, on or after that commencement.

Part 2—Minor and technical amendments

Crimes Act 1914

7 Subparagraph 3ZZOB(2)(b)(i)

Omit “to (f)”, substitute “to (c)”.

8 Paragraph 3ZZTC(3)(i)

Omit “*Terrorism (Emergency Powers) Act*”, substitute “*Terrorism (Emergency Powers) Act 2003*”.

9 Paragraph 15AB(3A)(f)

Omit “*Northern Territory Aboriginal Sacred Sites Act* of the Northern Territory”, substitute “*Northern Territory Aboriginal Sacred Sites Act 1989* (NT)”.

10 Paragraph 15AB(3A)(g)

Repeal the paragraph.

11 Paragraph 15AB(3A)(h)

Omit “*Aboriginal Land Act* of the Northern Territory”, substitute “*Aboriginal Land Act 1978* (NT)”.

12 Paragraph 15AB(3A)(i)

Omit “*Heritage Act* of the Northern Territory”, substitute “*Heritage Act 2011* (NT)”.

13 Paragraph 16AA(2)(a)

Omit “*Northern Territory Aboriginal Sacred Sites Act* of the Northern Territory”, substitute “*Northern Territory Aboriginal Sacred Sites Act 1989* (NT)”.

14 Paragraph 16AA(2)(b)

Repeal the paragraph.

15 Paragraph 16AA(2)(c)

Omit “*Aboriginal Land Act of the Northern Territory*”, substitute “*Aboriginal Land Act 1978 (NT)*”.

16 Paragraph 16AA(2)(d)

Omit “*Heritage Act of the Northern Territory*”, substitute “*Heritage Act 2011 (NT)*”.

17 Subsection 85ZZG(1)

Omit “98”, substitute “80W”.

Schedule 4—Criminology Research Act 1971

Criminology Research Act 1971

1 Subsections 33(3) and (4)

Repeal the subsections, substitute:

- (3) The Advisory Council consists of the following members:
 - (a) a representative of the Commonwealth;
 - (b) a representative of each State, the Australian Capital Territory and the Northern Territory.
- (4) The representative of the Commonwealth is:
 - (a) if the Minister designates in writing a position in the Department for the purposes of this paragraph—the person for the time being occupying that position; or
 - (b) otherwise—the person appointed by the Minister in writing.
- (5) A designation made under paragraph (4)(a) is not a legislative instrument.
- (6) The representative of a State, the Australian Capital Territory or the Northern Territory is the person appointed by the Attorney-General of the State or Territory in writing.
- (7) A person appointed under paragraph (4)(b) may resign from the Advisory Council by written notice given to the Minister.
- (8) A person appointed under subsection (6) may resign from the Advisory Council by written notice given to the Attorney General of the relevant State or Territory.

Note: An appointment may be revoked: see subsection 33(3) of the *Acts Interpretation Act 1901*.

2 Transitional—appointments

- (1) An appointment:
 - (a) made under paragraph 33(3)(a) of the *Criminology Research Act 1971*; and
 - (b) in force immediately before the commencement of this item;

has effect, from that commencement, as if it had been made for the purposes of paragraph 33(4)(b) of that Act, as amended by this Schedule.

- (2) An appointment:
- (a) made under paragraph 33(3)(b) of the *Criminology Research Act 1971*; and
 - (b) in force immediately before the commencement of this item; has effect, from that commencement, as if it had been made for the purposes of subsection 33(6) of that Act, as amended by this Schedule.

Schedule 5—Obtaining foreign materials

Foreign Evidence Act 1994

1 Subsection 3(1) (paragraphs (a) and (b) of the definition of foreign material)

Omit “any exhibit annexed to such testimony”, substitute “any documents or things produced by or with such testimony”.

2 Subsection 20(1A)

Omit “an exhibit”, substitute “any documents or things”.

3 Section 21

Omit “any exhibit annexed to such testimony” (wherever occurring), substitute “any documents or things produced by or with such testimony”.

4 Subsection 22(2)

Repeal the subsection, substitute:

- (2) The testimony must purport to be signed or certified by:
- (a) a judge, magistrate or officer in or of the foreign country concerned; or
 - (b) a person who is authorised, by or under a law of the foreign country concerned, to:
 - (i) administer an oath or affirmation; or
 - (ii) impose an obligation on the person giving the testimony to tell the truth.

5 Section 29

Omit “any exhibit annexed to such testimony” (wherever occurring), substitute “any documents or things produced by or with such testimony”.

