



Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014

No. 116, 2014

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

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

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Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014

No. 116, 2014

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

[Assented to 3 November 2014]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Counter-Terrorism Legislation
Amendment (Foreign Fighters) Act 2014*.

No. 116, 2014 Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 1
2014

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.	3 November 2014
2. Schedules 1 and 2	The 28th day after this Act receives the Royal Assent.	1 December 2014
3. Schedules 3 to 5	The day after this Act receives the Royal Assent.	4 November 2014
4. Schedule 6	1 July 2015.	1 July 2015
5. Schedule 7, items 1 to 3	The day after this Act receives the Royal Assent.	4 November 2014
6. Schedule 7, item 4	Immediately after the commencement of the provisions covered by table item 1. However, if item 2 of Schedule 1 to the <i>Migration Amendment (Protection and Other Measures) Act 2014</i> commences before that time, the provisions do not commence at all.	3 November 2014
7. Schedule 7, item 5	Immediately after the commencement of item 2 of Schedule 1 to the <i>Migration Amendment (Protection and Other Measures) Act 2014</i> (the <i>related item</i>). However, if the related item commences before the commencement of the provisions covered by table item 1, the provisions do not commence at all.	18 April 2015
8. Schedule 7,	The day after this Act receives the Royal	4 November

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
item 6	Assent.	2014
9. Schedule 7, item 7	The day after this Act receives the Royal Assent. However, if item 2 of Schedule 1 to the <i>Migration Amendment (Protection and Other Measures) Act 2014</i> has not commenced before that day, the provisions do not commence at all.	Never commenced
10. Schedule 7, item 8	The day after this Act receives the Royal Assent.	4 November 2014
11. Schedule 7, item 9	The day after this Act receives the Royal Assent. However, if item 2 of Schedule 1 to the <i>Migration Amendment (Protection and Other Measures) Act 2014</i> has commenced before that day, the provisions do not commence at all.	4 November 2014
12. Schedule 7, item 10	Immediately after the commencement of item 2 of Schedule 1 to the <i>Migration Amendment (Protection and Other Measures) Act 2014</i> (the <i>related item</i>). However, if the related item commences before the commencement of the provisions covered by table item 6, the provisions do not commence at all.	18 April 2015
13. Schedule 7, item 11	The day after this Act receives the Royal Assent.	4 November 2014

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—Main counter-terrorism amendments

Part 1—Amendments

Administrative Decisions (Judicial Review) Act 1977

1 After paragraph (db) of Schedule 1

Insert:

- (dc) decisions under section 22A or 24A of the *Australian Passports Act 2005*;
- (dd) decisions under section 15A or 16A of the *Foreign Passports (Law Enforcement and Security) Act 2005*;

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

2 Section 5

Insert:

Attorney-General's Department means the Department administered by the Attorney-General.

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

Insert:

- (hb) the Attorney-General's Department; or

4 Application of amendments

- (1) The amendments of section 5 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* made by this Schedule apply in relation to disclosures of, and access to, information after this item commences, whether the information was obtained before, on or after that commencement.
- (2) For the purposes of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, if information is disclosed in accordance with a

Schedule 1 Main counter-terrorism amendments

Part 1 Amendments

provision of that Act to an official of the Attorney-General's Department before this item commences, the information is taken to have been disclosed to an official of a designated agency.

5 Paragraph 121(2)(a)

Omit "section 49 or".

6 Paragraphs 122(1)(a), (b), (c) and (d)

Repeal the paragraphs.

7 Paragraphs 122(3)(a), (c) and (d)

Repeal the paragraphs.

8 Application of amendments

The amendments of sections 121 and 122 of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* made by this Schedule apply in relation to disclosures of information after this item commences, whether the information was obtained before, on or after that commencement.

AusCheck Act 2007

9 Paragraph 8(2)(d)

After "5.3", insert "or 5.5".

10 Paragraph 8(2)(d)

Omit "deals with terrorism", substitute "deal with terrorism, foreign incursions and recruitment".

Australian Passports Act 2005

11 Subsection 6(1)

Insert:

ASIO means the Australian Security Intelligence Organisation.

12 Section 17 (heading)

Repeal the heading, substitute:

17 Reasons relating to concurrently valid or suspended Australian travel document

13 At the end of subsection 17(1)

Add “or is suspended under section 22A”.

14 Division 3 of Part 2 (heading)

Repeal the heading, substitute:

Division 3—When Australian travel documents are not valid

15 Section 20 (heading)

Repeal the heading, substitute:

20 When Australian passports are not valid

Cessation of validity

16 At the end of section 20

Add:

Suspension of validity

- (3) An Australian passport is not valid while it is suspended under section 22A.

17 Section 21 (heading)

Repeal the heading, substitute:

21 When travel-related documents are not valid

Cessation of validity

18 Section 21

Before “A travel-related document”, insert “(1)”.

19 At the end of section 21

Add:

Suspension of validity

- (2) A travel-related document is not valid while it is suspended under section 22A.

20 At the end of section 22

Add:

- (3) To avoid doubt, the suspension of an Australian travel document does not prevent the Minister from cancelling it.

21 At the end of Division 3 of Part 2

Add:

22A Suspension of Australian travel document

- (1) The Minister may, on request under subsection (2), suspend for 14 days all Australian travel documents that have been issued to a person.
- (2) The Director-General of Security may request the Minister to suspend all Australian travel documents issued to a person if the Director-General suspects on reasonable grounds that:
- (a) the person may leave Australia to engage in conduct that might prejudice the security of Australia or a foreign country; and
 - (b) all the person’s Australian travel documents should be suspended in order to prevent the person from engaging in the conduct.

- (3) If an Australian travel document of a person has been suspended under subsection (1), another request under subsection (2) relating to the person must not be made unless the grounds for suspicion mentioned in subsection (2) include information first obtained by the Director-General of Security or an officer or employee of ASIO after the end of the suspension.
- (4) The Director-General of Security may, in writing, delegate his or her power under subsection (2) to a Deputy Director-General of Security (within the meaning of the *Australian Security Intelligence Organisation Act 1979*).
- (5) In exercising power under a delegation, the delegate must comply with any directions of the Director-General of Security.

22 At the end of paragraph 24(1)(b)

Add “except because of a suspension under section 22A”.

23 After section 24

Insert:

24A Demand for surrender of suspended Australian travel document

- (1) An officer may demand that a person surrender an Australian travel document to the officer if the document is suspended under section 22A.
- (2) A person commits an offence if:
 - (a) an officer demands under subsection (1) that the person surrender an Australian travel document; and
 - (b) the officer informs the person that the officer is authorised to demand that document; and
 - (c) the officer informs the person that it may be an offence not to comply with the demand; and
 - (d) the person has possession or control of the document; and
 - (e) the person fails to surrender the document to the officer immediately.

Penalty: Imprisonment for 6 months or 10 penalty units, or both.

- (3) An Australian travel document obtained by an officer under this section must be returned, to the person to whom it was issued, at the end of the period for which it is suspended, unless it is cancelled.

24 Section 48 (note)

Omit “Under section 27A”, substitute “Except in cases described in section 48A of this Act, under section 27A”.

25 After section 48

Insert:

48A When notice of refusal or cancellation of Australian travel document is not required

Application

- (1) This section sets out when the Minister is not required to notify a person of a decision by the Minister to do either of the following because of a refusal/cancellation request made under subsection 14(1):
- (a) refuse to issue an Australian passport to the person;
 - (b) cancel an Australian travel document issued to the person.

Note: This section applies to a delegate of the Minister in the same way as it applies to the Minister: see paragraph 34AB(1)(c) of the *Acts Interpretation Act 1901*.

Request by ASIO

- (2) The Minister is not required to notify the person if:
- (a) the request was made by ASIO or the Director-General of Security; and
 - (b) there is in force a certificate under paragraph 38(2)(a) of the *Australian Security Intelligence Organisation Act 1979* relating to notice to the person of the making of the security assessment that constituted the request.

Request by Australian Federal Police

- (3) The Minister is not required to notify the person if:
-

- (a) the request was made by a member or a special member of the Australian Federal Police; and
 - (b) there is in force a certificate under subsection (4).
- (4) If the Minister administering the *Australian Federal Police Act 1979* is satisfied that notifying the person of the decision would adversely affect a current investigation of any of the following offences, that Minister may, by signed writing, certify accordingly:
- (a) an offence against Subdivision A of Division 72 of the *Criminal Code*;
 - (b) an offence against Subdivision B of Division 80 of the *Criminal Code*;
 - (c) an offence against Part 5.3 or 5.5 of the *Criminal Code*;
 - (d) an offence against either of the following provisions of the *Charter of the United Nations Act 1945*:
 - (i) Part 4 of that Act;
 - (ii) Part 5 of that Act, to the extent that it relates to the *Charter of the United Nations (Sanctions—Al-Qaida) Regulations 2008*.
- (5) A certificate under subsection (4) is not a legislative instrument.
- (6) If the Minister administering the *Australian Federal Police Act 1979* issues a certificate under subsection (4) or revokes a certificate under that subsection, he or she must give a copy of the certificate or revocation to the Minister administering this Act.
- (6A) Before the end of the following periods, the Minister administering the *Australian Federal Police Act 1979* must consider whether to revoke a certificate under subsection (4) (if the certificate remains in force):
- (a) 12 months after it was issued;
 - (b) 12 months after that Minister last considered whether to revoke it.

Overriding the Administrative Appeals Tribunal Act 1975

- (7) This section has effect despite section 27A of the *Administrative Appeals Tribunal Act 1975*.

Schedule 1 Main counter-terrorism amendments
Part 1 Amendments

Note: If subsection (2) or (3) ceases to apply because a certificate mentioned in that subsection ceases to be in force, section 27A of the *Administrative Appeals Tribunal Act 1975* (about notification) will apply in relation to the decision (unless the other of those subsections still applies).

26 After subsection 51(1)

Insert:

- (1A) The Minister may, in writing, delegate to the Secretary of the Department the Minister's power under subsection 22A(1).

Australian Security Intelligence Organisation Act 1979

27 Section 4 (paragraph (c) of the definition of *politically motivated violence*)

Omit "the *Crimes (Foreign Incursions and Recruitment) Act 1978*", substitute "Division 119 of the *Criminal Code*".

28 Paragraph 34D(4)(b)

Repeal the paragraph, substitute:

- (b) that, having regard to other methods (if any) of collecting the intelligence that are likely to be as effective, it is reasonable in all the circumstances for the warrant to be issued; and

29 Application of amendment

The amendment of subsection 34D(4) of the *Australian Security Intelligence Organisation Act 1979* made by this Schedule applies to the giving of consent where that consent was sought on or after the commencement of the amendment.

30 At the end of section 34L

Add:

- (10) A person commits an offence if:
- (a) the person has, in accordance with a warrant issued under this Division, been requested to produce a record or thing; and
 - (b) the person engages in conduct; and

- (c) as a result of the conduct, the record or thing is unable to be produced, or to be produced in wholly legible or usable form.

Penalty: Imprisonment for 5 years.

31 Application of subsection 34L(10) of the *Australian Security Intelligence Organisation Act 1979*

Subsection 34L(10) of the *Australian Security Intelligence Organisation Act 1979* applies to conduct occurring on or after the commencement of the subsection, whether the warrant was or is issued under Division 3 of Part III of that Act before, on or after that commencement.

32 Subsection 34V(3)

Repeal the subsection, substitute:

- (3) Without limiting the operation of subsection (2), a police officer must not, in the course of an act described in subsection (1) in relation to a person, do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer).

33 Section 34ZZ

Omit “22 July 2016”, substitute “7 September 2018”.

34 After paragraph 36(b)

Insert:

- (ba) a security assessment that is a request under section 22A of the *Australian Passports Act 2005* for suspension of all Australian travel documents issued to a person; or

34A At the end of section 38

Add:

- (7) Before the end of the following periods, the Attorney-General must consider whether to revoke a certificate certifying in accordance with paragraph (2)(a) (if the certificate remains in force):
- (a) 12 months after it was issued;

- (b) 12 months after the Attorney-General last considered whether to revoke it.

34B Application

Subsection 38(7) of the *Australian Security Intelligence Organisation Act 1979* applies to certificates issued on or after the commencement of that subsection.

Crimes Act 1914

35 Subsection 3(1) (after paragraph (a) of the definition of terrorism offence)

Insert:

- (aa) an offence against Subdivision B of Division 80 of the *Criminal Code*; or

36 Subsection 3(1) (paragraph (b) of the definition of terrorism offence)

After “Part 5.3”, insert “or 5.5”.

37 Subsection 3(1) (at the end of the definition of terrorism offence)

Add:

- ; or (c) an offence against either of the following provisions of the *Charter of the United Nations Act 1945*:
- (i) Part 4 of that Act;
 - (ii) Part 5 of that Act, to the extent that it relates to the *Charter of the United Nations (Sanctions—Al-Qaida) Regulations 2008*.

38 Application of amendments

The amendments of the definition of *terrorism offence* in subsection 3(1) of the *Crimes Act 1914* made by this Schedule apply in relation to any terrorism offence, whether the offence occurs before, on or after the commencement of this item.

39 Part IAA (heading)

Repeal the heading, substitute:

**Part IAA—Search, information gathering, arrest
and related powers (other than powers
under delayed notification search
warrants)**

40 Subsection 3C(1) (at the end of the definition of *issuing officer*)

Add:

Note: Under section 3ZZBJ, an eligible issuing officer (within the meaning of Part IAAA) may, as specified in that section, consider and deal with an application for a warrant as if the eligible issuing officer were an issuing officer within the meaning of this Part.

41 Subsections 3D(1) and (2)

After “another law of the Commonwealth”, insert “(including other provisions of this Act)”.

42 After subsection 3E(1)

Insert:

Note: For the issue of delayed notification search warrants, see Part IAAA.

43 Subsection 3UK(1)

Omit “the end of 10 years after the day on which the Division commences”, substitute “7 September 2018”.

44 Subsection 3UK(2)

Omit “10 years after the day on which this Division commences”, substitute “7 September 2018”.

45 Subsection 3UK(3)

Omit “the end of 10 years after the day on which this Division commences”, substitute “7 September 2018”.

46 Subsection 3W(1)

After “offence” (first occurring), insert “(other than a terrorism offence and an offence against section 80.2C of the *Criminal Code*)”.

47 After section 3W

Insert:

3WA Constables' power of arrest without warrant for a terrorism offence or offence of advocating terrorism

- (1) A constable may, without warrant, arrest a person for a terrorism offence or an offence against section 80.2C of the *Criminal Code* if the constable suspects on reasonable grounds that:
 - (a) the person has committed or is committing the offence; and
 - (b) proceedings by summons against the person would not achieve one or more of the following purposes:
 - (i) ensuring the appearance of the person before a court in respect of the offence;
 - (ii) preventing a repetition or continuation of the offence or the commission of another offence;
 - (iii) preventing the concealment, loss or destruction of evidence relating to the offence;
 - (iv) preventing harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence;
 - (v) preventing the fabrication of evidence in respect of the offence;
 - (vi) preserving the safety or welfare of the person.
- (2) If:
 - (a) a person has been arrested for an offence under subsection (1); and
 - (b) before the person is charged with the offence, the constable in charge of the investigation ceases to suspect on reasonable grounds:
 - (i) that the person committed the offence; or
 - (ii) that holding the person in custody is necessary to achieve a purpose referred to in paragraph (1)(b);the person must be released.

48 Application of amendments

The amendment of section 3W of the *Crimes Act 1914* made by this Schedule, and section 3WA of that Act, apply to an arrest made after this item commences (whether the alleged offence in relation to which the arrest is made is believed or suspected of having been committed before, on or after that commencement).

49 Paragraph 3ZB(2)(a)

After “section 3W”, insert “or 3WA”.

50 Paragraph 3ZQN(3)(e)

Repeal the paragraph, substitute:

- (e) specify the day by which the person must comply with the notice, being a day that is at least:
 - (i) 14 days after the giving of the notice; or
 - (ii) if the officer believes that it is appropriate, having regard to the urgency of the situation, to specify an earlier day—3 days after the giving of the notice; and

51 After Part IAA

Insert:

Part IAAA—Delayed notification search warrants

Division 1—Preliminary

3ZZAA Object of this Part

- (1) The object of this Part is to provide for eligible agencies to obtain search warrants:
 - (a) that relate to eligible offences; and
 - (b) that authorise the entry and search of premises without having to produce the warrant at the time of entry and search.
- (2) A warrant issued under this Part is a ***delayed notification search warrant***.
- (3) An ***eligible agency*** is the Australian Federal Police.

- (4) An *eligible offence* is a terrorism offence that is punishable on conviction by imprisonment for 7 years or more.

3ZZAB Application of Part

- (1) This Part is not intended to limit or exclude the operation of another law of the Commonwealth (including other provisions of this Act) relating to:
- (a) the search of premises; or
 - (b) the seizure of things; or
 - (c) the use of an assumed identity; or
 - (d) the installation of surveillance devices (within the meaning of the *Surveillance Devices Act 2004*).
- (2) To avoid doubt, it is declared that even though another law of the Commonwealth provides power to do one or more of the things referred to in subsection (1), a similar power conferred by this Part may be used despite the existence of the power under the other law.

3ZZAC Definitions

In this Part:

adjoining premises, in relation to particular premises, means premises adjoining, or providing access, to the premises.

adjoining premises occupier's notice: see section 3ZZDB.

applicable normal search warrant regime: see subsection 3ZZBJ(2).

authorised agency means the Australian Federal Police.

chief officer, in relation to an authorised agency or eligible agency, means the Commissioner.

conditions for issue: see section 3ZZBA.

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

day of execution of a delayed notification search warrant means the day on which the warrant premises were first entered under the warrant.

delayed notification search warrant: see subsection 3ZZAA(2).

eligible agency: see subsection 3ZZAA(3).

eligible issuing officer: see subsection 3ZZAD(1).

eligible offence: see subsection 3ZZAA(4).

eligible officer of an authorised agency or eligible agency means a member or special member of the Australian Federal Police.

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

evidential material means a thing relevant to an eligible offence, or an indictable offence, that has been, is being, is about to be or is likely to be committed.

executing officer, in relation to a delayed notification search warrant, means:

- (a) the eligible officer of the authorised agency who is named in the warrant by the eligible issuing officer as being responsible for executing the warrant; or
- (b) if that eligible officer does not intend to be present at the execution of the warrant—another eligible officer of the authorised agency whose name has been written in the warrant by the eligible officer so named; or
- (c) another eligible officer of the authorised agency whose name has been written in the warrant by the eligible officer of the authorised agency last named in the warrant.

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

nominated AAT member means a person in relation to whom a nomination is in force under section 3ZZAF.

person assisting, in relation to a delayed notification search warrant, means:

- (a) a person who is an eligible officer of the authorised agency and who is assisting in the execution of the warrant; or
- (b) another person who has been authorised by the executing officer to assist in executing the warrant.

premises includes a place and a conveyance.

relevant eligible agency, in relation to a thing seized under this Part, is the eligible agency whose chief officer authorised the application for the delayed notification search warrant under which the thing was seized.

staff member of an authorised agency or eligible agency means a person referred to in paragraph (a) of the definition of **law enforcement officer** in subsection 3(1).

State or Territory agency: see section 3ZZGF.

State or Territory inspecting authority: see section 3ZZGF.

State or Territory law enforcement agency means:

- (a) the police force or police service of a State or Territory; or
- (b) the New South Wales Crime Commission constituted by the *Crime Commission Act 2012* (NSW); or
- (c) the Independent Commission Against Corruption constituted by the *Independent Commission Against Corruption Act 1988* (NSW); or
- (d) the Police Integrity Commission constituted by the *Police Integrity Commission Act 1996* (NSW); or
- (e) the Independent Broad-based Anti-corruption Commission established by the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic.); or
- (f) the Crime and Corruption Commission established by the *Crime and Corruption Act 2001* (Qld); or
- (g) the Corruption and Crime Commission established by the *Corruption and Crime Commission Act 2003* (WA); or

- (h) the Independent Commissioner Against Corruption established by the *Independent Commissioner Against Corruption Act 2012* (SA); or
- (i) the Integrity Commission established by the *Integrity Commission Act 2009* (Tas.).

thing includes a thing in electronic form.

warrant premises means premises in relation to which a delayed notification search warrant is in force, but does not include any adjoining premises that are also authorised to be entered under the warrant.

warrant premises occupier's notice: see section 3ZZDA.

3ZZAD Eligible issuing officers

- (1) An **eligible issuing officer** is:
 - (a) a person:
 - (i) who is a Judge of the Federal Court of Australia, or a Judge of the Supreme Court of a State or Territory; and
 - (ii) in relation to whom a consent under subsection 3ZZAE(1), and a declaration under subsection 3ZZAE(2), are in force; or
 - (b) a nominated AAT member.
- (2) A function or power conferred on a Judge by this Part is conferred on the Judge in a personal capacity and not as a court or a member of a court.
- (3) A Judge has, in relation to the performance or exercise of a function or power conferred on an eligible issuing officer by this Part, the same protection and immunity as if he or she were performing that function, or exercising that power, as, or as a member of, a court (being the court of which the Judge is a member).

Note: A member of the Administrative Appeals Tribunal has the same protection and immunity as a Justice of the High Court (see subsection 60(1) of the *Administrative Appeals Tribunal Act 1975*).

3ZZAE Consent of Judges

- (1) A Judge of the Federal Court of Australia, or of the Supreme Court of a State or Territory, may, by writing, consent to be declared an eligible issuing officer by the Minister under subsection (2).
- (2) The Minister may, by writing, declare a Judge in relation to whom a consent under subsection (1) is in force to be an eligible issuing officer for the purposes of this Part.
- (3) A consent or declaration under this section is not a legislative instrument.

3ZZAF Nominated AAT members

- (1) The Minister may, by writing, nominate a person who holds one of the following appointments to the Administrative Appeals Tribunal to issue delayed notification search warrants and perform related functions under this Act:
 - (a) Deputy President;
 - (b) full-time senior member.
- (2) Despite subsection (1), the Minister must not nominate a person who holds an appointment as a full-time senior member of the Tribunal unless the person:
 - (a) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or of the Australian Capital Territory; and
 - (b) has been so enrolled for not less than 5 years.
- (3) A nomination ceases to be in force if:
 - (a) the nominated AAT member ceases to hold an appointment described in subsection (1); or
 - (b) the Minister, by writing, withdraws the nomination.

Division 2—Issue of delayed notification search warrants

Subdivision A—The normal process for applying for and issuing delayed notification search warrants

3ZZBA The *conditions for issue* of a delayed notification search warrant

A person is satisfied that the *conditions for issue* of a delayed notification search warrant are met in respect of particular premises if the person:

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

3ZZBB Authorisation to apply for a delayed notification search warrant

- (1) The chief officer of an eligible agency may, in writing, authorise an eligible officer of the agency to apply for a delayed notification search warrant in respect of particular premises if the chief officer is satisfied that the conditions for issue are met.
- (2) The chief officer of an eligible agency may orally (in person or by telephone or other means of voice communication) authorise an eligible officer of the agency to apply for a delayed notification search warrant in respect of particular premises if the chief officer is satisfied that:
 - (a) the conditions for issue are met; and
 - (b) either:
 - (i) it is an urgent case; or

- (ii) the delay that would occur if the authorisation were in writing would frustrate the effective execution of the delayed notification search warrant.
- (3) If the chief officer of an eligible agency gives an authorisation under subsection (2), he or she must make a written record of the authorisation within 7 days.

