



Crimes Act 1914

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This compilation is in 3 volumes

Volume 1: sections 1-15F
Volume 2: sections 15G-23W
Volume 3: sections 23WA-91
Schedule
Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Crimes Act 1914* that shows the text of the law as amended and in force on 18 February 2026 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au).

Application, saving and transitional provisions

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

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The *Legislation Act 2003* provides for First Parliamentary Counsel to make presentational changes to a compilation. Presentational changes are applied to give a more consistent look and feel to legislation published on the Register, and enable the user to more easily navigate those documents.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. Any modifications affecting the law are accessible on the Register.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part IAB—Controlled operations

Division 1—Preliminary

15G Objects of Part

The main objects of this Part are:

- (a) to provide for the authorisation, conduct and monitoring of controlled operations; and
- (b) to exempt from criminal liability, and to indemnify from civil liability:
 - (i) law enforcement officers who, in the course of a controlled operation authorised under this Part, take an active part in, or are otherwise involved in, the commission of a Commonwealth offence or an offence against a law of a State or Territory or conduct that may result in a civil liability; and
 - (ii) certain other persons who, in accordance with the instructions of a law enforcement officer and in the course of a controlled operation authorised under this Part, take an active part in, or are otherwise involved in, the commission of a Commonwealth offence or an offence against a law of a State or Territory or conduct that may result in a civil liability.

15GA Relationship to other laws and matters

- (1) Subject to subsection (2) and section 15HZ, this Part is not intended to limit a discretion that a court has:
 - (a) to admit or exclude evidence in any proceedings; or
 - (b) to stay criminal proceedings in the interests of justice.
- (2) In determining whether evidence should be admitted or excluded in any proceedings, the fact that the evidence was obtained as a result of a person engaging in criminal activity is to be disregarded if:
 - (a) both:

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- (i) the person was a participant in a controlled operation authorised under this Part acting in the course of the controlled operation; and
 - (ii) the criminal activity was controlled conduct; or
- (b) both:
- (i) the person was a participant in an operation authorised under a corresponding State controlled operations law acting in the course of that operation; and
 - (ii) the criminal activity was conduct constituting an offence for which a person would, but for section 15HH, be criminally responsible.

15GB Concurrent operation of State and Territory laws

It is the intention of the Parliament that this Part is not to apply to the exclusion of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Part.

15GC Definitions

In this Part:

ACC authorising officer has the meaning given by subsection 15GF(3).

AFP authorising officer has the meaning given by subsection 15GF(2).

appropriate authorising officer, for a controlled operation authorised under this Part, means the following:

- (aa) if the controlled operation is a major controlled operation conducted by the Australian Federal Police—the Commissioner or a Deputy Commissioner;
- (a) if the controlled operation is not a major controlled operation conducted by the Australian Federal Police—any AFP authorising officer;

- (b) if the authority to conduct the controlled operation was granted by an ACC authorising officer—any ACC authorising officer;
- (c) if the authority to conduct the controlled operation was granted by a NACC authorising officer—any NACC authorising officer.

authorising agency, for a controlled operation authorised under this Part, means the following:

- (a) if the authority to conduct the controlled operation was granted by an AFP authorising officer—the Australian Federal Police;
- (b) if the authority to conduct the controlled operation was granted by an ACC authorising officer—the ACC;
- (c) if the authority to conduct the controlled operation was granted by a NACC authorising officer—the National Anti-Corruption Commission.

authorising officer has the meaning given by subsection 15GF(1).

authority means an authority (whether formal or urgent) to conduct a controlled operation granted under section 15GI, and includes any such authority as varied.

chief officer means the following:

- (a) in relation to the Australian Federal Police—the Commissioner;
- (b) in relation to the police force of a State or Territory—the Commissioner of Police in that police force or the person holding equivalent rank;
- (c) in relation to the Immigration and Border Protection Department—the Secretary of that Department;
- (d) in relation to the ACC—the Chief Executive Officer of the ACC;
- (e) in relation to the National Anti-Corruption Commission—the National Anti-Corruption Commissioner.