Schedule 6—Refusal of consent to international transfer of prisoners

International Transfer of Prisoners Act 1997

1 Section 17

Repeal the section.

2 After section 18

Insert:

19 Decision by the Attorney-General to refuse consent to transfer from Australia

- (1) If the transfer country consents to the transfer of the prisoner on terms that it proposes, the Attorney-General may decide to refuse consent to the transfer on those terms.
- (2) Before deciding under subsection (1) to refuse consent, the Attorney-General must notify the prisoner (or the prisoner's representative) of the proposed terms on which the transfer country has consented to the transfer, including the proposed method by which the sentence of imprisonment will be enforced by the transfer country.
- (3) If the Attorney-General decides under subsection (1) to refuse consent to the transfer on terms proposed by the transfer country, the Attorney-General:
 - (a) must notify the transfer country of the decision; and
 - (b) may advise the transfer country in writing that consent may be given if the transfer country proposes a variation of those terms, including any variation suggested by the Attorney-General.

Note: This section applies separately for each occasion where the transfer country proposes varied terms. This means the Attorney-General can consider whether to refuse consent under subsection (1) in relation to each variation of terms proposed by the transfer country.

- (4) If the Attorney-General decides under subsection (1) to refuse consent to the transfer on terms proposed by the transfer country, sections 20 to 23 do not apply for the transfer on those particular terms.

Note: Sections 20 to 23 continue to apply for the transfer on any proposed variation of those terms, unless the Attorney-General has refused consent to the varied terms under subsection (1) of this section.

3 Subsection 20(1)

Repeal the subsection, substitute:

- (1) If the transfer country consents to the transfer of the prisoner on terms that it proposes, the Attorney-General must:
- (a) give any State Ministers and Territory Ministers whose consent is required for the transfer to have appropriate Ministerial consent:
 - (i) a copy of the application given under section 16; and
 - (ii) any other information the Attorney-General considers relevant; and
 - (b) notify the following of the proposed terms on which the transfer country has given consent to the transfer, including the proposed method by which the sentence of imprisonment will be enforced by the transfer country:
 - (i) each Minister concerned;
 - (ii) unless earlier notified under subsection 19(2) of those proposed terms—the prisoner (or the prisoner’s representative).
- (1A) Each Minister concerned may:
- (a) advise the Attorney-General of any matters that Minister considers relevant to the processing of the application; and
 - (b) request the Attorney-General to obtain information from the transfer country that is relevant to that Minister’s assessment of the application.

4 Subsection 20(2)

After “and”, insert “each”.

5 Subsection 20(5)

Omit “state in the notice”, substitute “advise the transfer country in writing”.

6 Subsection 20(5)

Omit “agrees to a specified variation of those terms”, insert “proposes a variation of those terms, including any variation suggested by the Attorney-General”.

7 Section 21

Omit “(or, if the transfer country has agreed to variation of the terms, the terms as varied)”, substitute “(including proposed terms that are an agreed variation of earlier terms)”.

8 After section 24

Insert:

24A Decision by the Attorney-General to refuse consent to transfer to Australia

- (1) The Attorney-General may decide to refuse consent to the transfer of a prisoner to Australia under this Part:
 - (a) after the Attorney-General receives a request under section 24 for the transfer; but
 - (b) before the Attorney-General has started to act under any of sections 26 to 32 in relation to the transfer.
- (2) Sections 26 to 32 do not apply for the transfer of the prisoner if the Attorney-General decides under subsection (1) of this section to refuse consent to the transfer.

9 Paragraph 28(1)(a)

Omit “in the notice”, substitute “in writing by the Attorney-General”.

10 After section 33

Insert:

33A Decision by the Attorney-General to refuse consent to transfer of Tribunal prisoner to Australia

- (1) The Attorney-General may decide to refuse consent to the transfer of a Tribunal prisoner to Australia under this Part:
 - (a) after the Attorney-General receives a request under section 33 for the transfer; but
 - (b) before the Attorney-General has started to act under any of sections 35 to 41 in relation to the transfer.
- (2) Sections 35 to 41 do not apply for the transfer of the Tribunal prisoner if the Attorney-General decides under subsection (1) of this section to refuse consent to the transfer.

11 Application of amendments

The amendments made by this Schedule apply in relation to:

- (a) applications under section 16 of the *International Transfer of Prisoners Act 1997*; and
 - (b) requests under section 24 of that Act; and
 - (c) requests under section 33 of that Act;
- made on or after the commencement of this Schedule.