3ZZBC Applying for a delayed notification search warrant

- (1) An eligible officer of an eligible agency may apply to an eligible issuing officer for a delayed notification search warrant in respect of particular premises if the officer is authorised under section 3ZZBB to apply for the warrant.

Note 1: The application will need to address:

- (a) why the conditions for issue are met (see section 3ZZBA); and
- (b) other matters the eligible issuing officer must have regard to (see subsection 3ZZBD(2)); and
- (c) matters that must be specified in the warrant (see subsection 3ZZBE(1)).

Note 2: In urgent cases or certain other cases, an application may be made by telephone, fax or other electronic means: see section 3ZZBF.

- (2) The eligible officer must provide the eligible issuing officer with:
 - (a) a copy of, or details of, the authorisation under section 3ZZBB; and
 - (b) particulars of any applications, and the outcomes, so far as known to the eligible officer, of any previous applications, in respect of the premises, for a warrant under this Part or Division 2 of Part IAA.
- (3) The application must be supported by an affidavit setting out the grounds on which the warrant is sought.
- (4) The eligible issuing officer may request further information relating to the application, and may require that the information be provided on oath or affirmation.

3ZZBD Issuing a delayed notification search warrant

- (1) If:
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- (a) an eligible officer applies to an eligible issuing officer, in accordance with section 3ZZBC, for a delayed notification search warrant in respect of particular premises (the *main premises*); and
 - (b) the eligible issuing officer is satisfied, by information on oath or affirmation, that the conditions for issue are met;
- the eligible issuing officer may issue a delayed notification search warrant in respect of the premises.
- (2) In determining whether the delayed notification search warrant should be issued, the eligible issuing officer must have regard to the following:
- (a) the extent to which the exercise of the powers under the warrant would assist the prevention or investigation of the eligible offence to which the application for the warrant relates;
 - (b) the existence of alternative means of obtaining the evidence or information sought to be obtained;
 - (c) the extent to which the privacy of any person is likely to be affected;
 - (d) the nature and seriousness of that offence;
 - (e) if it is proposed that adjoining premises be entered for the purpose of entering the main premises—whether allowing entry to the adjoining premises is reasonably necessary:
 - (i) to enable entry to the main premises; and
 - (ii) to avoid compromising the prevention or investigation of that offence;
 - (f) any conditions to which the warrant should be subject;
 - (g) the outcome, so far as known to the eligible issuing officer, of any previous application, in respect of the main premises, for a warrant under this Part or Division 2 of Part IAA.
- (3) An eligible issuing officer of the Federal Court of Australia or the Administrative Appeals Tribunal may issue a delayed notification search warrant in relation to premises located anywhere in the Commonwealth or an external Territory.
- (4) An eligible issuing officer of the Supreme Court of a State or Territory may issue a delayed notification search warrant only in relation to premises located in that State or Territory.
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3ZZBE Contents of a delayed notification search warrant

- (1) A delayed notification search warrant must specify the following:
 - (a) the name of the applicant;
 - (b) the name of the authorised agency;
 - (c) the name of the eligible officer of that agency who, unless he or she inserts the name of another such eligible officer in the warrant, is to be responsible for executing the warrant;
 - (d) the address, location or other description of the warrant premises;
 - (e) the eligible offence to which the warrant relates;
 - (f) whether the warrant authorises the entry of adjoining premises, and if it does, the address, location or other description of the adjoining premises;
 - (g) the day on which, and the time at which, the warrant is issued;
 - (h) the day on which, and the time at which, the warrant expires (which must be a time on a day that is not more than 30 days after the day on which the warrant is issued);
 - (i) the time by which notice of entry of premises under the warrant is to be given (expressed as a time on a specified day that is not more than 6 months after the day on which the warrant is issued);
 - (j) a description of the kinds of things that may be searched for, seized, copied, photographed, recorded, marked, tagged, operated, printed, tested or sampled;
 - (k) whether the warrant authorises a thing to be placed in substitution for a thing seized under the warrant or moved under subsection 3ZZCE(2);
 - (l) whether the warrant authorises the re-entry of the warrant premises, and any adjoining premises authorised to be entered, to:
 - (i) return to the warrant premises any thing seized under the warrant or moved under subsection 3ZZCE(2); or
 - (ii) retrieve any thing substituted at the warrant premises for a thing seized under the warrant or moved under subsection 3ZZCE(2);

- (m) if the warrant authorises such re-entry—that the re-entry must be within:
 - (i) 14 days of the day of execution of the warrant; or
 - (ii) if a thing is moved under subsection 3ZZCE(2) and the time for which it may be examined or processed is more than 14 days because of an extension under section 3ZZCE—that time as extended under that section;
- (n) any conditions to which the warrant is subject;
- (o) that the eligible issuing officer is satisfied as mentioned in paragraph 3ZZBD(1)(b), and has had regard to the matters specified in subsection 3ZZBD(2).

Note 1: Regarding paragraph (i):

- (a) the specified time is the time by which a warrant premises occupier's notice, and any adjoining premises occupier's notice, must be given (subject to subsections 3ZZDA(4), 3ZZDB(4) and 3ZZDC(3)); and
- (b) the specified time can be extended (see subsection 3ZZDC(5)).

Note 2: Regarding the period described in paragraph (m), see also subsection 3ZZCA(3).

- (2) The warrant must be signed by the eligible issuing officer who issued it and include his or her name.

Subdivision B—Delayed notification search warrants by telephone, fax etc.

3ZZBF Delayed notification search warrants by telephone, fax etc.

When this section applies

- (1) This section applies if the requirements specified in subsection 3ZZBC(1) for when an eligible officer of an eligible agency may apply for a delayed notification search warrant in respect of particular premises are satisfied.

Note: This section sets out an alternative method of applying for and issuing delayed notification search warrants.

Application for delayed notification search warrant

- (2) The eligible officer may apply to an eligible issuing officer by telephone, fax or other electronic means for a delayed notification search warrant in respect of the premises:
 - (a) if it is an urgent case; or
 - (b) if the delay that would occur if the application were made in person would frustrate the effective execution of the delayed notification search warrant.
- (3) The eligible issuing officer:
 - (a) may require communication by voice to the extent that it is practicable in the circumstances; and
 - (b) may make a recording of the whole or any part of any such communication by voice.
- (4) The application must:
 - (a) include all information required to be provided in an ordinary application for a delayed notification search warrant, but the application may, if necessary, be made before the information is sworn or affirmed; and
 - (b) include details of, or be accompanied by a copy of, the authorisation under section 3ZZBB.

Eligible issuing officer may complete and sign warrant

- (5) The eligible issuing officer may complete and sign the same delayed notification search warrant that would have been issued under section 3ZZBD if, after:
 - (a) considering the information and having received and considered such further information (if any) as the eligible issuing officer required; and
 - (b) having regard to the matters specified in subsection 3ZZBD(2);the eligible issuing officer is satisfied:
 - (c) that the conditions for issue are met; and
 - (d) that:
 - (i) a delayed notification search warrant in the terms of the application should be issued urgently; or

- (ii) the delay that would occur if an application were made in person would frustrate the effective execution of the delayed notification search warrant.
- (6) After completing and signing the delayed notification search warrant, the eligible issuing officer must inform the applicant, by telephone, fax or other electronic means, of:
- (a) the terms of the warrant; and
 - (b) the day on which, and the time at which, the warrant was signed.

Obligations on applicant

- (7) The applicant must then do the following:
- (a) complete a form of delayed notification search warrant in the same terms as the warrant completed and signed by the eligible issuing officer;
 - (b) state on the form the following:
 - (i) the name of the eligible issuing officer;
 - (ii) the day and time of signing of the warrant;
 - (c) send the following to the eligible issuing officer:
 - (i) the form of warrant completed by the applicant;
 - (ii) the information referred to in subsection (4), which must have been duly sworn or affirmed.
- (8) The applicant must comply with paragraph (7)(c) by the end of the day after the earlier of the following:
- (a) the day on which the delayed notification search warrant expires;
 - (b) the day of execution of the warrant.

Eligible issuing officer to attach documents together

- (9) The eligible issuing officer must attach the documents provided under paragraph (7)(c) to the delayed notification search warrant signed by the eligible issuing officer.

3ZZBG Authority of delayed notification search warrant by telephone, fax etc.

- (1) A form of delayed notification search warrant duly completed under subsection 3ZZBF(7) is authority for the same powers as are authorised by the warrant signed by the eligible issuing officer under subsection 3ZZBF(5).
- (2) In any proceedings, a court is to assume (unless the contrary is proved) that an exercise of power was not authorised by a delayed notification search warrant under section 3ZZBF if:
 - (a) it is material, in those proceedings, for the court to be satisfied that the exercise of power was duly authorised by the warrant; and
 - (b) the delayed notification search warrant signed by the eligible issuing officer authorising the exercise of the power is not produced in evidence.

Subdivision C—Offences relating to applying for warrants etc.

3ZZBH Offence for making false statement in application for delayed notification search warrant

A person must not make, in an application for a delayed notification search warrant, a statement that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

3ZZBI Offence relating to delayed notification search warrant by telephone, fax etc.

A person must not:

- (a) state in a document that purports to be a form of delayed notification search warrant under section 3ZZBF the name of an eligible issuing officer unless that eligible issuing officer issued the warrant; or
- (b) state on a form of delayed notification search warrant under that section a matter that, to the person's knowledge, departs

- in a material particular from the form authorised by the eligible issuing officer; or
- (c) purport to execute, or present to a person, a document that purports to be a form of delayed notification search warrant under that section that the person knows:
 - (i) has not been approved by an eligible issuing officer under that section; or
 - (ii) departs in a material particular from the terms authorised by an eligible issuing officer under that section; or
 - (d) give to an eligible issuing officer a form of delayed notification search warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

Subdivision D—Interaction with other provisions under which search warrants may be issued

3ZZBJ Issue of warrants under other provisions as well as or instead of delayed notification search warrants

When this section applies

- (1) This section applies if an eligible officer of an eligible agency, under an authorisation under section 3ZZBB from the chief officer of the agency, makes an application (the ***delayed notification search warrant application***) to an eligible issuing officer for a delayed notification search warrant:
 - (a) in respect of particular premises; and
 - (b) in relation to a particular eligible offence.
- (2) The ***applicable normal search warrant regime*** is Division 2 of Part IAA.

Application may be made to eligible issuing officer for normal search warrant

- (3) The eligible officer may, at the same time or subsequently, make an application to the eligible issuing officer for the issue of a

warrant, under the applicable normal search warrant regime, to search the premises or other premises for evidential material relevant to the eligible offence or to another offence connected to the eligible offence.

- (4) If the eligible issuing officer is not a person who is authorised to issue warrants under the applicable normal search warrant regime, the eligible issuing officer may consider and deal with an application made as mentioned in subsection (3) as if the eligible issuing officer were such a person.

Eligible issuing officer may instead treat application as if it were made under applicable normal search warrant regime

- (5) If the eligible issuing officer is not satisfied that a delayed notification search warrant in respect of the premises should be issued, the eligible issuing officer may:
- (a) treat the delayed notification search warrant application as if it were an application for a warrant under the applicable normal search warrant regime (even if such an application has not been made); and
 - (b) consider and deal with the application under that regime:
 - (i) as if the application had been validly made under that regime; and
 - (ii) if the eligible issuing officer is not a person who is authorised to issue warrants under the applicable normal search warrant regime—as if the eligible issuing officer were such a person.

Division 3—Exercise of powers under delayed notification search warrants

3ZZCA What is authorised by a delayed notification search warrant

- (1) A delayed notification search warrant authorises the executing officer or a person assisting to do any of the following:
- (a) to enter the warrant premises;
 - (b) if the warrant authorises the entry of adjoining premises—to enter the adjoining premises solely for the purpose of entering or leaving the warrant premises;

- (c) to impersonate another person to the extent reasonably necessary for executing the warrant;
- (d) to search the warrant premises for the kinds of things (if any) specified in the warrant as the kinds of things that may be searched for;
- (e) to seize any thing of a kind specified in the warrant as a kind of thing that may be seized;
- (f) to seize other things found in the course of executing the warrant at the warrant premises that the executing officer or a person assisting believes on reasonable grounds to be evidential material, if the executing officer or a person assisting believes on reasonable grounds that the seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing any offence;
- (g) to seize any thing found in the course of executing the warrant at the warrant premises that the executing officer or a person assisting believes on reasonable grounds:
 - (i) would present a danger to a person; or
 - (ii) could be used to assist a person to escape from lawful custody;
- (h) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes;
- (i) if specified in the warrant—to place a thing in substitution for a thing seized or moved under subsection 3ZZCE(2);
- (j) to do any of the following acts to a thing found in the course of executing the warrant at the warrant premises that is of a kind specified in the warrant as the kind of thing to which the act may be done, or that the executing officer or a person assisting believes on reasonable grounds to be evidential material:
 - (i) copy the thing;
 - (ii) photograph or otherwise record the thing;
 - (iii) mark or tag the thing (whether or not the mark or tag can be detected only with the use of a device);
 - (iv) operate the thing;
 - (v) print the thing;
 - (vi) test the thing;

- (vii) sample the thing;
- (k) to do anything reasonably necessary to conceal the fact that any thing has been done under the warrant;
- (l) if specified in the warrant—to re-enter:
 - (i) the warrant premises; and
 - (ii) if the warrant authorises the entry of adjoining premises—the adjoining premises solely for the purpose of entering or leaving the warrant premises;within the period described in paragraph 3ZZBE(1)(m), for the purpose of returning any thing seized from the warrant premises or moved under subsection 3ZZCE(2), or retrieving any thing substituted at the premises for a thing seized or moved under that subsection;
- (m) to exercise the other powers conferred on the executing officer, or a person assisting, by the other provisions of this Division.

Note: Paragraph (c) does not authorise the acquisition or use of an assumed identity (see Part IAC). The protection provided by Part IAC only applies if the requirements of that Part have been complied with.

- (2) The entry of premises under a paragraph of subsection (1) may be effected without the knowledge of the occupier of the premises or any other person present at the premises.
- (3) If the period referred to in paragraph (1)(l) ends after the delayed notification search warrant expires, the powers referred to in that paragraph may be exercised during that period as if the warrant were still in force.

3ZZCB Specific powers available to person executing warrant

Photography

- (1) In executing a delayed notification search warrant, the executing officer or a person assisting may, for a purpose incidental to the execution of the warrant, take photographs (including video recordings) of the warrant premises or of things at the warrant premises.

Completion of execution of warrant after brief interruption

- (2) If a delayed notification search warrant in relation to premises is being executed, the executing officer and the persons assisting may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the premises:
- (a) for not more than one hour; or
 - (b) for not more than 24 hours, or such longer period as allowed by an eligible issuing officer under section 3ZZCC, if they leave the premises:
 - (i) because of an emergency situation; or
 - (ii) to reduce the risk of discovery of the fact that a law enforcement officer has been on the premises.

Completion of execution of warrant after court proceedings

- (3) If:
- (a) the execution of a delayed notification search warrant is stopped by an order of a court; and
 - (b) the order is later revoked or reversed on appeal; and
 - (c) the warrant is still in force;
- the execution of the warrant may be completed.

3ZZCC Extension of time to re-enter premises left in emergency situation or to avoid discovery of law enforcement officer

- (1) If:
- (a) a delayed notification search warrant in relation to premises is being executed; and
 - (b) the executing officer and the persons assisting (if any) leave the premises for a reason described in subparagraph 3ZZCB(2)(b)(i) or (ii); and
 - (c) the executing officer or a person assisting believes on reasonable grounds that the executing officer and the persons assisting will not be able to return to the premises within the 24-hour period mentioned in paragraph 3ZZCB(2)(b);
- he or she may apply to an eligible issuing officer for an extension of that period.

- (2) If an application mentioned in subsection (1) has been made, an eligible issuing officer may extend the period during which the executing officer and persons assisting may be away from the premises if:
- (a) the eligible issuing officer is satisfied, by information on oath or affirmation, that there are circumstances that justify the extension; and
 - (b) the extension would not result in the period ending after the expiry of the warrant.

3ZZCD Executing a warrant—assistance, use of force and related matters

- (1) In executing a delayed notification search warrant:
- (a) the executing officer may obtain such assistance; and
 - (b) the executing officer, or an eligible officer who is a person assisting, may use such force against persons and things; and
 - (c) a person assisting who is not an eligible officer may use such force against things;
- as is necessary and reasonable in the circumstances.
- (2) At any time when the executing officer is at warrant premises, or adjoining premises, under a delayed notification search warrant, the executing officer must have in his or her possession, or be in a position to produce without delay:
- (a) a copy of the warrant; or
 - (b) if the warrant was issued under section 3ZZBF—a copy of the form of warrant completed under subsection 3ZZBF(7).
- (3) To avoid doubt, subsection (2) does not require the executing officer to produce a copy of the warrant or the form of warrant.

3ZZCE Use of equipment to examine or process things

Equipment may be brought onto warrant premises

- (1) In executing a delayed notification search warrant, the executing officer or a person assisting may bring to the warrant premises any equipment reasonably necessary for the examination or processing

of a thing found at the premises in order to determine whether it is a thing that may be seized under the warrant.

Thing may be moved for examination or processing

- (2) A thing found at the warrant premises may be moved to another place for examination or processing in order to determine whether it may be seized under the delayed notification search warrant if:
- (a) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; and
 - (b) the executing officer or a person assisting suspects on reasonable grounds that the thing contains or constitutes a thing that may be seized under the warrant.

Note: Sections 3ZZCG and 3ZZCH authorise operation of electronic equipment moved under this section.

Time limit on moving a thing

- (3) The thing may be moved to another place for examination or processing for no longer than 14 days.
- (4) An executing officer may apply to an eligible issuing officer for one or more extensions of that time if the executing officer believes on reasonable grounds that the thing cannot be examined or processed within 14 days or that time as previously extended.
- (5) A single extension cannot exceed 7 days.

Equipment at warrant premises may be operated

- (6) The executing officer or a person assisting may operate equipment already at the warrant premises to carry out the examination or processing of a thing found at the premises, if the executing officer or person believes on reasonable grounds that:
- (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damage to the equipment or the thing.

3ZZCF Use of electronic equipment at warrant premises

Use of electronic equipment to access data

- (1) In executing a delayed notification search warrant, the executing officer or a person assisting may operate electronic equipment at the warrant premises to access data (including data not held at the premises) if he or she suspects on reasonable grounds that the data constitutes a thing that may be seized under the warrant.

Copy of data onto disk, tape or other device

- (2) If the executing officer or person assisting suspects on reasonable grounds that any data accessed by operating the electronic equipment constitutes a thing that may be seized under the warrant, he or she may copy the data to a disk, tape or other associated device and take the disk tape or device from the warrant premises.
- (3) If:
 - (a) under subsection (2), the executing officer or person assisting copies data to a disk, tape or device; and
 - (b) the chief officer of the authorised agency is satisfied that the data is not required, is no longer required, or is not likely to be required, for a purpose mentioned in section 3ZZEA;
the chief officer must arrange for:
 - (c) the removal of the data from any device in the control of the authorised agency; and
 - (d) the destruction of any other reproduction of the data in the control of the authorised agency.

Powers if thing that may be seized is accessible by operating equipment

- (4) If the executing officer or a person assisting, after operating the electronic equipment, finds that a thing that may be seized under the warrant is accessible by doing so, he or she may:
 - (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the thing can, by using facilities at the warrant premises, be put in documentary form—operate the facilities to put the thing in that form and seize the documents so produced.

- (5) The executing officer or a person assisting may seize equipment under paragraph (4)(a) only if:
 - (a) it is not practicable to copy the data as mentioned in subsection (2) or to put the thing that may be seized in documentary form as mentioned in paragraph (4)(b); or
 - (b) possession of the equipment, by the occupier of the warrant premises, could constitute an offence.

3ZZCG Use of moved electronic equipment at other place

- (1) If electronic equipment is moved to another place under subsection 3ZZCE(2), the executing officer or a person assisting may operate the equipment to access data (including data held at another place).
- (2) If the executing officer or person assisting suspects on reasonable grounds that any data accessed by operating the electronic equipment constitutes a thing that may be seized under the warrant, he or she may copy any or all of the data accessed by operating the electronic equipment to a disk, tape or other associated device.
- (3) If the chief officer of the authorised agency is satisfied that the data is not required, is no longer required, or is not likely to be required, for a purpose mentioned in section 3ZZEA, the chief officer must arrange for:
 - (a) the removal of the data from any device in the control of the authorised agency; and
 - (b) the destruction of any other reproduction of the data in the control of the authorised agency.
- (4) If the executing officer or a person assisting, after operating the equipment, finds that a thing that may be seized under the warrant is accessible by doing so, he or she may:
 - (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the thing can be put in documentary form—put the thing in that form and seize the documents so produced.
- (5) The executing officer or a person assisting may seize equipment under paragraph (4)(a) only if:

- (a) it is not practicable to copy the data as mentioned in subsection (2) or to put the thing that may be seized in documentary form as mentioned in paragraph (4)(b); or
- (b) possession of the equipment, by the occupier of the warrant premises, could constitute an offence.

3ZZCH Operating seized or moved electronic equipment

- (1) This section applies to electronic equipment seized under this Part or moved under section 3ZZCE.
- (2) The electronic equipment may be operated at any location after it has been seized or moved, for the purpose of determining whether data that is a thing that may be seized under the relevant delayed notification search warrant is held on or accessible from the electronic equipment, and obtaining access to such data.
- (3) The data referred to in subsection (2) includes, but is not limited to, the following:
 - (a) data held on the electronic equipment, including data held on the electronic equipment when operated under this section that was not held on the electronic equipment at the time the electronic equipment was seized;
 - (b) data not held on the electronic equipment but accessible by using it, including data that was not accessible at the time the electronic equipment was seized.
- (4) The electronic equipment may be operated before or after the expiry of the relevant delayed notification search warrant.
- (5) This section does not limit the operation of other provisions of this Part that relate to dealing with items seized under this Part or moved under section 3ZZCE.

Note: For example, this section does not affect the operation of the time limits in section 3ZZCE on examination or processing of a thing moved under that section.

3ZZCI Compensation for damage to electronic equipment

- (1) This section applies if:
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- (a) as a result of equipment being operated as mentioned in section 3ZZCE, 3ZZCF, 3ZZCG or 3ZZCH:
 - (i) damage is caused to the equipment; or
 - (ii) damage is caused to data recorded on the equipment or data access to which was obtained from the operation of the equipment; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
 - (b) the damage or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the court determines.