Schedule 7—Grounds to refuse mutual assistance requests

Mutual Assistance in Criminal Matters Act 1987

1 Paragraph 8(1)(ca)

Omit “the person”, substitute “a person”.

2 Application of amendment

The amendment made by this Schedule applies in relation to a request by a foreign country that is under consideration on or after the commencement of this item, whether the request was made before or after that commencement.

Schedule 8—Public interest monitors

Telecommunications (Interception and Access) Act 1979

1 Paragraph 44A(2)(a)

Omit “46(5)(a) to (f)”, substitute “46(5)(a) to (gb)”.

2 Paragraph 44A(2)(b)

Omit “46A(2B)(a) to (f)”, substitute “46A(2B)(a) to (gb)”.

3 Paragraph 45(2)(a)

Omit “46(5)(a) to (f)”, substitute “46(5)(a) to (gb)”.

4 Paragraph 45(2)(b)

Omit “46A(2B)(a) to (f)”, substitute “46A(2B)(a) to (gb)”.

5 Paragraph 58(2)(a) of Schedule 1

Omit “60(5)(a) to (g)”, substitute “60(5)(a) to (gb) and paragraph 60(5)(j)”.

6 Paragraph 58(2)(b) of Schedule 1

Omit “60(6)(a) to (g)”, substitute “60(6)(a) to (gb) and paragraph 60(6)(j)”.

7 Paragraph 59(2)(a) of Schedule 1

Omit “60(5)(a) to (g)”, substitute “60(5)(a) to (gb) and paragraph 60(5)(j)”.

8 Paragraph 59(2)(b) of Schedule 1

Omit “60(6)(a) to (g)”, substitute “60(6)(a) to (gb) and paragraph 60(6)(j)”.

Schedule 9—Witness protection

Part 1—Past program participants

Witness Protection Act 1994

1 At the end of section 29

Add:

- (3) To avoid doubt, an identity provided to a person under the program mentioned in subsection (2) is taken, for the purposes of this Act, to have been provided under the NWPP.

2 After section 29

Insert:

29A Past program participants

- (1) This section applies to a person (a *past program participant*) who:
 - (a) was, at some time before the commencement of this Act, included in a program (the *past program*) operated by the Australian Federal Police for the purpose of witness protection before the commencement of this Act; but
 - (b) was not included in the past program immediately before the commencement of this Act.

Note 1: This Act commenced on 18 April 1995.

Note 2: The transitional provision in subsection 29(2) applies to people who were included in the past program immediately before the commencement of this Act.

- (2) For the purposes of this Act:
 - (a) a past program participant is taken to be a former participant; and
 - (b) an identity provided to a past program participant under the past program is taken to have been provided under the NWPP.
- (3) To avoid doubt, paragraph (2)(a) does not prevent a past program participant from becoming included in the NWPP under this Act.

Part 2—Suspension of protection and assistance

Witness Protection Act 1994

3A Section 3

Insert:

Assistant Commissioner means an Assistant Commissioner of the Australian Federal Police.

3 At the end of subsection 9(2)

Add:

- ; and (h) details of how a suspension of protection and assistance under section 17A or 17B affects any of the other matters in the memorandum of understanding.

4 After section 17

Insert:

17A Suspension of protection and assistance on request by participant

- (1) Protection and assistance provided under the NWPP to a participant may be suspended by the Commissioner if the participant requests in writing that it be suspended.
- (2) A suspension under subsection (1) takes effect:
 - (a) if the request specifies a time, and the Commissioner makes a decision on the request before that time—at the time specified in the request; or
 - (b) otherwise—at a time determined by the Commissioner.
- (3) A suspension under subsection (1) ceases to have effect:
 - (a) when the participant requests in writing that the suspension cease; or
 - (b) if the request under subsection (1) specifies a time for the suspension to cease—at that time.

Notice of decision

- (4) If a participant makes a request under subsection (1), the Commissioner must, as soon as practicable after the request is made:
 - (a) give written notice to the participant of the Commissioner's decision to suspend, or not to suspend, protection and assistance; and
 - (b) notify the relevant approved authority of that decision.

Effect of suspension

- (5) Subject to subsection (6), protection or assistance must not be provided under the NWPP to a participant while a suspension under this section is in effect for the participant.
- (6) However, subsection (5) does not prevent protection or assistance being provided under the NWPP to a participant while a suspension under this section is in effect for the participant if the Commissioner is satisfied that, in the circumstances, it is necessary and reasonable for the protection or assistance to be provided despite the suspension.
- (7) To avoid doubt, a suspension under this section does not result in a person ceasing to be a participant while the suspension is in effect.