Division 4—Notice to occupiers

3ZZDA Warrant premises occupier's notice must be prepared and given

- (1) As soon as practicable after the exercise of powers under a delayed notification search warrant has been completed, the executing officer must prepare a written notice (the *warrant premises occupier's notice*) that complies with subsection (2).
- (2) The warrant premises occupier's notice must:
 - (a) specify the name of the authorised agency; and
 - (b) specify the day on which, and the time at which, the warrant was issued; and
 - (c) specify the day of execution of the warrant; and

- (d) specify the address, location or other description of the warrant premises; and
 - (e) specify the number of persons who entered the warrant premises for the purposes of executing, or assisting in the execution of, the warrant; and
 - (f) include a summary of:
 - (i) the purpose of delayed notification search warrants (including a statement to the effect that they are to authorise entry and search of premises to be conducted without the knowledge of the occupier of the premises or any other person present at the premises); and
 - (ii) the things done under the warrant; and
 - (g) describe any thing seized from the warrant premises and state whether a thing was placed in substitution for the seized thing; and
 - (h) state whether any thing was returned to, or retrieved from, the warrant premises and the date on which this occurred.
- (3) Subject to subsection (4), a staff member of the authorised agency must give the warrant premises occupier's notice, and a copy of the warrant (or the form of warrant completed under subsection 3ZZBF(7)), to the person (the *occupier*) who was the occupier of the warrant premises when they were entered under the warrant. The notice, and the copy of the warrant (or form of warrant), must be given to the occupier by the time applicable under section 3ZZDC.
- (4) If the occupier cannot be identified or located, a staff member of the authorised agency must report back to an eligible issuing officer, and the eligible issuing officer may give such directions as the eligible issuing officer thinks fit.
- (5) A notice and a direction under this section are not legislative instruments.

3ZZDB Adjoining premises occupier's notice must be prepared and given

- (1) As soon as practicable after adjoining premises are entered under a delayed notification search warrant, the executing officer must

prepare a written notice (the *adjoining premises occupier's notice*) that complies with subsection (2).

- (2) The adjoining premises occupier's notice must specify:
 - (a) the name of the authorised agency; and
 - (b) the day on which, and the time at which, the warrant was issued; and
 - (c) the day of execution of the warrant; and
 - (d) the address, location or other description of:
 - (i) the warrant premises; and
 - (ii) the adjoining premises; and
 - (e) the purpose of delayed notification search warrants, including:
 - (i) a statement to the effect that they are to authorise entry and search of warrant premises to be conducted without the knowledge of the occupier of those premises or any other person present at those premises; and
 - (ii) a statement that adjoining premises may be entered solely for the purpose of entering or leaving the warrant premises.
- (3) Subject to subsection (4), a staff member of the authorised agency must give the adjoining premises occupier's notice, and a copy of the warrant (or the form of warrant completed under subsection 3ZZBF(7)), to the person (the *occupier*) who was the occupier of the adjoining premises when they were entered under the warrant. The notice, and the copy of the warrant, must be given to the occupier by the time applicable under section 3ZZDC.
- (4) If the occupier cannot be identified or located, a staff member of the authorised agency must report back to an eligible issuing officer, and the eligible issuing officer may give such directions as the eligible issuing officer thinks fit.
- (5) A notice and a direction under this section are not legislative instruments.

3ZZDC Time for giving warrant premises occupier's notice or adjoining premises occupier's notice

Section determines time by which notice must be given

- (1) This section:
- (a) applies if a warrant premises occupier's notice, or an adjoining premises occupier's notice, is prepared in relation to a delayed notification search warrant; and
 - (b) determines the time by which the notice (and a copy of the warrant, or the form of warrant) must be given in accordance with subsection 3ZZDA(3) or 3ZZDB(3).

Note: This section has effect subject to any directions given under subsection 3ZZDA(4) or 3ZZDB(4).

General rule

- (2) Subject to subsection (3), the notice (and the copy of the warrant or form of warrant) must be given by:
- (a) the time specified under paragraph 3ZZBE(1)(i); or
 - (b) if that time has been extended under subsection (5), that time as so extended.

Rule if person is charged with an offence relying on evidence obtained under the warrant

- (3) If:
- (a) a person is charged with an offence; and
 - (b) the prosecution proposes to rely on evidence obtained under the warrant;
- the notice (and the copy of the warrant or of the form of the warrant completed under subsection 3ZZBF(7)) must be given as soon as practicable after the person is charged with the offence, but no later than the earlier of the following times:
- (c) the time applicable under subsection (2);
 - (d) the time of service of the brief of evidence by the prosecution.

Extending the time specified in the warrant for giving notice

- (4) The chief officer of the authorised agency may, in writing, authorise an eligible officer of the agency to apply to an eligible issuing officer for an extension of the time specified under paragraph 3ZZBE(1)(i) by which notice of entry of premises under a delayed notification search warrant is to be given.
- (5) An eligible issuing officer may, on application by an eligible officer authorised under subsection (4), extend the time specified under paragraph 3ZZBE(1)(i) by which notice of entry of premises under a delayed notification search warrant is to be given if the eligible issuing officer is satisfied that there are reasonable grounds for continuing to delay notice of entry of the premises.
- (6) An eligible issuing officer may, under subsection (5), extend the time specified under paragraph 3ZZBE(1)(i) on more than one occasion, but:
 - (a) must not extend the time by more than 6 months on any one occasion; and
 - (b) must not extend the time to more than 12 months after the day on which the delayed notification search warrant was issued unless:
 - (i) the Minister is satisfied on reasonable grounds that there are exceptional circumstances justifying the extension, and that it is in the public interest to do so; and
 - (ii) the Minister has issued a certificate approving the application for the extension; and
 - (iii) the eligible issuing officer is satisfied that there are exceptional circumstances justifying such an extension.
- (7) A certificate issued under subsection (6) is not a legislative instrument.

Division 5—Using, sharing and returning things seized

Subdivision A—Using and sharing things seized

3ZZEA Purposes for which things may be used and shared

Use and sharing of thing by eligible officer or Commonwealth officer

- (1) An eligible officer of an eligible agency or a Commonwealth officer may use, or make available to another eligible officer or Commonwealth officer to use, a thing seized under this Part for the purpose of any or all of the following if it is necessary to do so for that purpose:
 - (a) preventing, investigating or prosecuting an offence;
 - (b) proceedings under the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*;
 - (c) proceedings for the forfeiture of the thing under a law of the Commonwealth;
 - (d) the performance of a function or duty, or the exercise of a power, by a person, court or other body under, or in relation to a matter arising under, Division 104 or 105 of the *Criminal Code*;
 - (e) investigating or resolving a complaint or an allegation of misconduct relating to an exercise of a power or the performance of a function or duty under this Part;
 - (f) investigating or resolving an AFP conduct or practices issue (within the meaning of the *Australian Federal Police Act 1979*) under Part V of that Act;
 - (g) investigating or resolving a complaint under the *Ombudsman Act 1976* or the *Privacy Act 1988*;
 - (h) investigating or inquiring into a corruption issue under the *Law Enforcement Integrity Commissioner Act 2006*;
 - (i) proceedings in relation to a complaint, allegation or issue mentioned in paragraph (e), (f), (g) or (h);
 - (j) deciding whether to institute proceedings, to make an application or request, or to take any other action, mentioned in any of the preceding paragraphs of this subsection;

- (k) the performance of the functions of the Australian Federal Police under section 8 of the *Australian Federal Police Act 1979*.
- (2) An eligible officer of an eligible agency or a Commonwealth officer may use a thing seized under this Part for any other use that is required or authorised by or under a law of a State or a Territory.
- (3) An eligible officer of an eligible agency may make available to another eligible officer of an eligible agency or a Commonwealth officer to use a thing seized under this Part for any purpose for which the making available of the thing or document is required or authorised by a law of a State or Territory.
- (4) To avoid doubt, this section does not limit any other law of the Commonwealth that:
- (a) requires or authorises the use of a thing; or
 - (b) requires or authorises the making available (however described) of a thing.

Sharing thing for use by State, Territory or foreign agency

- (5) An eligible officer of an eligible agency or a Commonwealth officer may make a thing seized under this Part available to:
- (a) a State or Territory law enforcement agency; or
 - (b) an agency that has responsibility for:
 - (i) law enforcement in a foreign country; or
 - (ii) intelligence gathering for a foreign country; or
 - (iii) the security of a foreign country;
- to be used by that agency for a purpose mentioned in subsection (1), (2) or (3) and the purpose of any or all of the following (but not for any other purpose):
- (c) preventing, investigating or prosecuting an offence against a law of a State or Territory;
 - (d) proceedings under a corresponding law (within the meaning of the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*);
 - (e) proceedings for the forfeiture of the thing under a law of a State or Territory;

- (f) deciding whether to institute proceedings or to take any other action mentioned in any of paragraphs (1)(a) to (k) (inclusive), subsection (2) or (3) or paragraph (c), (d) or (e) of this subsection.

Ministerial arrangements for sharing

- (6) This Division does not prevent the Minister from making an arrangement with a Minister of a State or Territory for:
 - (a) the making available to a State or Territory law enforcement agency of that State or Territory, for purposes mentioned in subsections (1), (3) and (5), of things seized under this Part; and
 - (b) the disposal by the agency of such things when they are no longer of use to that agency for those purposes.

Note: This subsection does not empower the Minister to make such an arrangement.

Subdivision B—Returning things seized

3ZZEB When things seized must be returned

- (1) If the chief officer of the relevant eligible agency is satisfied that a thing seized under this Part is not required (or is no longer required) for a purpose mentioned in section 3ZZEA or for other judicial or administrative review proceedings, the chief officer must take reasonable steps to return the thing to the person from whom it was seized, or to the owner if that person is not entitled to possess it.
- (2) However, the chief officer does not have to take those steps if:
 - (a) either:
 - (i) the thing may be retained because of an order under subsection 3ZZEC(1), or any other order under that subsection has been made in relation to the thing; or
 - (ii) the chief officer has applied for such an order and the application has not been determined; or
 - (b) the thing may otherwise be retained, destroyed or disposed of under a law, or an order of a court or tribunal, of the Commonwealth or of a State or a Territory; or

- (c) the thing is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership; or
- (d) a warrant premises occupier's notice has not been given in relation to the occupier of the warrant premises.

3ZZEC Eligible issuing officer may permit a thing seized to be retained, forfeited etc.

- (1) An eligible issuing officer may, on application by an eligible officer of an eligible agency, make any of the orders referred to in subsection (2) in relation to a thing seized under this Part if the eligible issuing officer is satisfied that there are reasonable grounds to suspect that, if the thing is returned to the owner of the thing, or the person from whom the thing was seized, it is likely to be used by that person or another person in the commission of:
 - (a) a terrorist act or a terrorism offence; or
 - (b) a serious offence (within the meaning of Part IAA).
- (2) The orders are as follows:
 - (a) an order that the thing may be retained for the period specified in the order;
 - (b) an order that the thing is forfeited to the Commonwealth;
 - (c) an order that:
 - (i) the thing be sold and the proceeds given to the owner of the thing; or
 - (ii) the thing be sold in some other way;
 - (d) an order that the thing is to be destroyed or otherwise disposed of.
- (3) If the eligible issuing officer is not satisfied as mentioned in subsection (1), the eligible issuing officer must order that the thing be returned to:
 - (a) the person from whom the thing was seized; or
 - (b) if that person is not entitled to possess the thing—the owner of the thing.

Division 6—Reporting and record-keeping

3ZZFA Reporting on delayed notification search warrants

- (1) The executing officer in relation to a delayed notification search warrant, or the applicant for the warrant, must give a written report on the warrant to the chief officer of the authorised agency.
- (2) The report must be given to the chief officer of the authorised agency as soon as practicable after:
 - (a) the day of execution of the warrant; or
 - (b) if the warrant was not executed—the expiry of the warrant.
- (3) The report must:
 - (a) specify the address, location or other description of the warrant premises; and
 - (b) state whether or not the warrant was executed; and
 - (c) state whether the application for the warrant was made in person or in accordance with section 3ZZBF.
- (4) If the warrant was executed, the report must also include the following information:
 - (a) the day of execution of the warrant;
 - (b) the name of the executing officer;
 - (c) the name of any persons assisting and the kind of assistance provided;
 - (d) the name of the occupier of the warrant premises, if known to the executing officer;
 - (e) whether adjoining premises were entered under the warrant and, if they were, the name of the occupier of the adjoining premises, if known to the executing officer;
 - (f) the things that were done under the warrant;
 - (g) without limiting paragraph (f)—details of any thing at the warrant premises:
 - (i) seized; or
 - (ii) replaced with a substitute; or
 - (iii) copied, photographed or otherwise recorded; or
 - (iv) marked or tagged; or

- (v) operated, printed, tested or sampled;
 - (h) whether or not the execution of the warrant assisted in the prevention or investigation of an eligible offence;
 - (i) details of compliance with any conditions to which the warrant was subject;
 - (j) details of any warrant premises occupier's notice given in relation to the warrant;
 - (k) details of any adjoining premises occupier's notice given in relation to the warrant;
 - (l) details of any directions given under subsection 3ZZDA(4) or 3ZZDB(4) in relation to the warrant.
- (5) To avoid doubt, if, at the time a report was given, the details in any of paragraphs (4)(j), (k) and (l) were not included because notice or directions had not been given at that time, but are given later, the person who gave the original report under subsection (1) must give a further report under that subsection including those details.
- (6) If the warrant was not executed, the report must state the reason why it was not executed.
- (7) If the warrant premises were entered after the warrant was executed for the purpose of returning a thing to, or retrieving a thing left at, the premises, a written report in relation to that entry must be provided to the chief officer of the authorised agency. The report must include the following information:
- (a) the address, location or other description of the warrant premises;
 - (b) the date on which the warrant premises were entered for that purpose;
 - (c) the name of each person who so entered the warrant premises;
 - (d) details of the thing returned or retrieved;
 - (e) if the thing was not returned or retrieved—the reason why the thing was not returned or removed.
- (8) A report under subsection (7) must be given as soon as practicable after the warrant premises were entered as mentioned in that subsection.

- (9) A report under this section is not a legislative instrument.

3ZZFB Annual reports to Minister

- (1) The chief officer of an eligible agency must give a written report to the Minister that includes the following information in respect of each financial year:
- (a) the number of applications for delayed notification search warrants made in person by eligible officers of the agency;
 - (b) the number of applications for delayed notification search warrants made under section 3ZZBF by eligible officers of the agency;
 - (c) the number of delayed notification search warrants issued as a result of applications referred to in paragraphs (a) and (b) and the eligible offences to which they related;
 - (d) the number of delayed notification search warrants that were executed by an eligible officer of the agency;
 - (e) the number of delayed notification search warrants that were executed by an eligible officer of the agency under which:
 - (i) one or more things were seized from the warrant premises; or
 - (ii) one or more things were placed in substitution at the warrant premises for a seized thing; or
 - (iii) one or more things were returned to, or retrieved from, the warrant premises; or
 - (iv) one or more things were copied, photographed, recorded, marked, tagged, operated, printed, tested or sampled at the warrant premises;
 - (f) any other information relating to delayed notification search warrants and the administration of this Part that the Minister considers appropriate.
- (2) The report for a financial year must be given to the Minister as soon as practicable, and in any event not more than 3 months, after the end of the financial year.
- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives it.

3ZZFC Regular reports to Ombudsman

As soon as practicable after each 6-month period starting on 1 January or 1 July the chief officer of an eligible agency must give a written report to the Ombudsman that includes the following information in respect of the period:

- (a) the number of applications for delayed notification search warrants made in person by eligible officers of the agency;
- (b) the number of applications for delayed notification search warrants made under section 3ZZBF by eligible officers of the agency;
- (c) the number of delayed notification search warrants issued as a result of applications referred to in paragraphs (a) and (b) and the eligible offences to which they related;
- (d) the number of delayed notification search warrants that were executed by an eligible officer of the agency.

3ZZFD Keeping documents connected with delayed notification search warrants

The chief officer of an eligible agency must cause the following to be kept:

- (a) a copy of each authorisation given in writing by the chief officer under section 3ZZBB;
- (b) a copy of the written record made under section 3ZZBB of each authorisation given orally by the chief officer under that section;
- (c) a copy of each application for a delayed notification search warrant made by an eligible officer of the agency, and a statement of whether the application was granted or refused;
- (d) each delayed notification search warrant issued to an eligible officer of the agency;
- (e) a copy of each form of delayed notification search warrant completed under subsection 3ZZBF(7) by an eligible officer of the agency;
- (f) a copy of the following:
 - (i) each warrant premises occupier's notice given in relation to a delayed notification search warrant issued to an eligible officer of the agency;

- (ii) each adjoining premises occupier's notice given in relation to such a warrant;
- (iii) each application made by an eligible officer of the agency under section 3ZZCC;
- (iv) any directions given under subsection 3ZZDA(4) or 3ZZDB(4) in relation to such a warrant;
- (v) each authorisation given by the chief officer of the agency under subsection 3ZZDC(4);
- (vi) each application made by an eligible officer of the agency as mentioned in subsection 3ZZDC(5);
- (vii) each extension of time granted under subsection 3ZZDC(5) in response to such an application;
- (g) each report given to the chief officer of the agency under section 3ZZFA.

3ZZFE Register of delayed notification search warrants

- (1) The chief officer of an eligible agency must cause a register of delayed notification search warrants to be kept.
- (2) The register is to specify, for each delayed notification search warrant sought by an eligible officer of the eligible agency:
 - (a) the date the warrant was issued or refused; and
 - (b) the name of the eligible issuing officer who issued or refused to issue the warrant; and
 - (c) if the warrant was issued:
 - (i) the name of the applicant for the warrant and the executing officer; and
 - (ii) the eligible offence to which the warrant relates; and
 - (iii) if the warrant was executed—the day of execution of the warrant; and
 - (iv) the day and time of issue of the warrant, and the time of expiry of the warrant; and
 - (v) the time by which notice of entry of premises under the warrant is to be given; and
 - (vi) whether a warrant premises occupier's notice has been given in relation to the warrant and, if such a notice has been given, the date on which it was given; and

- (vii) whether an adjoining premises occupier's notice has been given in relation to the warrant and, if such a notice has been given, the date on which it was given; and
 - (viii) details of any extension of time granted under subsection 3ZZDC(5) in relation to the warrant; and
 - (ix) details of any directions given under subsection 3ZZDA(4) or 3ZZDB(4) in relation to the warrant.
- (3) The register is not a legislative instrument.

Division 7—Inspections by Ombudsman

3ZZGA Appointment of inspecting officers

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

3ZZGB Inspection of records by the Ombudsman

- (1) The Ombudsman must, from time to time and at least once in each 6-month period starting on 1 January or 1 July, inspect the records of each eligible agency to determine the extent of compliance with this Part by the agency, and eligible officers of the agency, in relation to delayed notification search warrants.
- (2) For the purpose of an inspection under this section, the Ombudsman:
 - (a) may, after notifying the chief officer of the eligible agency, enter at any reasonable time premises occupied by the agency; and
 - (b) is entitled to have full and free access at all reasonable times to all records of the agency that are relevant to the inspection; and
 - (c) may require a staff member of the agency to give the Ombudsman any information that the Ombudsman considers necessary, being information that is in the member's

possession, or to which the member has access, and that is relevant to the inspection.

- (3) The chief officer must ensure that staff members of the agency give the Ombudsman any assistance the Ombudsman reasonably requires to enable the Ombudsman to perform functions under this section.
- (4) Nothing in this section requires the Ombudsman to inspect records that are relevant to the obtaining or execution of a delayed notification search warrant if a warrant premises occupier's notice has not yet been given in relation to the warrant, unless directions have been made under subsection 3ZZDA(4) or 3ZZDB(4) not requiring such notice to be given.

3ZZGC Power to obtain relevant information

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

the Ombudsman may, by writing given to the chief officer of the agency, require the chief officer, or a person nominated by the chief officer, to attend:

- (c) before a specified inspecting officer; and
 - (d) at a specified place; and
 - (e) within a specified period or at a specified time on a specified day;
- to answer questions relevant to the inspection.
- (5) The place, and the period or the time and day, specified in a requirement under this section, must be reasonable having regard to the circumstances in which the requirement is made.

3ZZGD Offence

A person commits an offence if:

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

Penalty: Imprisonment for 6 months.

3ZZGE Ombudsman to be given information etc. despite other laws

- (1) Despite any other law, a person is not excused from giving information, answering a question, or giving access to a document, as and when required under this Division, on the ground that giving the information, answering the question, or giving access to the document, as the case may be:
- (a) would contravene a law; or
 - (b) would be contrary to the public interest; or
 - (c) might tend to incriminate the person or make the person liable to a penalty; or
 - (d) would disclose one of the following:
 - (i) a legal advice given to a Minister or a Department, or a prescribed authority (within the meaning of the *Ombudsman Act 1976*);

- (ii) a communication between an officer of a Department or of a prescribed authority (within the meaning of the *Ombudsman Act 1976*) and another person or body, being a communication protected against disclosure by legal professional privilege.
- (2) However, if the person is a natural person:
- (a) the information, the answer, or the fact that the person has given access to the document, as the case may be; and
 - (b) any information or thing (including a document) obtained as a direct or indirect consequence of giving the information, answering the question or giving access to the document;
- are not admissible in evidence against the person except in a proceeding by way of a prosecution for an offence against section 3ZZHA or against Part 7.4 or 7.7 of the *Criminal Code*.
- (3) Nothing in section 3ZZHA or any other law prevents a staff member of an eligible agency from:
- (a) giving information to the Ombudsman or an inspecting officer (whether orally or in writing and whether or not in answer to a question); or
 - (b) giving access to a record of the agency to the Ombudsman or an inspecting officer;
- for the purposes of an inspection under this Division of the agency's records.
- (4) Nothing in section 3ZZHA or any other law prevents a staff member of an eligible agency from making a record of information, or causing a record of information to be made, for the purposes of giving the information to a person as permitted by subsection (3).
- (5) The fact that a person is not excused under subsection (1) from giving information, answering a question or producing a document does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that information, answer or document.

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

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

- (4) In this section:

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

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

3ZZGG Ombudsman not to be sued

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

3ZZGH Report on inspection

- (1) As soon as practicable after each 6-month period starting on 1 January or 1 July the Ombudsman must give a written report to the Minister on the results of each inspection under section 3ZZGB in the period.
- (2) If, having regard to information obtained in the course of the inspection or a previous inspection, the Ombudsman considers that the requirements of section 3ZZFB or 3ZZFC have not been properly complied with in relation to an eligible agency, the Ombudsman may include a comment to that effect in the report.
- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives it.

Division 8—Unauthorised disclosure of information

3ZZHA Unauthorised disclosure of information

- (1) A person commits an offence if:
 - (a) the person discloses information; and
 - (b) the information relates to:
 - (i) an application for a delayed notification search warrant; or
 - (ii) the execution of a delayed notification search warrant; or
 - (iii) a report under section 3ZZFA in relation to a delayed notification search warrant; or
 - (iv) a warrant premises occupier's notice or an adjoining premises occupier's notice prepared in relation to a delayed notification search warrant.