Former participants etc.

- (8) This section does not apply to:
 - (a) former participants; or
 - (b) other persons who are receiving protection or assistance under subsection 13(5) because of a relationship with a former participant.

17B Suspension of protection and assistance by Commissioner

- (1) Protection and assistance provided under the NWPP to a participant may be suspended by the Commissioner if, in the opinion of the Commissioner:
 - (a) the participant has done or intends to do something that limits, or would limit, the Commissioner's ability to provide adequate protection and assistance under the NWPP; and
-

- (b) in the circumstances of the case, protection and assistance under the NWPP should be suspended.
- (2) A suspension under subsection (1) takes effect:
 - (a) at the time determined by the Commissioner; or
 - (b) if no such time is determined—at the time the Commissioner decides to suspend the protection and assistance.
- (3) A suspension under subsection (1):
 - (a) has effect until the time determined by the Commissioner, which must be reasonable in all the circumstances; and
 - (b) may be extended by the making of a new decision under subsection (1); and
 - (c) may be revoked by the Commissioner if the Commissioner is satisfied that paragraph (1)(a) or (b) no longer applies.

Notice of decision

- (4) If the Commissioner makes a decision under subsection (1) to suspend the protection and assistance provided to a participant under the NWPP, the Commissioner must:
 - (a) take reasonable steps to notify the participant of the decision; and
 - (b) notify the relevant approved authority of the decision.

Effect of suspension

- (5) Subject to subsection (6), protection or assistance must not be provided under the NWPP to a participant while a suspension under this section is in effect for the participant.
- (6) However, subsection (5) does not prevent protection or assistance being provided under the NWPP to a participant while a suspension under this section is in effect for the participant if the Commissioner is satisfied that, in the circumstances, it is necessary and reasonable for the protection or assistance to be provided despite the suspension.
- (7) To avoid doubt, a suspension under this section does not result in a person ceasing to be a participant while the suspension is in effect.

Former participants etc.

- (8) This section does not apply to:
- (a) former participants; or
 - (b) other persons who are receiving protection or assistance under subsection 13(5) because of a relationship with a former participant.

Suspension decision may only be made by delegate or sub-delegate

- (9) A decision under subsection 17B(1) to suspend the protection and assistance provided to a participant under the NWPP (other than such a decision made as a result of a review under section 17C) may only be made by a person to whom the power to make the decision has been delegated, or sub-delegated, under section 25.

17C Review of decision to suspend protection and assistance

- (1) This section applies to a decision under subsection 17B(1) to suspend the protection and assistance provided to a participant under the NWPP (a *suspension decision*), other than such a decision made as a result of a review under this section.
- (2) A participant who receives notification of a suspension decision may, within 7 days after receiving the notification, apply in writing to the Commissioner for a review of the decision.
- (3) If an application is made, the Commissioner:
- (a) must review the decision, and confirm, reverse or vary it; and
 - (b) before making that decision, must give the participant a reasonable opportunity to state the participant's case; and
 - (c) after making that decision, must inform the participant in writing of the decision.

5 Subsection 25(4)

Repeal the subsection, substitute:

- (4) The Commissioner's powers under sections 17A and 17B may only be delegated to an Assistant Commissioner.
- (5) If the Commissioner delegates a power under section 17A or 17B to an Assistant Commissioner, the Assistant Commissioner may,

Schedule 9 Witness protection

Part 2 Suspension of protection and assistance

by writing, sub-delegate the power to a Commander or Superintendent in the Australian Federal Police.

- (6) A Commander or Superintendent may exercise a power delegated under subsection (5) only if the Commander or Superintendent is satisfied that the circumstances are serious and urgent.
- (7) The Commissioner's powers under section 17C:
 - (a) may only be delegated to a member of the Australian Federal Police who holds or occupies a designated position; and
 - (b) may, in relation to a particular decision under subsection 17B(1), be exercised by a delegate only if that delegate holds a rank higher than the rank held by the delegate, or sub-delegate, who made the decision under subsection 17B(1).
- (8) Subject to subsection 17B(9) of this Act, sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply in relation to a sub-delegation in a corresponding way to the way in which they apply in relation to a delegation.

Part 3—Minor and technical amendments

Witness Protection Act 1994

6 Section 3 (paragraph (a) of the definition of *designated position*)

Repeal the paragraph, substitute:

- (a) the duties of which relate to the NWPP and require the occupant to have an eligible national security clearance; and

7 Section 3

Insert:

eligible national security clearance means a clearance prescribed by the regulations for the purposes of this definition.

8 Section 3

Repeal the following definitions:

- (a) the definition of *position of trust clearance*;
- (b) the definition of *sensitive information*.

9 Subsection 12(2)

Omit “a national security clearance at the level of ‘secret’ or ‘top secret’ or a position of trust clearance at the level of ‘highly protected’”, substitute “an eligible national security clearance”.

10 Subsection 13(4)

Omit “a national security clearance at the level of ‘secret’ or ‘top secret’ or a position of trust clearance at the level of ‘highly protected’”, substitute “an eligible national security clearance”.

Schedule 10—Amendments relating to the South Australian Independent Commission Against Corruption

Crimes Act 1914

1 Subsection 3ZQU(7) (paragraph (h) of the definition of *State or Territory law enforcement agency*)

Omit “Commissioner”, substitute “Commission”.

2 Section 3ZZAC (paragraph (h) of the definition of *State or Territory law enforcement agency*)

Repeal the paragraph, substitute:

- (h) the Independent Commission Against Corruption established by the *Independent Commission Against Corruption Act 2012* (SA); or

3 Section 20BZ (subparagraph (c)(viii) of the definition of *relevant person*)

Omit “*Commissioner*”, substitute “*Commission*”.

4 Section 85ZL (paragraph (fa) of the definition of *law enforcement agency*)

Repeal the paragraph.

Criminal Code Act 1995

5 Section 473.1 of the *Criminal Code* (paragraph (l) of the definition of *law enforcement officer*)

Repeal the paragraph, substitute:

- (l) any of the following:
- (i) the Commissioner of the Independent Commission Against Corruption of South Australia;
 - (ii) the Deputy Commissioner of the Commission;

- (iii) a person engaged as an employee of the Commission under subsection 12(1) of the *Independent Commission Against Corruption Act 2012* (SA);
- (iv) an examiner or investigator (within the meaning of that Act) of the Commission.

Privacy Act 1988

6 Subsection 6(1) (paragraph (b) of the definition of enforcement body)

Omit “Commissioner”, substitute “Commission”.

Surveillance Devices Act 2004

7 Subsection 6(1)

Insert:

member of the staff, in relation to the Independent Commission Against Corruption of South Australia, means a person who is engaged under subsection 12(1) of the *Independent Commission Against Corruption Act 2012* (SA).

8 Subsection 6A(7) (table item 35)

Repeal the item, substitute:

35	Independent Commission Against Corruption of South Australia	the Commissioner of the Commission	(a) the Commissioner; or	(a) the Commissioner; or
			(b) the Deputy Commissioner; or	(b) the Deputy Commissioner; or
			(c) a member of the staff of the Commission; or	(c) an executive level member of the staff of the Commission the chief officer authorises under subsection (5)
			(d) an examiner or investigator (within the meaning of the <i>Independent</i>	

*Commission
Against
Corruption Act
2012 (SA)* of
the Commission

Telecommunications (Interception and Access) Act 1979

**9 Subsection 5(1) (paragraph (ia) of the definition of
certifying officer)**

Repeal the paragraph, substitute:

- (ia) in the case of the Independent Commission Against
Corruption (SA):
 - (i) the Commissioner of the Independent Commission
Against Corruption (SA); or
 - (ii) the Deputy Commissioner of the Independent
Commission Against Corruption (SA); or
 - (iii) a person authorised to be a certifying officer for the
Independent Commission Against Corruption (SA)
under subsection 5AC(9A); or

**10 Subsection 5(1) (paragraph (la) of the definition of *chief
officer*)**

Repeal the paragraph, substitute:

- (la) in the case of the Independent Commission Against
Corruption (SA)—the Commissioner of the Independent
Commission Against Corruption (SA); or

**11 Subsection 5(1) (paragraph (e) of the definition of *eligible
authority*)**

Omit “Independent Commissioner Against Corruption”, substitute
“Independent Commission Against Corruption (SA)”.

12 Subsection 5(1)

Insert:

Independent Commission Against Corruption (SA) means the
Independent Commission Against Corruption of South Australia.

Independent Commission Against Corruption Act (SA) means the *Independent Commission Against Corruption Act 2012 (SA)*.