Penalty: Imprisonment for 2 years.

- (2) Each of the following is an exception to the offence created by subsection (1):
 - (a) the disclosure is in connection with the administration or execution of this Part;

- (aa) the disclosure is for the purposes of obtaining or providing legal advice related to this Part;
- (b) the disclosure is for the purposes of any legal proceeding arising out of or otherwise related to this Part or of any report of any such proceedings;
- (c) the disclosure is in accordance with any requirement imposed by law;
- (d) the disclosure is for the purposes of:
 - (i) the performance of duties or functions or the exercise of powers under or in relation to this Part; or
 - (ii) the performance of duties or functions or the exercise of powers by a law enforcement officer, an officer of the Australian Security Intelligence Organisation, a staff member of the Australian Secret Intelligence Service or a person seconded to either of those bodies;
- (da) the disclosure is made by anyone to the Ombudsman, a Deputy Commonwealth Ombudsman or a member of the Ombudsman's staff (whether in connection with the exercise of powers or performance of functions under Division 7, in connection with a complaint made to the Ombudsman or in any other circumstances);
- (e) the disclosure is made after a warrant premises occupier's notice or an adjoining premises occupier's notice has been given in relation to the warrant;
- (f) the disclosure is made after a direction has been given under subsection 3ZZDA(4) or 3ZZDB(4) in relation to the warrant.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

Division 9—Other matters

3ZZIA Delegation

Delegation by chief officer

- (1) The chief officer of an authorised agency or eligible agency may, in writing, delegate all or any of the chief officer's powers, functions or duties under this Part to:

- (a) a Deputy Commissioner of the Australian Federal Police; or
 - (b) a senior executive AFP employee who is a member of the Australian Federal Police and who is authorised in writing by the Commissioner for the purposes of this paragraph.
- (2) The chief officer of an authorised agency or eligible agency may, in writing, delegate all or any of the chief officer's powers, functions or duties under Division 5 to the chief executive officer (however described) of a State or Territory law enforcement agency.
- (3) The chief officer of an authorised agency or eligible agency may, in writing, delegate all or any of the chief officer's powers, functions or duties under Division 5 to a Commonwealth officer if the chief officer is satisfied on reasonable grounds that the Commonwealth officer is able to properly exercise those powers, functions or duties.

Delegation by Ombudsman

- (4) The Ombudsman may, in writing, delegate all or any of the Ombudsman's powers under this Part, other than a power to report to the Minister, to an APS employee responsible to the Ombudsman.

Delegate must produce delegation on request

- (5) A delegate must, upon request by a person affected by the exercise of any power delegated to the delegate, produce the instrument of delegation, or a copy of the instrument, for inspection by the person.

3ZZIB Law relating to legal professional privilege not affected

Except as expressly provided, this Part does not affect the law relating to legal professional privilege.

Note: Section 3ZZGE expressly overrides legal professional privilege.

52 Paragraphs 15AA(2)(c) and (d)

After "provision of", insert "Subdivision C of".

53 After paragraph 15YU(1)(f)

Insert:

(fa) an offence against Part 5.5 of the *Criminal Code*; or

54 Paragraph 15YU(1)(j)

Repeal the paragraph.

55 Application of amendments

Despite the repeal of paragraph 15YU(1)(j) of the *Crimes Act 1914* by this Schedule, that paragraph continues to apply after this item commences in relation to any proceedings for an offence against the *Crimes (Foreign Incursions and Recruitment) Act 1978* (whether those proceedings commence before, on or after the commencement of this item).

56 Subsection 23DB(1) (note)

Omit “3W(2)”, substitute “3WA(2)”.

Criminal Code Act 1995

57 Part 5.1 of the *Criminal Code* (heading)

Repeal the heading, substitute:

Part 5.1—Treason, urging violence and advocating terrorism

58 Division 80 of the *Criminal Code* (heading)

Repeal the heading, substitute:

Division 80—Treason, urging violence and advocating terrorism

59 Subsection 80.1AA(6) of the *Criminal Code*

After “conduct”, insert “solely”.

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

Repeal the heading, substitute:

Subdivision C—Urging violence and advocating terrorism

61 At the end of Subdivision C of Division 80 of the *Criminal Code*

Add:

80.2C Advocating terrorism

- (1) A person commits an offence if:
- (a) the person advocates:
 - (i) the doing of a terrorist act; or
 - (ii) the commission of a terrorism offence referred to in subsection (2); and
 - (b) the person engages in that conduct reckless as to whether another person will:
 - (i) engage in a terrorist act; or
 - (ii) commit a terrorism offence referred to in subsection (2).

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

Penalty: Imprisonment for 5 years.

- (2) A terrorism offence is referred to in this subsection if:
- (a) the offence is punishable on conviction by imprisonment for 5 years or more; and
 - (b) the offence is not:
 - (i) an offence against section 11.1 (attempt), 11.4 (incitement) or 11.5 (conspiracy) to the extent that it relates to a terrorism offence; or
 - (ii) a terrorism offence that a person is taken to have committed because of section 11.2 (complicity and common purpose), 11.2A (joint commission) or 11.3 (commission by proxy).

Definitions

(3) In this section:

advocates: a person ***advocates*** the doing of a terrorist act or the commission of a terrorism offence if the person counsels, promotes, encourages or urges the doing of a terrorist act or the commission of a terrorism offence.

terrorism offence has the same meaning as in subsection 3(1) of the *Crimes Act 1914*.

terrorist act has the same meaning as in section 100.1.

- (4) A reference in this section to advocating the doing of a terrorist act or the commission of a terrorism offence includes a reference to:
- (a) advocating the doing of a terrorist act or the commission of a terrorism offence, even if a terrorist act or terrorism offence does not occur; and
 - (b) advocating the doing of a specific terrorist act or the commission of a specific terrorism offence; and
 - (c) advocating the doing of more than one terrorist act or the commission of more than one terrorism offence.

62 Subsection 80.4(2) of the *Criminal Code*

Omit “or 80.2B(2)”, substitute “, 80.2B(2) or 80.2C(1)”.

62A Subsection 100.1(1) of the *Criminal Code*

Insert:

engage in a hostile activity has the meaning given by subsection 117.1(1).

63 Subsection 102.1(1) of the *Criminal Code* (paragraph (a) of the definition of *terrorist organisation***)**

Omit “(whether or not a terrorist act occurs)”.

64 Paragraph 102.1(1A)(a) of the *Criminal Code*

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

65 Subsections 102.1(2), (4) and (17) of the *Criminal Code*

Omit “(whether or not a terrorist act has occurred or will occur)”
(wherever occurring).

66 At the end of section 102.1 of the *Criminal Code*

Add:

- (20) In this section, a reference to the doing of a terrorist act includes:
- (a) a reference to the doing of a terrorist act, even if a terrorist act does not occur; and
 - (b) a reference to the doing of a specific terrorist act; and
 - (c) a reference to the doing of more than one terrorist act.

67 After section 102.1 of the *Criminal Code*

Insert:

102.1AA Including or removing names of prescribed terrorist organisations

- (1) This section applies if the Minister is satisfied on reasonable grounds that:
- (a) an organisation is specified in regulations made for the purposes of paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1); and
 - (b) the organisation:
 - (i) is referred to by another name (the *alias*), in addition to, or instead of, a name used to specify the organisation in the regulations; or
 - (ii) no longer uses a name (the *former name*) used in the regulations to specify the organisation.
- (2) The Minister may, by legislative instrument, amend the regulations to do either or both of the following:
- (a) include the alias in the regulations if the Minister is satisfied as referred to in subparagraph (1)(b)(i);
 - (b) remove the former name from the regulations if the Minister is satisfied as referred to in subparagraph (1)(b)(ii).
- (3) Amendment of regulations under subsection (2) does not:

- (a) prevent the further amendment or repeal of the regulations by regulations made under section 5 of this Act for the purposes of paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1); or
 - (b) affect when the amended regulations cease to have effect under section 102.1.
- (4) The Minister may not, by legislative instrument made under this section, amend the regulations to remove entirely an organisation that has been prescribed.
- (5) To avoid doubt, this section does not affect the power under section 5 of this Act to make regulations for the purposes of paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1).

68 Section 102.5 of the *Criminal Code* (heading)

Repeal the heading, substitute:

102.5 Training involving a terrorist organisation

69 Paragraphs 102.5(1)(a) and 102.5(2)(a) of the *Criminal Code*

Repeal the paragraphs, substitute:

- (a) the person does any of the following:
 - (i) intentionally provides training to an organisation;
 - (ii) intentionally receives training from an organisation;
 - (iii) intentionally participates in training with an organisation; and

70 Paragraph 104.2(2)(a) of the *Criminal Code*

Omit “considers”, substitute “suspects”.

71 Paragraph 104.2(2)(b) of the *Criminal Code*

Repeal the paragraph, substitute:

- (b) suspects on reasonable grounds that the person has:
 - (i) provided training to, received training from or participated in training with a listed terrorist organisation; or

- (ii) engaged in a hostile activity in a foreign country; or
- (iii) been convicted in Australia of an offence relating to terrorism, a terrorist organisation (within the meaning of subsection 102.1(1)) or a terrorist act (within the meaning of section 100.1); or
- (iv) been convicted in a foreign country of an offence that is constituted by conduct that, if engaged in in Australia, would constitute a terrorism offence (within the meaning of subsection 3(1) of the *Crimes Act 1914*).

72 At the end of section 104.2 of the *Criminal Code*

Add:

- (6) In paragraphs (2)(a) and (b), a reference to a terrorist act includes:
 - (a) a reference to a terrorist act that does not occur; and
 - (b) a reference to a specific terrorist act; and
 - (c) a reference to more than one terrorist act.

73 Subparagraph 104.4(1)(c)(ii) of the *Criminal Code*

Repeal the subparagraph, substitute:

- (ii) that the person has provided training to, received training from or participated in training with a listed terrorist organisation; or
- (iii) that the person has engaged in a hostile activity in a foreign country; or
- (iv) that the person has been convicted in Australia of an offence relating to terrorism, a terrorist organisation (within the meaning of subsection 102.1(1)) or a terrorist act (within the meaning of section 100.1); or
- (v) that the person has been convicted in a foreign country of an offence that is constituted by conduct that, if engaged in in Australia, would constitute a terrorism offence (within the meaning of subsection 3(1) of the *Crimes Act 1914*); and

74 At the end of section 104.4 of the *Criminal Code*

Add:

- (4) In paragraphs (1)(c) and (d), a reference to a terrorist act includes:
-

- (a) a reference to a terrorist act that does not occur; and
- (b) a reference to a specific terrorist act; and
- (c) a reference to more than one terrorist act.

75 At the end of paragraph 104.5(3)(c) of the *Criminal Code*

Add “, but for no more than 12 hours within any 24 hours”.

76 Paragraphs 104.6(1)(b) and 104.8(1)(b) of the *Criminal Code*

Omit “either considers or”.

77 Subparagraph 104.12(1)(b)(iii) of the *Criminal Code*

Omit “appropriate); and”, substitute “appropriate);”.

78 At the end of paragraph 104.12(1)(b) of the *Criminal Code*

Add:

- (iv) that the person may have appeal and review rights in relation to the decision of the issuing court to make the order;
- (v) the person’s right to attend court on the day specified for the purposes of paragraph 104.5(1)(e);
- (vi) the right of the person or one or more representatives of the person, and (if relevant) the right of the Queensland public interest monitor, to adduce evidence or make submissions under subsection 104.14(1) if the order is confirmed;
- (vii) that the person may have appeal and review rights in relation to any decision of the issuing court to confirm the order;
- (viii) the person’s right to apply under section 104.18 for an order revoking or varying the order if it is confirmed;
- (ix) the right of the person or one or more representatives of the person, and (if relevant) the right of the Queensland public interest monitor, to adduce evidence or make submissions under subsection 104.19(3) or 104.23(4) in relation to an application to revoke or vary the order if it is confirmed; and

79 Section 104.17 of the *Criminal Code*

Before “As soon as practicable”, insert “(1)”.

80 Section 104.17 of the *Criminal Code*

Omit all the words after “section 104.14,”, substitute:

an AFP member must:

- (a) serve the declaration, the revocation or the confirmed control order personally on the person; and
- (b) if the court confirms the interim order (with or without variation)—inform the person of the following:
 - (i) that the person may have appeal and review rights in relation to the decision of the issuing court to confirm the order;
 - (ii) the person’s right to apply under section 104.18 for an order revoking or varying the order;
 - (iii) the right of the person or one or more representatives of the person, and (if relevant) the right of the Queensland public interest monitor, to adduce evidence or make submissions under subsection 104.19(3) or 104.23(4) in relation to an application to revoke or vary the order; and
- (c) if paragraph (b) applies—ensure that the person understands the information provided under that paragraph (taking into account the person’s age, language skills, mental capacity and any other relevant factor).

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

Add:

- (2) Paragraphs (1)(b) and (c) do not apply if the actions of the person in relation to whom the interim control order has been declared void, revoked or confirmed make it impracticable for the AFP member to comply with those paragraphs.
- (3) A failure to comply with paragraph (1)(c) does not make the control order ineffective to any extent.

81A Subsection 104.23(1) of the *Criminal Code*

Repeal the subsection, substitute:

- (1) The Commissioner of the Australian Federal Police may cause an application to be made to an issuing court to vary, under section 104.24, a confirmed control order, by adding one or more obligations, prohibitions or restrictions mentioned in subsection 104.5(3) to the order, if the Commissioner:
 - (a) suspects on reasonable grounds that the varied order in the terms to be sought would substantially assist in preventing a terrorist act; or
 - (b) suspects on reasonable grounds that the person has:
 - (i) provided training to, received training from or participated in training with a listed terrorist organisation; or
 - (ii) engaged in a hostile activity in a foreign country; or
 - (iii) been convicted in Australia of an offence relating to terrorism, a terrorist organisation (within the meaning of subsection 102.1(1)) or a terrorist act (within the meaning of section 100.1); or
 - (iv) been convicted in a foreign country of an offence that is constituted by conduct that, if engaged in in Australia, would constitute a terrorism offence (within the meaning of subsection 3(1) of the *Crimes Act 1914*).

82 At the end of section 104.23 of the *Criminal Code*

Add:

- (6) In subsection (1), a reference to a terrorist act includes:
 - (a) a reference to a terrorist act that does not occur; and
 - (b) a reference to a specific terrorist act; and
 - (c) a reference to more than one terrorist act.

83 At the end of section 104.24 of the *Criminal Code*

Add:

- (4) In paragraph (1)(b), a reference to a terrorist act includes:
 - (a) a reference to a terrorist act that does not occur; and
 - (b) a reference to a specific terrorist act; and

(c) a reference to more than one terrorist act.

84 Subparagraph 104.26(1)(c)(ii) of the *Criminal Code*

Omit “appropriate); and”, substitute “appropriate);”.

85 At the end of paragraph 104.26(1)(c) of the *Criminal Code*

Add:

- (iii) that the person may have appeal and review rights in relation to the decision of the issuing court to vary the order;
- (iv) the person’s right to apply under section 104.18 for an order revoking or varying the order;
- (v) the right of the person or one or more representatives of the person, and (if relevant) the right of the Queensland public interest monitor, to adduce evidence or make submissions under subsection 104.19(3) or 104.23(4) in relation to an application to revoke or vary the order; and

86 Subsection 104.32(1) of the *Criminal Code*

Omit “10 years after the day on which this Division commences”, substitute “7 September 2018”.

87 Subsection 104.32(2) of the *Criminal Code*

Omit “the end of 10 years after the day on which this Division commences”, substitute “7 September 2018”.

88 Subsection 105.4(4) of the *Criminal Code*

Repeal the subsection, substitute:

- (4) A person meets the requirements of this subsection if:
 - (a) in the case of an AFP member—the member suspects, on reasonable grounds, that the subject:
 - (i) will engage in a terrorist act; or
 - (ii) possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or
 - (iii) has done an act in preparation for, or planning, a terrorist act; and

- (b) in the case of an issuing authority—the issuing authority is satisfied there are reasonable grounds to suspect that the subject:
 - (i) will engage in a terrorist act; or
 - (ii) possesses a thing that is connected with the preparation for, or the engagement of a person in, a terrorist act; or
 - (iii) has done an act in preparation for, or planning, a terrorist act; and
- (c) the person is satisfied that making the order would substantially assist in preventing a terrorist act occurring; and
- (d) the person is satisfied that detaining the subject for the period for which the person is to be detained under the order is reasonably necessary for the purpose referred to in paragraph (c).

89 Paragraph 105.4(6)(b) of the *Criminal Code*

Before “necessary”, insert “reasonably”.

90 Paragraph 105.7(2)(a) of the *Criminal Code*

Repeal the paragraph, substitute:

- (a) be made either:
 - (i) in writing (other than writing by means of an electronic communication); or
 - (ii) if the AFP member considers it necessary because of urgent circumstances—orally in person or by telephone, or by fax, email or other electronic means of communication; and

91 After subsection 105.7(2A) of the *Criminal Code*

Insert:

- (2B) If the application is made orally, information given by the AFP member to the issuing authority in connection with the application must be verified or given on oath or affirmation, unless the issuing authority is satisfied that it is not practical to administer an oath or affirmation to the member.

92 Subsection 105.8(1) of the *Criminal Code*

After “authority may”, insert “, subject to subsection (1A),”.

93 After subsection 105.8(1) of the *Criminal Code*

Insert:

- (1A) If the application is made orally in person or by telephone, or by fax, email or other electronic means of communication, the issuing authority must not make the order unless the issuing authority is satisfied that it is necessary, because of urgent circumstances, to apply for the order by such means.

94 Paragraph 105.8(6)(a) of the *Criminal Code*

Repeal the paragraph, substitute:

- (a) any of the following:
- (i) the true name of the person in relation to whom the order is made;
 - (ii) if, after reasonable inquiries have been made, the person’s true name is not known but an alias is known for the person—the alias of the person in relation to whom the order is made;
 - (iii) if, after reasonable inquiries have been made, the person’s true name is not known and no alias is known for the person—a description sufficient to identify the person in relation to whom the order is made; and

95 After subsection 105.8(7) of the *Criminal Code*

Insert:

- (7A) If the order is made on an application that was made orally (see subparagraph 105.7(2)(a)(ii)), the issuing authority must either:
- (a) ensure that there is an audio, or audio-visual, recording of the application; or
 - (b) as soon as practicable after the order is made, make a written record of the details of the application, including any information given in support of it.

95A Subsection 105.8(8) of the *Criminal Code*

After “must”, insert “, as soon as reasonably practicable after the order is made”.

96 Paragraph 105.12(6)(a) of the *Criminal Code*

Repeal the paragraph, substitute:

- (a) any of the following:
- (i) the true name of the person in relation to whom the order is made;
 - (ii) if, after reasonable inquiries have been made, the person’s true name is not known but an alias is known for the person—the alias of the person in relation to whom the order is made;
 - (iii) if, after reasonable inquiries have been made, the person’s true name is not known and no alias is known for the person—a description sufficient to identify the person in relation to whom the order is made; and

96A Subsection 105.12(8) of the *Criminal Code*

After “must”, insert “, as soon as reasonably practicable after the order is made”.

97 After subsection 105.15(1) of the *Criminal Code*

Insert:

- (1A) The application for the prohibited contact order may be made either:
- (a) in writing (other than writing by means of an electronic communication); or
 - (b) if the AFP member considers it necessary because of urgent circumstances—orally in person or by telephone, or by fax, email or other electronic means of communication.

98 Subsection 105.15(3) of the *Criminal Code*

Repeal the subsection, substitute:

- (3) If:

- (a) a continued preventative detention order is being applied for;
and
 - (b) the application for the prohibited contact order is made in
accordance with paragraph (1A)(a);
- the information in the application for the prohibited contact order
must be sworn or affirmed by the AFP member.
- (3A) If:
- (a) a continued preventative detention order is being applied for;
and
 - (b) the application for the prohibited contact order is made in
accordance with paragraph (1A)(b);
- the information in the application for the prohibited contact order
must be sworn or affirmed by the AFP member unless the issuing
authority is satisfied that it is not practical to administer an oath or
affirmation to the member.

99 Subsection 105.15(4) of the *Criminal Code*

After “authority may”, insert “, subject to subsection (4A),”.

100 After subsection 105.15(4) of the *Criminal Code*

Insert:

- (4A) If the application for the prohibited contact order is made orally in
person or by telephone, or by fax, email or other electronic means
of communication, the issuing authority must not make the order
unless the issuing authority is satisfied that it was necessary,
because of urgent circumstances, to apply for the order by such
means.

101 At the end of section 105.15 of the *Criminal Code*

Add:

- (7) If the prohibited contact order is made on an application that was
made orally, the issuing authority must either:
- (a) ensure that there is an audio, or audio-visual, recording of the
application; or

- (b) as soon as practicable after the order is made, make a written record of the details of the application, including any information given in support of it.

102 After subsection 105.16(1) of the *Criminal Code*

Insert:

- (1A) The application may be made either:
 - (a) in writing (other than writing by means of an electronic communication); or
 - (b) if the AFP member considers it necessary because of urgent circumstances—orally in person or by telephone, or by fax, email or other electronic means of communication.

103 Subsection 105.16(3) of the *Criminal Code*

Repeal the subsection, substitute:

- (3) If:
 - (a) the preventative detention order is a continued preventative detention order; and
 - (b) the application for the prohibited contact order is made in accordance with paragraph (1A)(a);the information in the application for the prohibited contact order must be sworn or affirmed by the AFP member.

- (3A) If:
 - (a) the preventative detention order is a continued preventative detention order; and
 - (b) the application for the prohibited contact order is made in accordance with paragraph (1A)(b);the information in the application for the prohibited contact order must be sworn or affirmed by the AFP member unless the issuing authority is satisfied that it is not practical to administer an oath or affirmation to the member.

104 Subsection 105.16(4) of the *Criminal Code*

After “authority may”, insert “, subject to subsection (4A),”.

105 After subsection 105.16(4) of the *Criminal Code*

Insert:

- (4A) If the application for the prohibited contact order is made orally in person or by telephone, or by fax, email or other electronic means of communication, the issuing authority must not make the order unless the issuing authority is satisfied that it was necessary, because of urgent circumstances, to apply for the order by such means.

106 At the end of section 105.16 of the *Criminal Code*

Add:

- (7) If the prohibited contact order is made on an application that was made orally, the issuing authority must either:
- (a) ensure there is an audio, or audio-visual, recording of the application; or
 - (b) as soon as practicable after the order is made, make a written record of the details of the application, including any information given in support of it.

107 Subsection 105.53(1) of the *Criminal Code*

Omit “10 years after the day on which this Division commences”, substitute “7 September 2018”.

108 Subsection 105.53(2) of the *Criminal Code*

Omit “the end of 10 years after the day on which this Division commences”, substitute “7 September 2018”.

109 At the end of Division 106 of the *Criminal Code*

Add:

**106.5 Application provisions for certain amendments in the
*Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014***

- (1) The amendments of section 102.1, made by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, do not affect the continuity of any regulations that are in

force for the purposes of that section immediately before the commencement of this section.

- (2) Section 104.2, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies to requests for interim control orders made after the commencement of this section, where the conduct in relation to which the request is made occurs before or after that commencement.
 - (3) Section 104.4, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies to the making of orders requested after the commencement of this section, where the conduct in relation to which the request is made occurs before or after that commencement.
 - (4) Sections 104.6 and 104.8, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, apply to the making of requests after the commencement of this section, where the conduct in relation to which the request is made occurs before or after that commencement.
 - (4A) Section 104.23, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies to variations of control orders, where the relevant interim control order is requested after that commencement.
 - (5) Section 105.4, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies in relation to applications for preventative detention orders made after the commencement of this section.
 - (6) Section 105.7, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies in relation to applications for initial preventative detention orders made after the commencement of this section.
 - (7) Section 105.8, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies in relation to initial preventative detention orders made after the commencement of this section.
 - (8) Section 105.12, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act*
-

2014, applies in relation to continued preventative detention orders made after the commencement of this section, regardless of when the initial preventative detention order to which the continued order relates was made.

- (9) Section 105.15, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies in relation to applications for prohibited contact orders made after the commencement of this section, regardless of when the application for the preventative detention order to which the prohibited contact order relates was made.
- (10) Section 105.16, as amended by Schedule 1 to the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014*, applies in relation to applications for prohibited contact orders made after the commencement of this section, regardless of when the preventative detention order to which the prohibited contact order relates was made.

110 At the end of Chapter 5 of the *Criminal Code*

Add:

Part 5.5—Foreign incursions and recruitment

Division 117—Preliminary

117.1 Definitions

- (1) In this Part:

armed force does not include an armed force forming part of the Australian Defence Force.

Defence Minister means the Minister administering the *Defence Force Discipline Act 1982*.

engage in a hostile activity: a person ***engages in a hostile activity*** in a foreign country if the person engages in conduct in that country with the intention of achieving one or more of the following objectives (whether or not such an objective is achieved):

- (a) the overthrow by force or violence of the government of that or any other foreign country (or of a part of that or any other foreign country);
- (b) the engagement, by that or any other person, in action that:
 - (i) falls within subsection 100.1(2) but does not fall within subsection 100.1(3); and
 - (ii) if engaged in in Australia, would constitute a serious offence;
- (c) intimidating the public or a section of the public of that or any other foreign country;
- (d) causing the death of, or bodily injury to, a person who is the head of state of that or any other foreign country, or holds, or performs any of the duties of, a public office of that or any other foreign country (or of a part of that or any other foreign country);
- (e) unlawfully destroying or damaging any real or personal property belonging to the government of that or any other foreign country (or of a part of that or any other foreign country).

Foreign Affairs Minister means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

government of a foreign country or a part of a foreign country means the authority exercising effective governmental control in that foreign country or that part of that foreign country.

listed terrorist organisation has the meaning given by subsection 100.1(1).

military training means training in the use of arms or explosives, or the practice of military exercises or movements.

prescribed organisation is:

- (a) an organisation that is prescribed by the regulations for the purposes of this paragraph; or
- (b) an organisation referred to in paragraph (b) of the definition of **terrorist organisation** in subsection 102.1(1).

recruit includes induce, incite or encourage.

serious offence means an offence against a law of the Commonwealth, a State or a Territory that is punishable by imprisonment for 2 years or more.

Prescribing organisations

- (2) Before the Governor-General makes a regulation prescribing an organisation for the purposes of paragraph (a) of the definition of *prescribed organisation* in subsection (1), the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering:
- (a) a serious violation of human rights; or
 - (b) the engagement, in Australia or a foreign country allied or associated with Australia, in action that falls within subsection 100.1(2) but does not fall within subsection 100.1(3); or
 - (c) a terrorist act (within the meaning of section 100.1); or
 - (d) an act prejudicial to the security, defence or international relations (within the meaning of section 10 of the *National Security Information (Criminal and Civil Proceedings) Act 2004*) of Australia.

117.2 Extended geographical jurisdiction—category D

Section 15.4 (extended geographical jurisdiction—category D) applies (subject to this Part) to an offence against this Part.

Division 119—Foreign incursions and recruitment

119.1 Incursions into foreign countries with the intention of engaging in hostile activities

Offence for entering foreign countries with the intention of engaging in hostile activities

- (1) A person commits an offence if:
- (a) the person enters a foreign country with the intention of engaging in a hostile activity in that or any other foreign country; and
 - (b) when the person enters the country, the person:

- (i) is an Australian citizen; or
- (ii) is a resident of Australia; or
- (iii) is a holder under the *Migration Act 1958* of a visa; or
- (iv) has voluntarily put himself or herself under the protection of Australia.

Penalty: Imprisonment for life.

Offence for engaging in a hostile activity in a foreign country

- (2) A person commits an offence if:
- (a) the person engages in a hostile activity in a foreign country; and
 - (b) when the person engages in the activity, the person:
 - (i) is an Australian citizen; or
 - (ii) is a resident of Australia; or
 - (iii) is a holder under the *Migration Act 1958* of a visa; or
 - (iv) has voluntarily put himself or herself under the protection of Australia.

Penalty: Imprisonment for life.

Absolute liability element

- (3) Absolute liability applies to paragraphs (1)(b) and (2)(b).

Note: For absolute liability, see section 6.2.

Exception

- (4) Subsections (1) and (2) do not apply to an act done by a person in the course of, and as part of, the person's service in any capacity in or with:
- (a) the armed forces of the government of a foreign country; or
 - (b) any other armed force if a declaration under subsection 119.8(1) covers the person and the circumstances of the person's service in or with the force.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3).

Note 2: For conduct for the defence or international relations of Australia, see section 119.9.

- (5) Paragraph (4)(a) does not apply if:
- (a) the person intends to engage, or engages, in a hostile activity in a foreign country while in or with an organisation; and
 - (b) the organisation is a prescribed organisation at the following time:
 - (i) for subsection (1)—the time of the entry referred to in that subsection;
 - (ii) for subsection (2)—the time the person engages in the hostile activity referred to in that subsection.

119.2 Entering, or remaining in, declared areas

- (1) A person commits an offence if:
- (a) the person enters, or remains in, an area in a foreign country; and
 - (b) the area is an area declared by the Foreign Affairs Minister under section 119.3; and
 - (c) when the person enters the area, or at any time when the person is in the area, the person:
 - (i) is an Australian citizen; or
 - (ii) is a resident of Australia; or
 - (iii) is a holder under the *Migration Act 1958* of a visa; or
 - (iv) has voluntarily put himself or herself under the protection of Australia.

Penalty: Imprisonment for 10 years.

Absolute liability element

- (2) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2.

Exception—entering or remaining solely for legitimate purposes

- (3) Subsection (1) does not apply if the person enters, or remains in, the area solely for one or more of the following purposes:
- (a) providing aid of a humanitarian nature;
 - (b) satisfying an obligation to appear before a court or other body exercising judicial power;

- (c) performing an official duty for the Commonwealth, a State or a Territory;
- (d) performing an official duty for the government of a foreign country or the government of part of a foreign country (including service in the armed forces of the government of a foreign country), where that performance would not be a violation of the law of the Commonwealth, a State or a Territory;
- (e) performing an official duty for the United Nations or an agency of the United Nations;
- (f) making a news report of events in the area, where the person is working in a professional capacity as a journalist or is assisting another person working in a professional capacity as a journalist;
- (g) making a bona fide visit to a family member;
- (h) any other purpose prescribed by the regulations.

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

Exception—entering or remaining solely for service with armed force other than prescribed organisation

- (4) Subsection (1) does not apply if the person enters, or remains in, the area solely in the course of, and as part of, the person's service in any capacity in or with:
 - (a) the armed forces of the government of a foreign country; or
 - (b) any other armed force if a declaration under subsection 119.8(1) covers the person and the circumstances of the person's service in or with the force.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3).

- (5) However, subsection (4) does not apply if:
 - (a) the person enters, or remains in, an area in a foreign country while in or with an organisation; and
 - (b) the organisation is a prescribed organisation at the time the person enters or remains in the area as referred to in paragraph (1)(a).

Schedule 1 Main counter-terrorism amendments

Part 1 Amendments

Note 1: For conduct for the defence or international relations of Australia, see section 119.9.

Note 2: Sections 10.1 and 10.3 also provide exceptions to subsection (1) of this section (relating to intervening conduct or event and sudden or extraordinary emergency respectively).

Sunset provision

- (6) This section ceases to have effect at the end of 7 September 2018.

119.3 Declaration of areas for the purposes of section 119.2

- (1) The Foreign Affairs Minister may, by legislative instrument, declare an area in a foreign country for the purposes of section 119.2 if he or she is satisfied that a listed terrorist organisation is engaging in a hostile activity in that area of the foreign country.
- (2) A single declaration may cover areas in 2 or more foreign countries if the Foreign Affairs Minister is satisfied that one or more listed terrorist organisations are engaging in a hostile activity in each of those areas.
- (2A) A declaration must not cover an entire country.

Requirement to brief Leader of the Opposition

- (3) Before making a declaration, the Foreign Affairs Minister must arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to the proposed declaration.

Cessation of declaration

- (4) A declaration ceases to have effect on the third anniversary of the day on which it takes effect. To avoid doubt, this subsection does not prevent:
- (a) the revocation of the declaration; or
 - (b) the making of a new declaration the same in substance as the previous declaration (whether the new declaration is made or takes effect before or after the previous declaration ceases to have effect because of this subsection).

Note: An offence committed in relation to the declared area before the cessation can be prosecuted after the cessation: see section 7 of the *Acts Interpretation Act 1901* as it applies because of paragraph 13(1)(a) of the *Legislative Instruments Act 2003*.

- (5) If:
- (a) an area is declared under subsection (1); and
 - (b) the Foreign Affairs Minister ceases to be satisfied that a listed terrorist organisation is engaging in a hostile activity in the area;
- the Foreign Affairs Minister must revoke the declaration.

Note: The Foreign Affairs Minister may, for example, cease to be satisfied that a listed terrorist organisation is engaging in a hostile activity in the area if the organisation ceases to be specified in the regulations.

- (6) To avoid doubt, subsection (5) does not prevent an area from being subsequently declared if the Foreign Affairs Minister becomes satisfied as mentioned in subsection (1).

Review of declaration

- (7) The Parliamentary Joint Committee on Intelligence and Security may review a declaration before the end of the period during which the declaration may be disallowed under section 42 of the *Legislative Instruments Act 2003*.

119.4 Preparations for incursions into foreign countries for purpose of engaging in hostile activities

Preparatory acts

- (1) A person commits an offence if:
- (a) the person engages in conduct (whether within or outside Australia); and
 - (b) the conduct is preparatory to the commission of an offence against section 119.1 (whether by that or any other person); and
 - (c) when the person engages in the conduct, the person:
 - (i) is an Australian citizen; or
 - (ii) is a resident of Australia; or
 - (iii) is a holder under the *Migration Act 1958* of a visa; or

- (iv) has voluntarily put himself or herself under the protection of Australia; or
- (v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Accumulating weapons etc.

- (2) A person commits an offence if:
- (a) the person (whether within or outside Australia) accumulates, stockpiles or otherwise keeps arms, explosives, munitions, poisons or weapons; and
 - (b) the person engages in that conduct with the intention that an offence against section 119.1 will be committed (whether by that or any other person); and
 - (c) when the person engages in the conduct, the person:
 - (i) is an Australian citizen; or
 - (ii) is a resident of Australia; or
 - (iii) is a holder under the *Migration Act 1958* of a visa; or
 - (iv) has voluntarily put himself or herself under the protection of Australia; or
 - (v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Providing or participating in training

- (3) A person commits an offence if:
- (a) the person engages in any of the following conduct (whether within or outside Australia):
 - (i) providing military training to another person;
 - (ii) participating in providing military training to another person;
 - (iii) being present at a meeting or assembly of persons, where the person intends at that meeting or assembly to provide, or participate in providing, military training to another person; and

- (b) the person engages in the conduct intending to prepare the other person to commit an offence against section 119.1; and
- (c) when the person engages in the conduct, the person:
 - (i) is an Australian citizen; or
 - (ii) is a resident of Australia; or
 - (iii) is a holder under the *Migration Act 1958* of a visa; or
 - (iv) has voluntarily put himself or herself under the protection of Australia; or
 - (v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

- (4) A person commits an offence if:
 - (a) the person engages in conduct of either of the following kinds (whether within or outside Australia):
 - (i) allowing military training to be provided to himself or herself;
 - (ii) allowing himself or herself to be present at a meeting or assembly of persons intending to allow military training to be provided to himself or herself; and
 - (b) the person engages in the conduct with the intention of committing an offence against section 119.1; and
 - (c) when the person engages in the conduct, the person:
 - (i) is an Australian citizen; or
 - (ii) is a resident of Australia; or
 - (iii) is a holder under the *Migration Act 1958* of a visa; or
 - (iv) has voluntarily put himself or herself under the protection of Australia; or
 - (v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Giving or receiving goods and services to promote the commission of an offence

- (5) A person commits an offence if:

- (a) the person engages in any of the following conduct (whether within or outside Australia):
 - (i) giving money or goods to, or performing services for, any other person, body or association;
 - (ii) receiving or soliciting money or goods, or the performance of services; and
- (b) the person engages in the conduct with the intention of supporting or promoting the commission of an offence against section 119.1; and
- (c) when the person engages in the conduct, the person:
 - (i) is an Australian citizen; or
 - (ii) is a resident of Australia; or
 - (iii) is a holder under the *Migration Act 1958* of a visa; or
 - (iv) has voluntarily put himself or herself under the protection of Australia; or
 - (v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Absolute liability element

- (6) Absolute liability applies to paragraphs (1)(c), (2)(c), (3)(c), (4)(c) and (5)(c).

Note: For absolute liability, see section 6.2.

Exception

- (7) This section does not apply if the person engages in conduct solely by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (7): see subsection 13.3(3).

Note 2: For conduct for the defence or international relations of Australia, see section 119.9.

Disregarding paragraphs 119.1(1)(b) and (2)(b)

- (8) A reference in this section to the commission of an offence against section 119.1 includes a reference to doing an act that would

constitute an offence against section 119.1 if paragraphs 119.1(1)(b) and (2)(b) were disregarded.

119.5 Allowing use of buildings, vessels and aircraft to commit offences

Use of buildings

- (1) A person commits an offence if:
- (a) the person is an owner, lessee, occupier, agent or superintendent of any building, room, premises or other place; and
 - (b) the person permits a meeting or assembly of persons to be held in that place (whether the person or the place is within or outside Australia); and
 - (c) by permitting the meeting or assembly to be so held, the person intends to commit, or support or promote the commission of, an offence against section 119.4; and
 - (d) when the person permits the meeting to be so held, the person:
 - (i) is an Australian citizen; or
 - (ii) is a resident of Australia; or
 - (iii) is a holder under the *Migration Act 1958* of a visa; or
 - (iv) has voluntarily put himself or herself under the protection of Australia; or
 - (v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Use of vessels or aircraft

- (2) A person commits an offence if:
- (a) the person is:
 - (i) an owner, charterer, lessee, operator, agent or master of a vessel; or
 - (ii) an owner, charterer, lessee, operator or pilot in charge of an aircraft; and

- (b) the person permits the vessel or aircraft to be used (whether the person, vessel or aircraft is within or outside Australia); and
- (c) by permitting the use, the person intends to commit, or support or promote the commission of, an offence against section 119.4; and
- (d) when the person permits the use, the person:
 - (i) is an Australian citizen; or
 - (ii) is a resident of Australia; or
 - (iii) is a holder under the *Migration Act 1958* of a visa; or
 - (iv) has voluntarily put himself or herself under the protection of Australia; or
 - (v) is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Penalty: Imprisonment for life.

Absolute liability element

- (3) Absolute liability applies to paragraphs (1)(d) and (2)(d).

Note: For absolute liability, see section 6.2.

Exception

- (4) This section does not apply if the person engages in conduct solely by way of, or for the purposes of, the provision of aid of a humanitarian nature.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3).

Note 2: For conduct for the defence or international relations of Australia, see section 119.9.

119.6 Recruiting persons to join organisations engaged in hostile activities against foreign governments

A person commits an offence if:

- (a) the person recruits, in Australia, another person to become a member of, or to serve in any capacity with, a body or association of persons; and

- (b) the objectives of the body or association include any one or more of the objectives referred to in the definition of *engage in a hostile activity* in subsection 117.1(1).

Note: For conduct for the defence or international relations of Australia, see section 119.9.

Penalty: Imprisonment for 25 years.

119.7 Recruiting persons to serve in or with an armed force in a foreign country

Recruiting others to serve with foreign armed forces

- (1) A person commits an offence if the person recruits, in Australia, another person to serve in any capacity in or with an armed force in a foreign country.

Penalty: Imprisonment for 10 years.

Publishing recruitment advertisements

- (2) A person commits an offence if:
- (a) the person publishes in Australia:
 - (i) an advertisement; or
 - (ii) an item of news that was procured by the provision or promise of money or any other consideration; and
 - (b) the person is reckless as to the fact that the publication of the advertisement or item of news is for the purpose of recruiting persons to serve in any capacity in or with an armed force in a foreign country.

Penalty: Imprisonment for 10 years.

- (3) A person commits an offence if:
- (a) the person publishes in Australia:
 - (i) an advertisement; or
 - (ii) an item of news that was procured by the provision or promise of money or any other consideration; and
 - (b) the advertisement or item of news contains information:

- (i) relating to the place at which, or the manner in which, persons may make applications to serve, or obtain information relating to service, in any capacity in or with an armed force in a foreign country; or
- (ii) relating to the manner in which persons may travel to a foreign country for the purpose of serving in any capacity in or with an armed force in a foreign country.

Penalty: Imprisonment for 10 years.

Facilitating recruitment

- (4) A person commits an offence if:
 - (a) the person engages in conduct in Australia; and
 - (b) the person engages in the conduct intending to facilitate or promote the recruitment of persons to serve in any capacity in or with an armed force in a foreign country.

Penalty: Imprisonment for 10 years.

Exception

- (5) This section does not apply in relation to service of a person in or with an armed force in circumstances if a declaration under subsection 119.8(2) covers the person and the circumstances of the person's service in or with the armed force.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3).

Note 2: For conduct for the defence or international relations of Australia, see section 119.9.

Armed forces that are not part of the government of a foreign country

- (6) A reference in this section to an armed force in a foreign country includes any armed force in a foreign country, whether or not the armed force forms part of the armed forces of the government of that foreign country.
- (7) Without limiting this section, a person recruits another person to serve in or with an armed force in a foreign country if the other person enters a commitment or engagement to serve in any

capacity in or with an armed force, whether or not the commitment or engagement is legally enforceable or constitutes legal or formal enlistment in that force.

119.8 Declaration in relation to specified armed forces

Service

- (1) The Minister may, by legislative instrument, declare that section 119.1 or 119.2 does not apply to a specified person or class of persons in any circumstances or specified circumstances if the Minister is satisfied that it is in the interests of the defence or international relations of Australia to permit the service of that person or class of persons in those circumstances in or with:
 - (a) a specified armed force in a foreign country; or
 - (b) a specified armed force in a foreign country in a specified capacity.

Recruitment

- (2) The Minister may, by legislative instrument, declare that section 119.7 does not apply to a specified person or class of persons in any circumstances or specified circumstances if the Minister is satisfied that it is in the interests of the defence or international relations of Australia to permit the recruitment in Australia of that person or class of persons to serve in those circumstances in or with:
 - (a) a specified armed force in a foreign country; or
 - (b) a specified armed force in a foreign country in a specified capacity.

119.9 Exception—conduct for defence or international relations of Australia

This Division does not apply in relation to conduct engaged in by a person acting in the course of the person's duty to the Commonwealth in relation to the defence or international relations of Australia.

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

Note 2: See also section 119.12 (declarations for the purposes of proceedings).

119.10 Mode of trial

- (1) A prosecution for any of the following offences is (subject to subsection (2)) to be on indictment:
 - (a) an offence against this Division;
 - (b) an offence against section 6 of the *Crimes Act 1914*, or an ancillary offence, that relates to an offence against this Division.
- (2) If the law of a State or Territory provides for a person who pleads guilty to a charge in proceedings for the person's commitment for trial on indictment to be committed to a higher court and dealt with otherwise than on indictment, a person charged in that State or Territory with an offence referred to in subsection (1) may be dealt with in accordance with that law.

119.11 Consent of Attorney-General required for prosecutions

- (1) Proceedings for the commitment of a person for the following must not be instituted without the written consent of the Attorney-General:
 - (a) the trial on indictment for an offence against the following provisions:
 - (i) this Division;
 - (ii) section 6 of the *Crimes Act 1914* to the extent that it relates to an offence against this Division;
 - (b) the summary trial of a person for an offence referred to in paragraph (a).
- (2) However, the following steps may be taken (but no further steps in proceedings may be taken) without consent having been given:
 - (a) a person may be charged with an offence referred to in paragraph (1)(a);
 - (b) a person may be arrested for an offence referred to in paragraph (1)(a), and a warrant for such an arrest may be issued and executed;
 - (c) a person so charged may be remanded in custody or on bail.

- (3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.

119.12 Declarations for the purposes of proceedings

- (1) The Foreign Affairs Minister may, in writing, declare that:
- (a) a specified authority is in effective governmental control in a specified foreign country or part of a foreign country; or
 - (b) a specified organisation is not an armed force, or part of an armed force, of the government of a foreign country.
- (2) The Defence Minister may, in writing, declare that if a specified person had done a specified act (being an act alleged to constitute an offence) the person would not have been acting in the course of the person's duty to the Commonwealth in relation to the defence or international relations of Australia.
- (3) Without limiting subsection (1) or (2), a declaration under that subsection may be made in relation to a specified day or period.
- (4) In proceedings for an offence referred to in paragraph 119.11(1)(a), a certificate under this section is prima facie evidence of the matters stated in the certificate.

Customs Act 1901

111 Subsection 183UA(1) (definition of *terrorist act*)

Repeal the definition, substitute:

terrorist act has the meaning given by section 100.1 of the *Criminal Code*.

112 Subsections 183UA(4), (4A) and (5)

Repeal the subsections.

113 Subsection 228(7) (definition of *terrorist act*)

Repeal the definition, substitute:

terrorist act has the meaning given by section 100.1 of the *Criminal Code*.

114 Application of amendments

The amendments of sections 183UA and 228 of the *Customs Act 1901* made by this Schedule apply in relation to any terrorist act (whether occurring before, on or after the commencement of this item).

Foreign Evidence Act 1994

115 Subsection 3(1) (paragraph (c) of the definition of *designated offence*)

Repeal the paragraph, substitute:

- (c) an offence against either of the following provisions of the *Charter of the United Nations Act 1945*:
 - (i) Part 4 of that Act;
 - (ii) Part 5 of that Act, to the extent that it relates to the *Charter of the United Nations (Sanctions—Al-Qaida) Regulations 2008*; or

116 Subsection 3(1) (after paragraph (d) of the definition of *designated offence*)

Insert:

- (da) an offence against Subdivision B of Division 80 of the *Criminal Code*; or

117 Subsection 3(1) (after paragraph (f) of the definition of *designated offence*)

Insert:

- (fa) an offence against Part 5.5 of the *Criminal Code*; or

118 Subsection 3(1) (paragraph (j) of the definition of *designated offence*)

Repeal the paragraph.