13 Subsection 5(1)

Repeal the following definitions:

- (a) definition of ***Independent Commissioner Against Corruption***;
- (b) definition of ***Independent Commissioner Against Corruption Act***.

14 Subsection 5(1)

Insert:

member of the staff of the Independent Commission Against Corruption (SA) means a person who is engaged as an employee of the Commission under subsection 12(1) of the Independent Commission Against Corruption Act (SA).

15 Subsection 5(1) (definition of *member of the staff of the Independent Commissioner Against Corruption*)

Repeal the definition.

16 Subsection 5(1) (paragraph (m) of the definition of *officer*)

Repeal the paragraph, substitute:

- (m) in the case of the Independent Commission Against Corruption (SA):
 - (i) the Commissioner of the Independent Commission Against Corruption (SA); or
 - (ii) the Deputy Commissioner of the Independent Commission Against Corruption (SA); or
 - (iii) a member of the staff of the Independent Commission Against Corruption (SA); or

17 Subsection 5(1) (paragraph (i) of the definition of *permitted purpose*)

Repeal the paragraph, substitute:

- (i) in the case of the Independent Commission Against Corruption (SA):

- (i) an investigation under the Independent Commission Against Corruption Act (SA) into corruption in public administration (within the meaning of that Act); or
- (ii) a report on such an investigation; or

18 Subsection 5(1) (paragraph (k) of the definition of *prescribed investigation*)

Repeal the paragraph, substitute:

- (k) in the case of the Independent Commission Against Corruption (SA)—means an investigation that the Independent Commission Against Corruption (SA) is conducting in the performance of its functions under the Independent Commission Against Corruption Act (SA).

19 Subsection 5(1) (paragraph (m) of the definition of *relevant offence*)

Omit “Independent Commissioner Against Corruption”, substitute “Independent Commission Against Corruption (SA)”.

20 Subsection 5AC(9A)

Omit “Independent Commissioner Against Corruption” (first occurring), substitute “Commissioner of the Independent Commission Against Corruption (SA)”.

21 Subsection 5AC(9A)

Omit “Independent Commissioner Against Corruption” (second and third occurring), substitute “Independent Commission Against Corruption (SA)”.

22 Paragraph 5B(1)(kc)

Omit “Independent Commissioner Against Corruption”, substitute “Independent Commission Against Corruption (SA)”.

23 Subparagraph 6A(1)(c)(xii)

Omit “Independent Commissioner Against Corruption”, substitute “Independent Commission Against Corruption (SA)”.

24 Paragraph 6L(2)(e)

Omit “Independent Commissioner Against Corruption”, substitute
“Independent Commission Against Corruption (SA)”.

25 Paragraph 39(2)(j)

Repeal the paragraph, substitute:

- (j) in the case of the Independent Commission Against
Corruption (SA):
 - (i) the Commissioner of the Independent Commission
Against Corruption (SA); or
 - (ii) the Deputy Commissioner of the Independent
Commission Against Corruption (SA); or
 - (iii) a member of the staff of the Independent Commission
Against Corruption (SA).

26 Paragraph 68(ja)

Omit “Independent Commissioner Against Corruption—to the
Independent Commissioner Against Corruption”, substitute
“Independent Commission Against Corruption (SA)—to the
Commissioner of the Independent Commission Against Corruption
(SA)”.

27 Paragraph 110A(1)(l)

Omit “Independent Commissioner Against Corruption”, substitute
“Independent Commission Against Corruption (SA)”.

28 Paragraph 22(3)(k) of Schedule 1

Repeal the paragraph, substitute:

- (k) in the case of the Independent Commission Against
Corruption (SA):
 - (i) the Commissioner of the Independent Commission
Against Corruption (SA); or
 - (ii) the Deputy Commissioner of the Independent
Commission Against Corruption (SA); or
 - (iii) a member of the staff of the Independent Commission
Against Corruption (SA).

29 Paragraphs 157(1)(z) and (zp) of Schedule 1

Omit “Independent Commissioner Against Corruption”, substitute “Independent Commission Against Corruption (SA)”.

30 Paragraph 157(2)(p) of Schedule 1

Repeal the paragraph, substitute:

- (p) each of the following is an *eligible purpose* of the Independent Commission Against Corruption (SA):
 - (i) an investigation under the Independent Commission Against Corruption Act (SA) into corruption in public administration (within the meaning of that Act);
 - (ii) a report on such an investigation.

*[Minister’s second reading speech made in—
House of Representatives on 29 March 2023
Senate on 13 June 2023]*

(36/23)