119 Subsection 3(1)

Insert:

duress has the meaning given by subsection 27D(3).

foreign authority means an authority of a foreign country or of part of a foreign country.

foreign government material means material provided by a foreign authority to an authority of the Commonwealth.

120 Subsection 3(1) (paragraph (a) of the definition of *foreign material*)

Omit “Part 3”, substitute “Parts 3 and 3A”.

121 Subsection 3(1)

Insert:

member of the Australian Federal Police has the same meaning as in the *Australian Federal Police Act 1979*.

senior AFP member means:

- (a) the Commissioner of the Australian Federal Police; or
- (b) a Deputy Commissioner of the Australian Federal Police; or
- (c) a senior executive AFP employee (within the meaning of the *Australian Federal Police Act 1979*) who is a member of the Australian Federal Police; or
- (d) a member of the Australian Federal Police occupying a position in the Australian Federal Police that is equivalent to or higher than one of the positions mentioned in paragraphs (a), (b) and (c), whether or not a declaration under section 25 of that Act is in force in respect of the person.

substantial adverse effect means an effect that is adverse and not insubstantial, insignificant or trivial.

terrorism-related proceeding means:

- (a) a criminal proceeding for a designated offence; or
- (b) a proceeding under the *Proceeds of Crime Act 2002* relating to a designated offence; or
- (c) a proceeding under Division 104 of the *Criminal Code*.

torture has the meaning given by subsection 27D(3).

122 After subsection 20(1)

Insert:

- (1A) However, this Part does not apply to a terrorism-related proceeding. This does not prevent testimony or an exhibit from being foreign material for the purposes of Part 3A.

Note: Part 3A deals with use of foreign material in terrorism-related proceedings.

123 Subsection 25(1) (note)

Repeal the note.

124 Section 25A

Repeal the section.

125 After Part 3

Insert:

Part 3A—Use of foreign material and foreign government material in terrorism-related proceedings

27A Foreign material may be adduced as evidence

- (1) Foreign material may be adduced in a terrorism-related proceeding.

Note 1: The court has a discretion to direct that foreign material not be adduced if it would have a substantial adverse effect on the right of a party to the proceeding to receive a fair hearing (see section 27C).

Note 2: Section 27D deals with admissibility of foreign material adduced.

- (2) However, foreign material is not to be adduced as evidence if it appears to the court's satisfaction at the hearing of the proceeding that the person who gave the testimony concerned is in Australia and is able to attend the hearing.

27B Foreign government material may be adduced as evidence

Adducing foreign government material

- (1) Foreign government material may be adduced in a terrorism-related proceeding if the material is:
 - (a) annexed to a written statement by a senior AFP member that:
 - (i) is verified on oath or affirmation by the member; and
 - (ii) meets the requirements in subsection (2); and
 - (b) accompanied by a certificate of the Attorney-General given under subsection (3).

Note 1: The court has a discretion to direct that foreign government material not be adduced if it would have a substantial adverse effect on the right of a party to the proceeding to receive a fair hearing (see section 27C).

Note 2: Section 27D deals with admissibility of foreign government material adduced.

Content of statement by senior AFP member

- (2) A statement by a senior AFP member for the purposes of paragraph (1)(a) must:
 - (a) relate only to foreign government material annexed to the statement; and
 - (b) state what the material is; and
 - (c) state, to the best of the senior AFP member's knowledge:
 - (i) how the material, and any information contained in the material, was obtained by the first foreign authority to obtain or produce the material or information; and
 - (ii) each step in the process by which the material or information came from that foreign authority into the possession of the Australian Federal Police.

Attorney-General's certificate

- (3) The Attorney-General may certify, in a form prescribed under subsection (4), that he or she is satisfied that it was not practicable to obtain the foreign government material or the information in the foreign government material as foreign material.

- (4) The Attorney-General may by legislative instrument prescribe a form for a certificate to be given under subsection (3).
- (5) A certificate given under subsection (3) is not a legislative instrument.

27C Discretion to prevent material being adduced

- (1) This section applies in relation to a terrorism-related proceeding described in an item of the following table if a person described in that item seeks to adduce foreign material or foreign government material in the proceeding.

Persons seeking to adduce material in proceedings		
Item	Proceeding	Person seeking to adduce material
1	Criminal proceeding for a designated offence	Prosecutor
2	Proceeding under the <i>Proceeds of Crime Act 2002</i> relating to a designated offence	The responsible authority under that Act in relation to the proceeding
3	Proceeding under Division 104 of the <i>Criminal Code</i>	A member of the Australian Federal Police or a special member (within the meaning of the <i>Australian Federal Police Act 1979</i>)

- (2) The court may direct that the material not be adduced as evidence in the proceeding if the court is satisfied that adducing the material would have a substantial adverse effect on the right of another party to the proceeding to receive a fair hearing.

27D Admissibility of material adduced

- (1) The following are admissible in a terrorism-related proceeding, subject to subsection (2) but despite any other Australian law about evidence:
 - (a) foreign material adduced under subsection 27A(1) in the proceeding;
 - (b) foreign government material adduced under subsection 27B(1) in the proceeding;

- (c) the statement to which the foreign government material was annexed as described in paragraph 27B(1)(a);
- (d) the certificate that accompanied the foreign government material as described in paragraph 27B(1)(b).

Exception to admissibility

- (2) Foreign material or foreign government material is not admissible if the court is satisfied that the material, or information contained in the material, was obtained directly as a result of torture or duress.
- (3) In subsection (2):

duress means a threat that:

- (a) is made explicitly or implicitly to a person; and
- (b) is a threat to imminently cause one or both of the following unless material or information is provided:
 - (i) death or serious injury of the person, a member of the person's family or a third party;
 - (ii) damage to, or loss by the person of, the person's significant assets; and
- (c) is a threat to which a reasonable person would respond by providing the material or information.

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act that the person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the International Covenant on Civil and Political Rights done at New York on 16 December 1966;

but does not include an act or omission arising only from, inherent in or incidental to lawful sanctions that are not inconsistent with the Articles of the Covenant.

Note: The International Covenant on Civil and Political Rights is in Australian Treaty Series 1980 No. 23 ([1980] ATS 23) and could in 2014 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

- (4) If foreign government material is not admissible, neither of the following is admissible, so far as it relates to the inadmissible foreign government material:
- (a) the statement described in paragraph (1)(c);
 - (b) the certificate described in paragraph (1)(d).

27DA Warning and informing jury

- (1) If foreign material or foreign government material is admitted in a terrorism-related proceeding conducted before a jury, and a party to the proceeding so requests, the judge is to:
- (a) warn the jury that the material may be unreliable; and
 - (b) inform the jury of matters that may cause it to be unreliable; and
 - (c) warn the jury of the need for caution in determining whether to accept the material and the weight to be given to it.
- (2) The judge need not comply with subsection (1) if there are good reasons for not doing so.
- (3) It is not necessary that a particular form of words be used in giving the warning or information.
- (4) This section does not affect any other power of the judge to give a warning to, or to inform, the jury.

27E Operation of other laws

This Part does not limit the ways in which a matter may be proved, or evidence may be adduced, under this Act (other than this Part) or any other Australian law.

126 Application of amendments

- (1) The amendments of the *Foreign Evidence Act 1994* made by this Schedule apply in relation to adducing evidence in proceedings instituted on or after the commencement of the amendments, whether the evidence was obtained before, on or after that commencement.
- (2) However, the repeal of paragraph (j) of the definition of **designated offence** in subsection 3(1) of the *Foreign Evidence Act 1994* by this Schedule does not prevent an offence against the *Crimes (Foreign Incursions and Recruitment) Act 1978* from being a designated offence for the purposes of proceedings instituted on or after that repeal.

Foreign Passports (Law Enforcement and Security) Act 2005

127 Subsection 5(1)

Omit “(1)”.

128 Subsection 5(1)

Insert:

ASIO means the Australian Security Intelligence Organisation.

129 At the end of Division 1 of Part 2

Add:

15A Request for 14-day surrender relating to security risk

- (1) The Director-General of Security may request the Minister to make an order under section 16A in relation to a person’s foreign travel documents if the Director-General suspects on reasonable grounds that:
 - (a) the person may leave Australia to engage in conduct that might prejudice the security of Australia or a foreign country; and
 - (b) the person should be required to surrender the person’s foreign travel documents in order to prevent the person from engaging in the conduct.

- (2) If the Minister has made an order under section 16A in relation to a person's foreign travel documents, another request under subsection (1) of this section relating to the person must not be made unless the grounds for suspicion mentioned in that subsection include information first obtained by the Director-General of Security or an officer or employee of ASIO more than 14 days after the Minister made the order.
- (3) The Director-General of Security may, in writing, delegate his or her power under subsection (1) to a Deputy Director-General of Security (within the meaning of the *Australian Security Intelligence Organisation Act 1979*).
- (4) In exercising power under a delegation, the delegate must comply with any directions of the Director-General of Security.

130 Section 16 (heading)

Repeal the heading, substitute:

16 Demand for surrender of foreign travel document ordered by Minister on request under section 13, 14 or 15

131 After section 16

Insert:

16A Demand for 14-day surrender of foreign travel document ordered by Minister on request under section 15A

- (1) The Minister may, on request under section 15A relating to a person's foreign travel documents, order the surrender of the documents.
- (2) If the Minister has made an order under subsection (1), an enforcement officer may demand that the person surrender to the officer the person's foreign travel documents.
- (3) If the person does not immediately surrender the person's foreign travel documents, the officer may:
 - (a) seize the person's foreign travel documents; and

- (b) seize any foreign travel document of the person that is not in the possession or control of any person.
- (4) Subsection (3) does not authorise an enforcement officer to enter premises that the officer would not otherwise be authorised to enter.
- (5) A person commits an offence if:
 - (a) an enforcement officer demands under subsection (2) that the person surrender the person's foreign travel documents; and
 - (b) the officer informs the person that the Minister has ordered the surrender of the person's foreign travel documents and that the officer is authorised to make the demand; and
 - (c) the officer informs the person that it may be an offence not to comply with the demand; and
 - (d) the person has possession or control of one or more of the person's foreign travel documents; and
 - (e) the person fails to surrender those documents to the officer immediately.

Penalty: Imprisonment for 6 months or 10 penalty units, or both.

- (6) A foreign travel document obtained by an enforcement officer under this section must be returned, to the person to whom it was issued, 14 days after the Minister made the order under subsection (1) relating to the document.
- (7) However, subsection (6) does not apply if, within the 14 days described in that subsection, the Minister makes an order under subsection 16(1). In that case, subsections 16(6) and (7) apply in relation to the foreign travel document as if it had been obtained by an enforcement officer under section 16.

Independent National Security Legislation Monitor Act 2010

131A After subsection 6(1A)

Insert:

- (1B) The Independent National Security Legislation Monitor must complete the review under paragraph (1)(a) of the following

counter-terrorism and national security legislation by 7 September 2017:

- (a) Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979* and any other provision of that Act as far as it relates to that Division;
- (b) Division 3A of Part IAA of the *Crimes Act 1914* and any other provision of that Act as far as it relates to that Division;
- (c) Divisions 104 and 105 of the *Criminal Code* and any other provision of the *Criminal Code Act 1995* as far as it relates to those Divisions;
- (d) sections 119.2 and 119.3 of the *Criminal Code* and any other provision of the *Criminal Code Act 1995* as far as it relates to those sections.

Intelligence Services Act 2001

131B Section 3

Insert:

AFP means the Australian Federal Police.

132 Paragraph 29(1)(ba)

Repeal the paragraph, substitute:

- (baa) to monitor and to review the performance by the AFP of its functions under Part 5.3 of the *Criminal Code*; and
- (bab) to report to both Houses of the Parliament, with such comments as it thinks fit, upon any matter appertaining to the AFP or connected with the performance of its functions under Part 5.3 of the *Criminal Code* to which, in the opinion of the Committee, the attention of the Parliament should be directed; and
- (bac) to inquire into any question in connection with its functions under paragraph (baa) or (bab) that is referred to it by either House of the Parliament, and to report to that House upon that question; and

133 Paragraph 29(1)(bb)

Omit “22 January 2016”, substitute “7 March 2018”.

133A Paragraph 29(3)(g)

Omit “or ONA”, substitute “, ONA or AFP”.

133B At the end of subsection 29(3)

Add:

- ; or (j) reviewing sensitive operational information or operational methods available to the AFP; or
- (k) reviewing particular operations or investigations that have been, are being or are proposed to be undertaken by the AFP.

133C At the end of section 30

Add:

- ; (d) the Commissioner of the AFP.

133D Clause 1A of Schedule 1 (definition of agency)

Omit “or ONA”, substitute “, ONA or AFP”.

133E Clause 1A of Schedule 1 (at the end of the definition of agency head)

Add:

- ; or (e) the Commissioner of the AFP.

133F Clause 1A of Schedule 1 (definition of staff member)

After “employee of the agency,”, insert “a member or special member of the agency (within the meaning of the *Australian Federal Police Act 1979*).”.

133G Application of amendments

The amendments of the *Intelligence Services Act 2001* made by this Schedule apply in relation to the performance of the AFP of its functions under Part 5.3 of the *Criminal Code*, whether those functions are performed before or after this item commences.

National Health Security Act 2007

134 Paragraph 89(1)(c)

After “5.3”, insert “or 5.5”.

135 Paragraph 92(c)

After “5.3”, insert “or 5.5”.

***Parliamentary Joint Committee on Law Enforcement Act
2010***

135A At the end of subsection 7(2)

Add:

; or (g) monitoring, reviewing or reporting on the performance by the AFP of its functions under Part 5.3 of the *Criminal Code*.

135B Application of amendment

The amendment of the *Parliamentary Joint Committee on Law Enforcement Act 2010* made by this Schedule applies in relation to the monitoring, reviewing, or reporting on, after this item commences, of the performance of the AFP of its functions under Part 5.3 of the *Criminal Code* (whether those functions are performed before or after this item commences).

Proceeds of Crime Act 2002

136 Section 338 (definition of terrorism offence)

Repeal the definition, substitute:

terrorism offence has the same meaning as in the *Crimes Act 1914*.

Sea Installations Act 1987

137 Schedule

Omit “*Crimes (Foreign Incursions and Recruitment) Act 1978*”.

Telecommunications (Interception and Access) Act 1979

138 After subparagraph 5D(1)(e)(i)

Insert:

- (ia) Subdivision B of Division 80 of the *Criminal Code*; or
 - (ib) section 80.2C of the *Criminal Code*; or
-

139 At the end of paragraph 5D(1)(e)

Add:

- (v) section 104.27 of the *Criminal Code*; or
- (vi) Division 119 of the *Criminal Code*; or

Terrorism Insurance Act 2003

140 Section 3 (definition of *terrorist act*)

Repeal the definition, substitute:

terrorist act has the meaning given by section 100.1 of the *Criminal Code*.

141 Section 5

Repeal the section.

142 Paragraph 8(2)(b)

Omit “section 5”, substitute “section 100.1 of the *Criminal Code*”.

143 Application of amendments

The amendments of the *Terrorism Insurance Act 2003* made by this Schedule apply in relation to any terrorist act (whether occurring before, on or after the commencement of this item).

Part 2—Repeals

Crimes (Foreign Incursions and Recruitment) Act 1978

144 The whole of the Act

Repeal the Act.

145 Transitional provision

Despite the repeal of section 11 of the *Crimes (Foreign Incursions and Recruitment) Act 1978*, that section continues to apply after this item commences in relation to any certificate that is in force under that section immediately before that repeal.

Schedule 2—Stopping welfare payments

Part 1—Main amendments

A New Tax System (Family Assistance) Act 1999

1 Subsection 3(1)

Insert:

Attorney-General's Secretary means the Secretary of the Department administered by the Minister administering the *Australian Security Intelligence Organisation Act 1979*.

Foreign Affairs Minister means the Minister administering the *Australian Passports Act 2005*.

Human Services Secretary means the Secretary of the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*.

Immigration Minister means the Minister administering the *Migration Act 1958*.

security notice means a notice under section 57GJ.

2 At the end of Part 3

Add:

Division 7—Loss of family assistance for individuals on security grounds

57GH Simplified outline of this Division

Individuals who might prejudice the security of Australia or a foreign country may lose family assistance.
--

57GI Loss of family assistance for individuals on security grounds

Security notice for recipient of family assistance

- (1) If a security notice is given to the Minister in relation to an individual, then while the notice is in force:
 - (a) no family assistance is to be paid to the individual; and
 - (b) the individual is not eligible for family assistance.
- Note 1: A security notice is a notice under section 57GJ.
- Note 2: This Division does not apply in relation to child care benefit or child care rebate: see section 57GQ.
- (2) If a security notice is given to the Minister in relation to an individual, then any determination that the individual is entitled to be paid family assistance, that is in force immediately before the day the notice comes into force, ceases to be in force on that day.
 - (3) If a security notice given to the Minister in relation to an individual ceases to be in force, then the individual is not eligible for family assistance for any day while the notice was in force.
 - (4) However, if:
 - (a) a security notice given to the Minister in relation to an individual recommends that payments of family assistance of the individual be paid to a payment nominee of the individual under Part 8B of the Family Assistance Administration Act; and
 - (b) apart from subsections (1) to (3), the individual would be eligible for the whole or a part of that family assistance;then that whole or part may be paid to a payment nominee of the individual under that Part.
 - (5) For the purposes of subsection (4), paragraph 219TD(2)(b) of the Family Assistance Administration Act does not apply.
 - (6) For the purposes of subsection (4), section 219TN of the Family Assistance Administration Act does not apply. Instead, any amount paid to a payment nominee of the individual is to be applied by the nominee in accordance with a written direction given by the Secretary under this subsection.
-

Security notice for individual in respect of whom family assistance payable

- (7) If:
- (a) a security notice is given to the Minister in relation to an individual; and
 - (b) the individual is aged 19 or less on the day the notice is given;

then, for any day while the notice is or was in force, the individual cannot be an FTB child of another individual, cannot be a regular care child of another individual and cannot be a client of an approved care organisation.

Relationship with other provisions

- (8) Subsections (1) to (7) have effect despite any other provision of the family assistance law.

Notification to individual

- (9) If a determination in relation to an individual ceases to be in force because of subsection (2), the Secretary must cause reasonable steps to be taken to notify the individual of the cessation.

57GJ Security notice from Attorney-General

- (1) The Attorney-General may give the Minister a written notice requiring that this Division apply in relation to a specified individual if:
- (a) the Foreign Affairs Minister gives the Attorney-General a notice under section 57GK in relation to the individual; or
 - (b) the Immigration Minister gives the Attorney-General a notice under section 57GL in relation to the individual.
- (2) A notice under this section may recommend that payments of family assistance of the individual, to the extent set out in the notice, be paid to a payment nominee of the individual under Part 8B of the Family Assistance Administration Act.
- (3) Before giving a notice under this section, the Attorney-General must have regard to the following:

- (a) the extent (if any) that any payments of family assistance of the individual are being, or may be, used for a purpose that might prejudice the security of Australia or a foreign country, if the Attorney-General is aware of that extent;
 - (b) the likely effect of the operation of section 57GI on the individual's dependants, if the Attorney-General is aware of those dependants.
- (4) The Attorney-General's Secretary must:
- (a) seek the advice of the Human Services Secretary in relation to paragraph (3)(b); and
 - (b) inform the Attorney-General of that advice.
- (5) Subsection (3) does not limit the matters to which regard may be had.

57GK Notice from Foreign Affairs Minister

If:

(a) either:

- (i) under subsection 14(2) of the *Australian Passports Act 2005*, the Foreign Affairs Minister refuses to issue an individual an Australian passport; or
- (ii) under section 22 of that Act, the Foreign Affairs Minister cancels an individual's Australian passport; and

- (b) the refusal or cancellation was because of a refusal/cancellation request made in relation to the individual under subsection 14(1) of that Act; and
- (c) the request was made on the basis of the circumstance mentioned in subparagraph 14(1)(a)(i) of that Act;

the Foreign Affairs Minister may give the Attorney-General a written notice setting out those matters.

57GL Notice from Immigration Minister

If:

- (a) the Immigration Minister cancels an individual's visa under section 116 or 128 of the *Migration Act 1958* because of an assessment by the Australian Security Intelligence

Organisation that the individual is directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*); or

- (b) the Immigration Minister cancels an individual's visa under section 134B of the *Migration Act 1958* (emergency cancellation on security grounds) and decides not to revoke that cancellation under subsection 134C(3) of that Act; or
- (c) the Immigration Minister cancels an individual's visa under section 501 of the *Migration Act 1958* and there is an assessment by the Australian Security Intelligence Organisation that the individual is directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*);

the Immigration Minister may give the Attorney-General a written notice setting out those matters.

57GM Copy of security notice to be given to Secretaries

The Minister must give a copy of a security notice to:

- (a) the Secretary of the Department; and
- (b) the Secretary of the Human Services Department.

57GN Period security notice is in force

A security notice comes into force on the day it is given to the Minister, and remains in force until it is revoked.

57GNA Annual review of security notice

Before the end of the following periods, the Attorney-General must consider whether to revoke a security notice (if it has not already been revoked):

- (a) 12 months after it came into force;
- (b) 12 months after the Attorney-General last considered whether to revoke it.

57GO Revoking a security notice

- (1) The Attorney-General may, by written notice given to the Minister, revoke a security notice.

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- (2) The revocation takes effect on the day it is made.
- (3) The Minister must give a copy of a notice under subsection (1) to:
 - (a) the Secretary of the Department; and
 - (b) the Secretary of the Human Services Department.
- (4) If:
 - (a) a determination in relation to an individual ceases to be in force because of subsection 57GI(2); and
 - (b) the Attorney-General revokes the security notice concerned; the Secretary of the Department must cause reasonable steps to be taken to notify the individual of the revocation.

57GP Notices may contain personal information

A notice under this Division in relation to an individual may contain personal information about the individual.

57GQ This Division does not apply to child care benefit or child care rebate

This Division does not apply in relation to child care benefit or child care rebate.

57GR Certain decisions not decisions of officers

For the purposes of Part 5 of the Family Assistance Administration Act, the following decisions are taken not to be decisions of an officer under the family assistance law:

- (a) any decision under this Division;
- (b) any decision under Part 8B of that Act to pay, or not to pay, an amount of family assistance as mentioned in subsection 57GI(4) of this Act;
- (c) any decision under Part 8B of that Act that is related to a decision mentioned in paragraph (b).

57GS Instruments not legislative instruments

The following are not legislative instruments:

- (a) a notice under this Division;
-

(b) a direction under subsection 57GI(6).

Paid Parental Leave Act 2010

3 Section 6

Insert:

Attorney-General's Secretary means the Secretary of the Department administered by the Minister administering the *Australian Security Intelligence Organisation Act 1979*.

Foreign Affairs Minister means the Minister administering the *Australian Passports Act 2005*.

Human Services Secretary means the Secretary of the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*.

Immigration Minister means the Minister administering the *Migration Act 1958*.

security notice means a notice under section 278C.

4 At the end of Part 6-1

Add:

Division 5—Loss of parental leave pay or dad and partner pay for persons on security grounds

278A Simplified outline of this Division

Persons who might prejudice the security of Australia or a foreign country may lose parental leave pay or dad and partner pay.
--

278B Loss of parental leave pay or dad and partner pay for persons on security grounds

- (1) If a security notice is given to the Minister in relation to a person, then while the notice is in force:

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- (a) no parental leave pay or dad and partner pay is to be paid to the person; and
- (b) the person is not eligible for parental leave pay or dad and partner pay; and
- (c) parental leave pay or dad and partner pay is not payable to the person.

Note: A security notice is a notice under section 278C.

- (2) If:
 - (a) a security notice is given to the Minister in relation to a person; and
 - (b) a payability determination that parental leave pay or dad and partner pay is payable to the person is in force at the end of the day (the *relevant day*) before the day the notice is given; and
 - (c) the day the notice is given is in the person's PPL period, or DAPP period, that is specified in that determination;then that determination is taken to be varied so that the person's PPL period or DAPP period, as the case requires, ends at the end of the relevant day.
- (3) If a security notice given to the Minister in relation to a person ceases to be in force, then for any day while the notice was in force:
 - (a) the person is not eligible for parental leave pay or dad and partner pay; and
 - (b) parental leave pay or dad and partner pay is not payable to the person.
- (4) Subsections (1) to (3) have effect despite any other provision of this Act.
- (5) If a payability determination for a person is varied by subsection (2), the Secretary must cause reasonable steps to be taken to notify the person of the variation.

278C Security notice from Attorney-General

- (1) The Attorney-General may give the Minister a written notice requiring that this Division apply in relation to a specified person if:
 - (a) the Foreign Affairs Minister gives the Attorney-General a notice under section 278D in relation to the person; or
 - (b) the Immigration Minister gives the Attorney-General a notice under section 278E in relation to the person.
- (2) Before giving a notice under this section, the Attorney-General must have regard to the following:
 - (a) the extent (if any) that any payments of parental leave pay or dad and partner pay of the person are being, or may be, used for a purpose that might prejudice the security of Australia or a foreign country, if the Attorney-General is aware of that extent;
 - (b) the likely effect of the operation of section 278B on the person's dependants, if the Attorney-General is aware of those dependants.
- (3) The Attorney-General's Secretary must:
 - (a) seek the advice of the Human Services Secretary in relation to paragraph (2)(b); and
 - (b) inform the Attorney-General of that advice.
- (4) Subsection (2) does not limit the matters to which regard may be had.

278D Notice from Foreign Affairs Minister

If:

- (a) either:
 - (i) under subsection 14(2) of the *Australian Passports Act 2005*, the Foreign Affairs Minister refuses to issue a person an Australian passport; or
 - (ii) under section 22 of that Act, the Foreign Affairs Minister cancels a person's Australian passport; and

- (b) the refusal or cancellation was because of a refusal/cancellation request made in relation to the person under subsection 14(1) of that Act; and
 - (c) the request was made on the basis of the circumstance mentioned in subparagraph 14(1)(a)(i) of that Act;
- the Foreign Affairs Minister may give the Attorney-General a written notice setting out those matters.

278E Notice from Immigration Minister

If:

- (a) the Immigration Minister cancels a person's visa under section 116 or 128 of the *Migration Act 1958* because of an assessment by the Australian Security Intelligence Organisation that the person is directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*); or
 - (b) the Immigration Minister cancels a person's visa under section 134B of the *Migration Act 1958* (emergency cancellation on security grounds) and decides not to revoke that cancellation under subsection 134C(3) of that Act; or
 - (c) the Immigration Minister cancels a person's visa under section 501 of the *Migration Act 1958* and there is an assessment by the Australian Security Intelligence Organisation that the person is directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*);
- the Immigration Minister may give the Attorney-General a written notice setting out those matters.

278F Copy of security notice to be given to Secretaries

The Minister must give a copy of a security notice to:

- (a) the Secretary of the Department; and
- (b) the Secretary of the Human Services Department.

278G Period security notice is in force

A security notice comes into force on the day it is given to the Minister, and remains in force until it is revoked.

278GA Annual review of security notice

Before the end of the following periods, the Attorney-General must consider whether to revoke a security notice (if it has not already been revoked):

- (a) 12 months after it came into force;
- (b) 12 months after the Attorney-General last considered whether to revoke it.

278H Revoking a security notice

- (1) The Attorney-General may, by written notice given to the Minister, revoke a security notice.
- (2) The revocation takes effect on the day it is made.
- (3) The Minister must give a copy of a notice under subsection (1) to:
 - (a) the Secretary of the Department; and
 - (b) the Secretary of the Human Services Department.
- (4) If:
 - (a) a payability determination for a person is varied by subsection 278B(2); and
 - (b) the Attorney-General revokes the security notice concerned; the Secretary of the Department must cause reasonable steps to be taken to notify the person of the revocation.

278J Notices may contain personal information

A notice under this Division in relation to a person may contain personal information (within the meaning of the *Privacy Act 1988*) about the person.

278K Decisions under Division not decisions of officers

For the purposes of Chapter 5, a decision under this Division is taken not to be a decision of an officer under this Act.

278L Notices not legislative instruments

A notice under this Division is not a legislative instrument.

Social Security Act 1991

5 Subsection 23(1)

Insert:

Attorney-General's Secretary means the Secretary of the Department administered by the Minister administering the *Australian Security Intelligence Organisation Act 1979*.

Foreign Affairs Minister means the Minister administering the *Australian Passports Act 2005*.

Human Services Secretary means the Secretary of the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*.

Immigration Minister means the Minister administering the *Migration Act 1958*.

security notice means a notice under section 38N.

6 After Part 1.3A of Chapter 1

Insert:

Part 1.3B—Loss of social security payments and concessions for persons on security grounds

38L Simplified outline of this Part

Persons who might prejudice the security of Australia or a foreign country may lose social security payments or concession cards.

38M Loss of social security payments and concessions for persons on security grounds

- (1) If a security notice is given to the Minister in relation to a person, then while the notice is in force:
 - (a) no social security payment is to be paid to the person; and

- (b) the person is not qualified for a social security payment; and
- (c) a social security payment is not payable to the person; and
- (d) the person is not qualified for a concession card.

Note: A security notice is a notice under section 38N.

- (2) If a security notice is given to the Minister in relation to a person, then any social security payment of the person is cancelled on the day the notice comes into force.
- (3) If a security notice is given to the Minister in relation to a person, then any concession card the person holds is cancelled on the day the notice comes into force.
- (4) If a security notice given to the Minister in relation to a person ceases to be in force, then for any day while the notice was in force:
 - (a) the person is not qualified for a social security payment; and
 - (b) a social security payment is not payable to the person; and
 - (c) the person is not qualified for a concession card.
- (5) Subsections (1) to (4) have effect despite any other provision of the social security law.
- (6) If a person's social security payment is cancelled by subsection (2), or a person's concession card is cancelled by subsection (3), the Secretary must cause reasonable steps to be taken to notify the person of the cancellation.

38N Security notice from Attorney-General

- (1) The Attorney-General may give the Minister a written notice requiring that this Part apply in relation to a specified person if:
 - (a) the Foreign Affairs Minister gives the Attorney-General a notice under section 38P in relation to the person; or
 - (b) the Immigration Minister gives the Attorney-General a notice under section 38Q in relation to the person.
- (2) Before giving a notice under this section, the Attorney-General must have regard to the following:
 - (a) the extent (if any) that any social security payments of the person are being, or may be, used for a purpose that might

- prejudice the security of Australia or a foreign country, if the Attorney-General is aware of that extent;
- (b) the likely effect of the operation of section 38M on the person's dependants, if the Attorney-General is aware of those dependants.
- (3) The Attorney-General's Secretary must:
- (a) seek the advice of the Human Services Secretary in relation to paragraph (2)(b); and
- (b) inform the Attorney-General of that advice.
- (4) Subsection (2) does not limit the matters to which regard may be had.

38P Notice from Foreign Affairs Minister

If:

- (a) either:
- (i) under subsection 14(2) of the *Australian Passports Act 2005*, the Foreign Affairs Minister refuses to issue a person an Australian passport; or
- (ii) under section 22 of that Act, the Foreign Affairs Minister cancels a person's Australian passport; and
- (b) the refusal or cancellation was because of a refusal/cancellation request made in relation to the person under subsection 14(1) of that Act; and
- (c) the request was made on the basis of the circumstance mentioned in subparagraph 14(1)(a)(i) of that Act;
- the Foreign Affairs Minister may give the Attorney-General a written notice setting out those matters.

38Q Notice from Immigration Minister

If:

- (a) the Immigration Minister cancels a person's visa under section 116 or 128 of the *Migration Act 1958* because of an assessment by the Australian Security Intelligence Organisation that the person is directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*); or

- (b) the Immigration Minister cancels a person's visa under section 134B of the *Migration Act 1958* (emergency cancellation on security grounds) and decides not to revoke that cancellation under subsection 134C(3) of that Act; or
 - (c) the Immigration Minister cancels a person's visa under section 501 of the *Migration Act 1958* and there is an assessment by the Australian Security Intelligence Organisation that the person is directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*);
- the Immigration Minister may give the Attorney-General a written notice setting out those matters.

38R Copy of security notice to be given to Secretaries

The Minister must give a copy of a security notice to:

- (a) the Secretary of the Department; and
- (b) the Secretary of the Human Services Department.

38S Period security notice is in force

A security notice comes into force on the day it is given to the Minister, and remains in force until it is revoked.

38SA Annual review of security notice

Before the end of the following periods, the Attorney-General must consider whether to revoke a security notice (if it has not already been revoked):

- (a) 12 months after it came into force;
- (b) 12 months after the Attorney-General last considered whether to revoke it.

38T Revoking a security notice

- (1) The Attorney-General may, by written notice given to the Minister, revoke a security notice.
- (2) The revocation takes effect on the day it is made.

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- (3) The Minister must give a copy of a notice under subsection (1) to:
 - (a) the Secretary of the Department; and
 - (b) the Secretary of the Human Services Department.
- (4) If:
 - (a) a person's social security payment is cancelled by subsection 38M(2) or a person's concession card is cancelled by subsection 38M(3); and
 - (b) the Attorney-General revokes the security notice concerned; the Secretary of the Department must cause reasonable steps to be taken to notify the person of the revocation.

38U Notices may contain personal information

A notice under this Part in relation to a person may contain personal information (within the meaning of the *Privacy Act 1988*) about the person.

38V Decisions under Part not decisions of officers

For the purposes of Part 4 of the Administration Act, a decision under this Part is taken not to be a decision of an officer under the social security law.

38W Notices not legislative instruments

A notice under this Part is not a legislative instrument.

Social Security (Administration) Act 1999

7 Before paragraph 123(1)(c)

Insert:

- (ba) the payment is cancelled by section 38M of the 1991 Act; or

Part 3—Application provisions

9 Application provisions

Affected payments and concessions

- (1) Section 57GI of the *A New Tax System (Family Assistance) Act 1999*, as inserted by this Act, applies in relation to family assistance of an individual, whether the individual became eligible for that assistance before, on or after the commencement of this item.
- (2) Section 278B of the *Paid Parental Leave Act 2010*, as inserted by this Act, applies in relation to parental leave pay or dad and partner pay of a person, whether the person became eligible for that pay before, on or after the commencement of this item.
- (3) Section 38M of the *Social Security Act 1991*, as inserted by this Act, applies in relation to the following:
 - (a) a social security payment of a person, whether the person qualified for that payment before, on or after the commencement of this item;
 - (b) a concession card of a person, whether that card was issued before, on or after the commencement of this item.

Ministerial notices

- (4) Paragraph 57GK(a) of the *A New Tax System (Family Assistance) Act 1999*, paragraph 278D(a) of the *Paid Parental Leave Act 2010* and paragraph 38P(a) of the *Social Security Act 1991*, as inserted by this Act, apply in relation to the refusal to issue, or the cancellation of, a passport before, on or after the commencement of this item.
- (5) Paragraphs 57GL(a) and (c) of the *A New Tax System (Family Assistance) Act 1999*, paragraphs 278E(a) and (c) of the *Paid Parental Leave Act 2010* and paragraphs 38Q(a) and (c) of the *Social Security Act 1991*, as inserted by this Act, apply in relation to the cancellation of a visa, or an assessment made, before, on or after the commencement of this item.

Schedule 3—Customs' detention powers

Customs Act 1901

1 Section 219ZJA

Insert:

national security has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

2 Section 219ZJA (definition of *serious Commonwealth offence*)

Repeal the definition, substitute:

serious Commonwealth offence means an offence against a law of the Commonwealth that is punishable on conviction by imprisonment for 12 months or more.

3 Paragraph 219ZJB(1)(b)

Omit “or is committing,” substitute “is committing or intends to commit”.

4 Subsection 219ZJB(3)

Omit “delivered, as soon as practicable, into the custody of”, substitute “made available, as soon as practicable, to”.

5 Subsection 219ZJB(4)

Omit “or was committing,” substitute “was committing or was intending to commit”.

6 Subsection 219ZJB(5)

Omit “45 minutes”, substitute “2 hours”.

7 Paragraphs 219ZJB(7)(a) and 219ZJC(6)(a)

After “safeguard”, insert “national security, the security of a foreign country or”.

8 At the end of Subdivision B of Division 1BA of Part XII

Add:

219ZJCA Detention of person for national security or security of a foreign country

- (1) An officer may detain a person if:
 - (a) the person is in a designated place; and
 - (b) the officer is satisfied on reasonable grounds that the person is, or is likely to be, involved in an activity that is a threat to national security or the security of a foreign country.
- (2) An officer who is detaining a person under this section must (subject to subsection (3)) ensure that the person is made available, as soon as practicable, to a police officer in person to be dealt with according to law.
- (3) An officer who is detaining a person under this section must release the person from that detention immediately if:
 - (a) the officer ceases to be satisfied on reasonable grounds that the person is, or is likely to be, involved in an activity that is a threat to national security or the security of a foreign country; or
 - (b) the person is made available to a police officer under subsection (2); or
 - (c) a police officer indicates that the police force to which the police officer belongs has no interest in the person.
- (4) Subject to subsection (6), if a person is detained under this section for more than 2 hours, an officer who is detaining the person under this section must inform the person of the right of the person to have a family member or another person notified of the person's detention.
- (5) Where a person detained under this section wishes to have a family member or another person notified of the person's detention, the officer must take all reasonable steps to notify the family member or the other person.
- (6) An officer who is detaining the person under this section may refuse to notify a family member or another person of the person's

detention if the officer believes on reasonable grounds that such notification should not be made in order to:

- (a) safeguard national security, the security of a foreign country or the processes of law enforcement; or
- (b) protect the life and safety of any person.

Note: In relation to references in this section to family member, see also section 4AAA.

9 At the end of subsection 219ZJD(1)

Add:

- ; or (e) in the case of a person detained under section 219ZJCA—preventing the concealment, loss or destruction of material of interest for national security or the security of a foreign country.

10 At the end of paragraph 219ZJD(3)(b)

Add:

- ; or (iv) that is of interest for national security or the security of a foreign country.

11 Subsection 219ZJD(4)

Repeal the subsection, substitute:

- (4) An officer who seizes a weapon or other thing under subsection (3) must ensure that it is made available to:
 - (a) the police officer to whom the person is made available under subsection 219ZJB(3) or 219ZJCA(2); or
 - (b) the police officer into whose custody the person is delivered under subsection 219ZJC(3).

12 Subsection 219ZJF(1)

Omit “this Division”, substitute “section 219ZJB or 219ZJC”.

13 Subparagraph 219ZJJ(1)(b)(iv)

After “detention”, insert “, unless the minor is detained under section 219ZJCA”.

14 Paragraph 219ZJJ(2)(a)

After “safeguard”, insert “national security, the security of a foreign country or”.

Schedule 4—Cancelling visas on security grounds

Part 1—Amendment of the Migration Act 1958

Division 1—Amendments

1 Subsection 5(1)

Insert:

ASIO means the Australian Security Intelligence Organisation.

ASIO Act means the *Australian Security Intelligence Organisation Act 1979*.

assessment, in relation to ASIO, has the same meaning as in subsection 35(1) of the ASIO Act.

2 Subsection 33(10)

Before “and H”, insert “, FB”.

3 Before paragraph 118(d)

Insert:

(cc) section 134B (emergency cancellation on security grounds);
or

4 Before Subdivision G of Division 3 of Part 2

Insert:

Subdivision FB—Emergency cancellation on security grounds

134A Natural justice

The rules of natural justice do not apply to a decision made under this Subdivision.

134B Emergency cancellation on security grounds

The Minister must cancel a visa held by a person if:

- (a) there is an assessment made by ASIO for the purposes of this section; and
- (b) the assessment contains advice that ASIO suspects that the person might be, directly or indirectly, a risk to security (within the meaning of section 4 of the ASIO Act); and
- (c) the assessment contains a recommendation that all visas held by the person be cancelled under this section; and
- (d) the person is outside Australia.

134C Decision about revocation of emergency cancellation

Application of section

- (1) This section applies to a visa that is cancelled under section 134B.

First ground to revoke cancellation

- (2) The Minister must revoke the cancellation of the visa as soon as reasonably practicable after the end of the period referred to in subsection (5).
- (3) However, the Minister must not revoke the cancellation under subsection (2) if:
 - (a) there is an assessment made by ASIO for the purposes of this section before the end of the period referred to in subsection (5); and
 - (b) the assessment contains advice that the former holder of the visa is, directly or indirectly, a risk to security (within the meaning of section 4 of the ASIO Act); and
 - (c) the assessment contains a recommendation that the cancellation not be revoked under subsection (2).

Second ground to revoke cancellation

- (4) If:
 - (a) there is an assessment made by ASIO for the purposes of this section before the end of the period referred to in subsection (5); and
 - (b) the assessment contains a recommendation that the cancellation of the visa be revoked under this subsection;

then the Minister must revoke the cancellation as soon as reasonably practicable after the assessment is made.

Period

- (5) For the purposes of subsections (2), (3) and (4), the period is the period that:
- (a) starts at the beginning of the day (the *cancellation day*) the visa is cancelled; and
 - (b) ends at the end of the 28th day after the cancellation day.

134D Effect of revocation of cancellation

- (1) If the cancellation of a visa is revoked under section 134C, then, without limiting its operation before cancellation, it has effect as if it were granted on the revocation.
- (2) However, the Minister may vary:
- (a) the time the visa is to be in effect; or
 - (b) any period in which, or date until which, the visa permits its holder to travel to, enter and remain in Australia, or to remain in Australia.

134E Notice of cancellation

- (1) If:
- (a) the Minister decides under section 134B to cancel a visa; and
 - (b) the Minister decides under subsection 134C(3) not to revoke the cancellation;
- then the Minister must give the former holder of the visa notice of the cancellation.
- (2) The notice must be given:
- (a) if the assessment made by ASIO for the purposes of section 134C contains an advice that it is essential to the security of the nation that a notice is not given to the person under this section—as soon as reasonably practicable after ASIO advises the Minister, in writing, that it is no longer essential to the security of the nation for the notice not to be given; and

- (b) otherwise—as soon as reasonably practicable after the Minister decides under subsection 134C(3) not to revoke the cancellation.
- (3) The notice must:
 - (a) state that the visa was cancelled under section 134B; and
 - (b) be given to the person in the prescribed way.
- (4) Failure to give the notice does not affect the validity of either:
 - (a) the decision under section 134B to cancel the visa; or
 - (b) the decision under subsection 134C(3) not to revoke the cancellation.

134F Effect of cancellation on other visas

- (1) This section applies if:
 - (a) a visa held by a person (the *relevant person*) is cancelled under section 134B; and
 - (b) the Minister decides under subsection 134C(3) not to revoke the cancellation; and
 - (c) the Minister has given a notice to the relevant person under section 134E about the cancellation.
- (2) If another person holds a visa only because the relevant person held a visa, then the Minister may, without notice to the other person, cancel the other person's visa.

Division 2—Application of amendments made by Part 1

5 Application of amendments made by Part 1

The amendments made by Part 1 of this Schedule apply in relation to visas granted before, on or after that commencement.

Part 2—Amendment of the Australian Security Intelligence Organisation Act 1979

6 Section 36

Before “This Part”, insert “(1)”.

7 At the end of section 36

Add:

- (2) Despite paragraph (1)(b), this Part applies to a security assessment in respect of a person if:
- (a) the person was the holder of a valid permanent visa; and
 - (b) the visa was cancelled under section 134B of the *Migration Act 1958*; and
 - (c) the security assessment is made for the purposes of section 134C of that Act in relation to that cancellation.

Schedule 5—Identifying persons in immigration clearance

Part 1—Amendment of the Migration Act 1958

1 Paragraph 5A(3)(g)

Repeal the paragraph, substitute:

- (g) to enhance the Department’s ability to identify non-citizens who have a criminal history or who are of character concern; and
- (ga) to assist in identifying persons who may be a security concern to Australia or a foreign country; and

2 Part 2 (heading)

Repeal the heading, substitute:

Part 2—Arrival, presence and departure of persons

3 Paragraph 166(1)(c)

Repeal the paragraph, substitute:

- (c) comply with any requirement, made by a clearance officer before an event referred to in subparagraph 172(1)(a)(iii) or (b)(iii) or paragraph 172(1)(c) occurs, to provide one or more personal identifiers referred to in subsection (5) to a clearance authority; and
- (d) if under paragraph (a) the person presents evidence to an authorised system—provide to the authorised system a photograph or other image of the person’s face and shoulders.

4 Subsection 166(2)

Omit “present evidence, or provide information,” substitute “present or provide evidence, information or personal identifiers”.

5 Subparagraph 166(2)(c)(i)

Omit “neither the system nor a clearance officer requires”, substitute “a clearance officer does not require”.

6 Subsection 166(3) (heading)

Repeal the heading, substitute:

Complying with paragraphs (1)(a) and (b)

7 Before subsection 166(5)

Insert:

Personal identifiers provided under paragraph (1)(c)

8 Subsection 166(5)

Omit “paragraphs (1)(a) and (c), a person may only be required to present or”, substitute “paragraph (1)(c), a person may only be required to”.

9 Paragraph 166(5)(c)

After “identifier”, insert “of a type”.

10 Subsection 166(6)

Repeal the subsection.

11 Subsection 166(7)

Repeal the subsection, substitute:

- (7) A person is taken not to have complied with a requirement to provide a personal identifier under paragraph (1)(c) or (d) unless the personal identifier is provided by way of one or more identification tests carried out by an authorised officer or authorised system.

12 Subsection 166(8)

Omit “non-citizen”, substitute “person”.

13 Paragraph 166(8)(a)

After “authorised officer”, insert “or authorised system”.

14 Paragraphs 170(1)(a) and (b)

Omit “the officer or an authorised system”, substitute “a clearance authority”.

15 At the end of subsection 170(1)

Add:

- ; and (c) to comply with any requirement made by a clearance officer to provide one or more personal identifiers referred to in subsection (2A) to a clearance authority; and
- (d) if under paragraph (a) the person presents evidence to an authorised system—to provide to the authorised system a photograph or other image of the person’s face and shoulders.

16 Subsection 170(2)

Repeal the subsection, substitute:

Complying with subsection (1)

- (2) A person is to comply with subsection (1) in a prescribed way.

17 Subsection 170(2AA)

Omit “present evidence, or provide information,”, substitute “present or provide evidence, information or personal identifiers”.

18 Subparagraph 170(2AA)(c)(i)

Omit “neither the system nor a clearance officer requires the person to present or provide evidence, information or personal identifiers referred to in subsection (1) or (2)”, substitute “a clearance officer does not require the person to present or provide evidence, information or personal identifiers referred to in subsection (1)”.

19 Subsection 170(2A) (heading)

Repeal the heading, substitute:

Personal identifiers provided under paragraph (1)(c)

20 Subsection 170(2A)

Omit “paragraph (1)(a) and subsection (2), a person may only be required to present or”, substitute “paragraph (1)(c), a person may only be required to”.

21 Paragraph 170(2A)(c)

After “identifier”, insert “of a type”.

22 Subsection 170(3)

Repeal the subsection.

23 Subsection 170(4)

Repeal the subsection, substitute:

- (4) A person is taken not to have complied with a requirement to provide a personal identifier under paragraph (1)(c) or (d) unless the personal identifier is provided by way of one or more identification tests carried out by an authorised officer or authorised system.

24 Subsection 170(5)

Omit “non-citizen”, substitute “person”.

25 Paragraph 170(5)(a)

After “an authorised officer”, insert “or authorised system”.

26 Subsection 175(1)

Omit “to leave Australia (whether or not after calling at places in Australia)”, substitute “due to depart from a place in Australia to a place outside Australia (whether or not after calling at other places in Australia)”.

27 Paragraphs 175(1)(a) and (b)

Omit “the officer or an authorised system”, substitute “a clearance authority”.

28 At the end of subsection 175(1)

Add:

- ; and (c) comply with any requirement made by a clearance officer to provide one or more personal identifiers referred to in subsection (2A) to a clearance authority; and
- (d) if under paragraph (a) the person presents evidence to an authorised system—provide to the authorised system a photograph or other image of the person’s face and shoulders.

29 Subsection 175(2)

Repeal the subsection, substitute:

Complying with subsection (1)

- (2) A person is to comply with subsection (1) in a prescribed way.

30 Subsection 175(2AA)

Omit “present evidence, or provide information,”, substitute “present or provide evidence, information or personal identifiers”.

31 Subparagraph 175(2AA)(c)(i)

Omit “neither the system nor a clearance officer requires the person to present or provide evidence, information or personal identifiers referred to in subsection (1) or (2)”, substitute “a clearance officer does not require the person to present or provide evidence, information or personal identifiers referred to in subsection (1)”.

32 Subsection 175(2A) (heading)

Repeal the heading, substitute:

Personal identifiers provided under paragraph (1)(c)

33 Subsection 175(2A)

Omit “paragraph (1)(a) and subsection (2), a person may only be required to present or”, substitute “paragraph (1)(c), a person may only be required to”.

34 Paragraph 175(2A)(c)

After “identifier”, insert “of a type”.

35 Subsection 175(3)

Repeal the subsection.

36 Subsection 175(4)

Repeal the subsection, substitute:

- (4) A person is taken not to have complied with a requirement to provide a personal identifier under paragraph (1)(c) or (d) unless the personal identifier is provided by way of one or more identification tests carried out by an authorised officer or authorised system.

37 Subsection 175(5)

Omit “non-citizen”, substitute “person”.

38 Paragraph 175(5)(a)

After “an authorised officer”, insert “or authorised system”.

39 At the end of Division 5 of Part 2

Add:

175B Collection, access and disclosure of information

Collection of information

- (1) If a person presents or provides a document to a clearance authority under this Division, the clearance authority may collect information (including personal identifiers) in the document.

Access to, and disclosure of, personal information

- (2) The following provisions:
- (a) section 336D (which authorises access to identifying information);

- (b) section 336E (other than subsection 336E(1)) and section 336F (which authorise disclosure of identifying information);
- (c) a provision of an instrument made under section 336D or 336F;

apply to personal information (other than personal identifiers) collected under this Division in the same way as they apply to identifying information.

Effect on interpretation

- (3) This section does not, by implication, affect the interpretation of any other provision of this Act or an instrument made under this Act.

40 Section 258

Omit “non-citizens” (wherever occurring), substitute “persons”.

41 Section 258A (heading)

Repeal the heading, substitute:

258A When person cannot be required to provide personal identifier

42 Subsection 258B(1)

Omit “carrying out an identification test on a non-citizen”, substitute “an authorised officer carries out an identification test on a person”.

43 Paragraphs 258B(1)(a) and (b)

Omit “the non-citizen” (wherever occurring), substitute “the person”.

44 Subsections 258B(2) and (3)

Omit “non-citizen” (wherever occurring), substitute “person”.

45 Section 258C (heading)

Repeal the heading, substitute:

258C Information to be provided when identification tests not carried out

46 Section 258C

Omit “non-citizen” (wherever occurring), substitute “person”.

47 Subsection 258D(1)

Omit “the authorised officer is to carry out identification tests on the non-citizen”, substitute “an identification test is to be carried out on a person”.

48 Subsection 258D(2)

Omit “non-citizen”, substitute “person”.

49 Subsection 258D(2)

Omit “carried out by an authorised officer”.

50 Paragraphs 258E(a) and (e)

Omit “non-citizen”, substitute “person”.

51 Subsection 261AL(1)

Omit “non-citizen”, substitute “person”.

52 Paragraphs 261AL(1)(a) and (b)

Omit “non-citizen’s” (wherever occurring), substitute “person’s”.

53 Subsection 261AL(5)

Omit “non-citizen”, substitute “person”.

54 Subsection 261AM(1)

Omit “non-citizen”, substitute “person”.

55 Paragraphs 261AM(1)(a) and (b)

Omit “non-citizen’s” (wherever occurring), substitute “person’s”.

56 Subsection 261AM(4)

Omit “non-citizen”, substitute “person”.

57 Paragraph 336D(2)(g)

Repeal the paragraph, substitute:

- (g) the purposes of:
 - (i) this Act or an instrument made under this Act; or
 - (ii) the *Australian Citizenship Act 2007* or an instrument made under that Act; or
 - (iii) the *Customs Act 1901* or an instrument made under that Act; or
 - (iv) any other law of the Commonwealth prescribed by the regulations;

58 Subparagraph 336E(2)(a)(iii)

Repeal the subparagraph, substitute:

- (iii) identify non-citizens who have a criminal history or who are of character concern; or
- (iiia) identify persons who may be a security concern to Australia or a foreign country; or

59 After paragraph 336E(2)(b)

Insert:

- (ba) is for the purpose of:
 - (i) this Act or an instrument made under this Act; or
 - (ii) the *Australian Citizenship Act 2007* or an instrument made under that Act; or
 - (iii) the *Customs Act 1901* or an instrument made under that Act; or
 - (iv) any other law of the Commonwealth prescribed by the regulations; or

60 After paragraph 366E(2)(eb)

Insert:

- (ec) is for the purpose of identifying non-citizens who have a criminal history or who are of character concern; or
- (ed) is for the purpose of identifying persons who may be a security concern to Australia or a foreign country; or

Part 2—Application of amendments

61 Application of amendments

- (1) The amendment made by item 1 of this Schedule, as it affects section 336A, 336D or 336F of the *Migration Act 1958*, applies in relation to personal identifiers and personal information provided before or after the commencement of this Schedule.
- (2) The amendment made by item 39 of this Schedule applies in relation to:
 - (a) documents presented or provided; or
 - (b) personal information provided;before or after the commencement of this Schedule.
- (3) The amendments made by items 57 to 60 apply in relation to personal identifiers and personal information provided before or after the commencement of this Schedule.
- (4) If:
 - (a) an instrument was made for the purposes of a provision of the *Migration Act 1958*; and
 - (b) the instrument was in force immediately before the commencement of this Schedule; and
 - (c) the provision is amended by this Schedule;then the instrument continues in force (and may be dealt with) as if it were made for the purposes of that provision as amended.

Schedule 6—Identifying persons entering or leaving Australia through advance passenger processing

Part 1—Amendment of the Migration Act 1958

Division 1—Amendments

1 Paragraph 5A(3)(c)

Omit “, including passenger processing at Australia’s border”.

2 After paragraph 5A(3)(c)

Insert:

(ca) to improve passenger processing at Australia’s border; and

3 Paragraph 245I(2)(b)

After “voyage to”, insert “or from”.

4 Subsections 245J(3) and 245K(2)

After “information”, insert “(including personal identifiers)”.

5 Section 245L (heading)

Repeal the heading, substitute:

245L Obligation to report on persons arriving in Australia

6 Subsection 245L(1)

Omit “an airport or port”, substitute “a place”.

7 Paragraphs 245L(2)(a) and (b)

Omit “airport or port”, substitute “place in Australia”.

8 Subsection 245L(2) (note 1)

Omit “(and the obligation in subsection (6))”.

9 Paragraphs 245L(4)(a) and (b)

Omit “airport” (wherever occurring), substitute “place”.

10 Paragraphs 245L(5)(a) and (b)

After “arrival”, insert “at the place in Australia”.

11 Subsections 245L(6) and (7)

Repeal the subsections.

12 After section 245L

Insert:

245LA Obligation to report on persons departing from Australia

Aircraft and ships to which section applies

- (1) This section applies to an aircraft or ship of a kind to which this Division applies that is due to depart from a place in Australia on a flight or voyage to a place outside Australia (whether or not after calling at other places in Australia).

Obligation to report on passengers and crew

- (2) The operator of the aircraft or ship must, in accordance with this section:
 - (a) report to the Department, using the approved primary reporting system for passengers, on each passenger who is on, or is expected to be on, the flight or voyage (including any part of the flight or voyage); and
 - (b) report to the Department, using the approved primary reporting system for crew, on each member of the crew who is on, or is expected to be on, the flight or voyage (including any part of the flight or voyage).

Note 1: This obligation must be complied with even if the information concerned is personal information.

Note 2: Section 245N contains an offence for failure to comply with this subsection.

- (3) However, if:
-

- (a) on the flight or voyage, the aircraft or ship calls at one or more places in Australia before departing to the place outside Australia; and
 - (b) the regulations prescribe that a report under subsection (2) must only relate to the part of the flight or voyage that is from the last place in Australia to the place outside Australia;
- then the report must be on each passenger or crew member who is on, or is expected to be on, that part of the flight or voyage.

Information to be reported

- (4) A report on a passenger or crew member under subsection (2) must include the information relating to the passenger or crew member that is specified, as mentioned in subsection 245J(3), in relation to the relevant approved primary reporting system.

Deadline for providing a report

- (5) A report on a passenger or crew member under subsection (2) must be provided:
 - (a) if the regulations prescribe a period or periods before the aircraft's or ship's departure from a place for the giving of a report under subsection (2) in relation to the passenger or crew member—not later than the start of that period or each of those periods; and
 - (b) if the regulations prescribe an event or events for the giving of a report under subsection (2) in relation to the passenger or crew member—at the time of that event or each of those events; and
 - (c) if the regulations prescribe a time or times for the giving of a report under subsection (2) in relation to the passenger or crew member—at that time or each of those times.
- (6) To avoid doubt, more than one report may be required to be provided under subsection (2) in relation to a passenger or crew member.

Note: For example, if regulations made for the purposes of subsection (5) prescribe a period of 48 hours before the aircraft's or ship's departure from a place on the flight or voyage and also prescribe an event of the passenger or crew member checking-in for the flight or voyage, then 2

reports would be required to be provided under this section in relation to the passenger or crew member.

13 Before section 245M

Insert:

245LB Dealing with information collected under this Division etc.

Collection of personal information

- (1) The Department may collect information (including personal identifiers) in a report provided under this Division.

Access to, and disclosure of, personal information

- (2) The following provisions:
- (a) section 336D (which authorises access to identifying information);
 - (b) section 336E (other than subsection 336E(1)) and section 336F (which authorise disclosure of identifying information);
 - (c) a provision of an instrument made under section 336D or 336F;

apply to personal information (other than personal identifiers) collected under this Division, or under subsection 64ACA(11) or 64ACB(8) of the *Customs Act 1901*, in the same way as they apply to identifying information.

- (3) As soon as practicable after information is reported under section 245L or 245LA, the Department must disclose the information (including personal identifiers) to the Australian Customs and Border Protection Service.

Effect on interpretation

- (4) This section does not, by implication, affect the interpretation of any other provision of this Act or an instrument made under this Act.

14 Subsection 245M(2)

Omit “Section 245L applies”, substitute “Sections 245L and 245LA apply”.

15 Paragraph 245M(2)(a)

Omit “paragraph 245L(2)(a) or (b)”, substitute “subsections 245L(2) and 245LA(2)”.

16 Paragraph 245M(2)(b)

Omit “subsection 245L(3)”, substitute “subsections 245L(3) and 245LA(4)”.

17 Subsections 245N(1), (2) and (4)

After “245L(2)”, insert “or 245LA(2)”.

Division 2—Application of amendments made by Part 1

18 Application of amendments made by Part 1

Access and disclosure of identifying information etc.

- (1) The amendments made by items 1 and 2 of this Schedule, as they affect section 336A, 336D or 336F of the *Migration Act 1958*, apply in relation to personal identifiers and personal information provided before, on or after the commencement of this Schedule.

Reports about arrivals including personal identifiers

- (2) The amendments made by item 4 apply in relation to an aircraft or ship arriving at a place in Australia on or after that commencement.
- (3) However, subitem (2) does not apply to the extent that it would require a report given before that commencement to include a personal identifier.

Reports about arrivals at a place in Australia

- (4) The amendments made by items 6, 7, 9 and 10 apply in relation to an aircraft or ship arriving at a place in Australia (whether or not an airport or a port) on or after that commencement.
-

Schedule 6 Identifying persons entering or leaving Australia through advance passenger processing

Part 1 Amendment of the Migration Act 1958

- (5) However, if the aircraft or ship arrives at a place that is not an airport or port, then subitem (4) does not apply to the extent that it would require a report in relation to that arrival to be given before that commencement.

Reports about departures

- (6) The amendments made by items 3, 4, 12, 14, 15, 16 and 17 apply in relation to an aircraft or ship departing from a place in Australia on or after that commencement.
- (7) However, subitem (6) does not apply to the extent that it would require a report to be given before that commencement.

Dealing with information

- (8) The amendment made by item 13 applies in relation to information in reports provided on or after that commencement.

Saving

- (9) If:
- (a) an instrument was made for the purposes of a provision of the *Migration Act 1958*; and
 - (b) the instrument was in force immediately before the commencement of this Schedule; and
 - (c) the provision is amended by this Schedule;
- then the instrument continues in force (and may be dealt with) as if it were made for the purposes of that provision as amended.

Part 2—Amendment of the Customs Act 1901

19 Paragraphs 64ACA(12)(b) and 64ACB(9)(b)

Omit “subsection 245L(6)”, substitute “section 245LB”.

Schedule 7—Seizing bogus documents

Part 1—Amendment of the Migration Act 1958

Division 1—Main amendments

1 Section 103

After “present”, insert “, produce”.

2 Section 103

After “presented”, insert “, produced”.

3 Before section 487

Insert:

Division 1—Bogus documents

487ZI Prohibition on, and forfeiture of, bogus documents

- (1) A person (whether a citizen or non-citizen) must not give, present, produce or provide a bogus document to an officer, an authorised system, the Minister, a tribunal or any other person or body performing a function or purpose under, or in relation to, this Act (the *official*), or cause such a document to be so given, presented, produced or provided.
- (2) A bogus document given, presented, produced or provided in contravention of subsection (1) is forfeited to the Commonwealth.

487ZJ Seizure of bogus documents

- (1) If an officer reasonably suspects that a document is forfeited under subsection 487ZI(2), then the officer may seize the document.
- (2) As soon as practicable after seizing the document, the officer must give written notice of the seizure to the person who gave, presented, produced or provided the document to the official under subsection 487ZI(1).

- (3) The notice must:
 - (a) identify the document; and
 - (b) state that the document has been seized; and
 - (c) specify the reason for the seizure; and
 - (d) state that the document will be condemned as forfeited unless the person institutes proceedings against the Commonwealth before the end of the period specified in the notice:
 - (i) to recover the document; or
 - (ii) for a declaration that the document is not forfeited.
- (4) For the purposes of paragraph (3)(d), the period must:
 - (a) start on the date of the notice; and
 - (b) end 90 days after that date.

487ZK Document condemned as forfeited

- (1) If a document is seized under subsection 487ZJ(1), then:
 - (a) the person who gave, presented, produced or provided the document to the official under subsection 487ZI(1); and
 - (b) if that person is not the owner of the document—the owner; may, subject to paragraph (2)(b), institute proceedings in a court of competent jurisdiction:
 - (c) to recover the document; or
 - (d) for a declaration that the document is not forfeited.
 - (2) The proceedings:
 - (a) may be instituted even if the seizure notice required to be given under subsection 487ZJ(2) in relation to the document has not yet been given; and
 - (b) may only be instituted before the end of the period specified in the seizure notice.
 - (3) If, before the end of the period specified in the seizure notice, the person or owner does not institute the proceedings, the document is condemned as forfeited to the Commonwealth immediately after the end of that period.
 - (4) If, before the end of the period specified in the seizure notice, the person or owner does institute the proceedings, the document is
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condemned as forfeited to the Commonwealth at the end of the proceedings unless there is:

- (a) an order for the person or owner to recover the document; or
 - (b) a declaration that the document is not forfeited.
- (5) For the purposes of subsection (4), if the proceedings go to judgment, they end:
- (a) if no appeal against the judgment is lodged within the period for lodging such an appeal—at the end of that period; or
 - (b) if an appeal against the judgment is lodged within that period—when the appeal lapses or is finally determined.

487ZL Dealing with a document after it is condemned as forfeited

- (1) If, under section 487ZK, a document is condemned as forfeited to the Commonwealth, it must be dealt with or disposed of (including by being given to another person) in accordance with any direction given by the Minister under section 499.
- (2) If the Minister considers that the document may be relevant to proceedings in a court or tribunal, then the Minister:
 - (a) must give a direction under section 499 for the safe keeping of the document; and
 - (b) must authorise access to the document for the purposes of those proceedings.

Division 2—Other

Division 2—Contingent amendments

4 Subsection 487ZI(1)

After “bogus document”, insert “(within the meaning of section 97)”.

5 Subsection 487ZI(1)

Omit “(within the meaning of section 97)”.

Division 3—Application of amendments made by Part 1

6 Application of amendments

The amendments made by Part 1 of this Schedule apply to documents given, presented, produced or provided to the official on or after the commencement of item 1 of this Schedule.

Part 2—Amendment of the Australian Citizenship Act 2007

Division 1—Main amendments

7 Section 3

Insert:

bogus document has the same meaning as in subsection 5(1) of the *Migration Act 1958*.

8 Before section 46

Insert:

Division 1—Bogus documents

45A Prohibition on, and forfeiture of, bogus documents

- (1) A person (whether a citizen or non-citizen) must not give a bogus document to the Minister, a person acting under a delegation or authorisation of the Minister, a tribunal or any other person or body performing a function or purpose under, or in relation to, this Act (the *official*), or cause such a document to be so given.
- (2) A bogus document given in contravention of subsection (1) is forfeited to the Commonwealth.

45B Seizure of bogus documents

- (1) If the Minister reasonably suspects that a document is forfeited under subsection 45A(2), then the Minister may seize the document.
- (2) As soon as practicable after seizing the document, the Minister must give written notice of the seizure to the person who gave the document to the official under subsection 45A(1).
- (3) The notice must:
 - (a) identify the document; and

- (b) state that the document has been seized; and
 - (c) specify the reason for the seizure; and
 - (d) state that the document will be condemned as forfeited unless the person institutes proceedings against the Commonwealth before the end of the period specified in the notice:
 - (i) to recover the document; or
 - (ii) for a declaration that the document is not forfeited.
- (4) For the purposes of paragraph (3)(d), the period must:
- (a) start on the date of the notice; and
 - (b) end 90 days after that date.

45C Document condemned as forfeited

- (1) If a document is seized under subsection 45B(1), then:
- (a) the person who gave the document to the official under subsection 45A(1); and
 - (b) if that person is not the owner of the document—the owner; may, subject to paragraph (2)(b), institute proceedings in a court of competent jurisdiction:
 - (c) to recover the document; or
 - (d) for a declaration that the document is not forfeited.
- (2) The proceedings:
- (a) may be instituted even if the seizure notice required to be given under subsection 45B(2) in relation to the document has not yet been given; and
 - (b) may only be instituted before the end of the period specified in the seizure notice.
- (3) If, before the end of the period specified in the seizure notice, the person or owner does not institute the proceedings, the document is condemned as forfeited to the Commonwealth immediately after the end of that period.
- (4) If, before the end of the period specified in the seizure notice, the person or owner does institute the proceedings, the document is condemned as forfeited to the Commonwealth at the end of the proceedings unless there is:
- (a) an order for the person or owner to recover the document; or

- (b) a declaration that the document is not forfeited.
- (5) For the purposes of subsection (4), if the proceedings go to judgment, they end:
 - (a) if no appeal against the judgment is lodged within the period for lodging such an appeal—at the end of that period; or
 - (b) if an appeal against the judgment is lodged within that period—when the appeal lapses or is finally determined.

45D Dealing with a document after it is condemned as forfeited

- (1) If, under section 45C, a document is condemned as forfeited to the Commonwealth, it must be dealt with or disposed of (including by being given to another person) in accordance with any direction given by the Minister.
- (2) If the Minister considers that the document may be relevant to proceedings in a court or tribunal, then the Minister:
 - (a) must give a direction for the safe keeping of the document; and
 - (b) must authorise access to the document for the purposes of those proceedings.
- (3) A direction given under this section is not a legislative instrument.

Division 2—Other

Division 2—Contingent amendments

9 Section 3

Insert:

bogus document has the same meaning as in section 97 of the *Migration Act 1958*.

10 Section 3 (definition of *bogus document*)

Omit “section 97”, substitute “subsection 5(1)”.

Division 3—Application of amendments made by Part 2

11 Application of amendments

The amendments made by Part 2 of this Schedule apply to documents given to the official on or after the commencement of item 1 of this Schedule.

*[Minister's second reading speech made in—
Senate on 24 September 2014
House of Representatives on 30 October 2014]*

(207/14)

*No. 116, 2014 Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 163
2014*