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civilian participant in a controlled operation means a participant in the controlled operation who is not a law enforcement officer.

conduct has the same meaning as in the *Criminal Code*.

controlled conduct means conduct constituting an offence for which a person would, but for section 15HA, be criminally responsible.

controlled operation has the meaning given by subsection 15GD(1).

corresponding State controlled operations law means:

- (a) a law of a State or Territory; or
- (b) a provision or provisions of a law of a State or Territory; prescribed by the regulations for the purposes of this definition.

disciplinary or legal action, in relation to a staff member of a target agency, means any of the following:

- (a) action in respect of alleged misconduct of the staff member;
- (b) termination of the employment or appointment of the staff member;
- (c) a disciplinary proceeding in relation to the staff member or a report of such a proceeding;
- (d) the investigation of an offence suspected to have been committed by the staff member;
- (e) a legal proceeding in relation to the staff member, or a report of such a proceeding.

Disciplinary or legal action also includes the consideration of whether an action or proceeding covered by this definition should be taken or brought.

disciplinary proceeding:

- (a) means a proceeding of a disciplinary nature under a law of the Commonwealth or of a State or Territory; and
- (b) includes action taken under Subdivision D of Division 3 of Part V of the *Australian Federal Police Act 1979*.

entrusted person means:

- (a) a participant in a controlled operation; or
- (b) any of the following:
 - (i) the Commissioner or an AFP appointee (within the meaning of the *Australian Federal Police Act 1979*);
 - (ii) a member of the police force of a State or Territory;
 - (iii) a staff member (within the meaning of section 12 of the *National Anti-Corruption Commission Act 2022*) of the Immigration and Border Protection Department;
 - (iv) the Chief Executive Officer of the ACC, a member of the staff of the ACC (within the meaning of the *Australian Crime Commission Act 2002*) or a person appointed under subsection 46B(1) of that Act;
 - (v) a staff member of the NACC (within the meaning of the *National Anti-Corruption Commission Act 2022*); or
- (c) an officer or staff member of a Commonwealth agency, or a State or Territory government entity, with which the National Anti-Corruption Commissioner is jointly conducting a corruption investigation under paragraph 41(1)(b) of the *National Anti-Corruption Commission Act 2022*, if a controlled operation relates to the investigation; or
- (d) an officer (within the meaning of section 35 of the *Ombudsman Act 1976*); or
- (e) a person who has entered into a contract, agreement or arrangement with:
 - (i) a law enforcement agency; or
 - (ii) a government agency, or an integrity agency, mentioned in paragraph (c); or
 - (iii) the Commonwealth Ombudsman;(other than as a person mentioned in paragraphs (b) to (d)).

exercise a function includes perform a duty.

formal application has the meaning given by paragraph 15GH(2)(a).

formal authority has the meaning given by paragraph 15GJ(1)(a).

Section 15GC

formal variation application:

- (a) in relation to an application under subsection 15GP(1)—has the meaning given by paragraph 15GP(3)(a); and
- (b) in relation to an application under subsection 15GU(1)—has the meaning given by paragraph 15GU(3)(a).

formal variation of authority:

- (a) in relation to a variation made by an appropriate authorising officer—has the meaning given by paragraph 15GR(1)(a); and
- (b) in relation to a variation made by a nominated Tribunal member—has the meaning given by paragraph 15GW(1)(a).

function includes a power, authority or duty.

integrity testing authority means an authority granted under Part IABA, and includes any such authority as varied.

integrity testing controlled operation authority means an authority granted under section 15GI on the basis that an integrity testing authority is in effect.

Note: See subparagraph 15GI(2)(a)(ii).

law enforcement agency means any of the following:

- (a) the Australian Federal Police;
- (b) the police force of a State or Territory;
- (c) the Immigration and Border Protection Department;
- (d) the ACC;
- (e) the National Anti-Corruption Commission.

law enforcement participant in a controlled operation means a participant in the controlled operation who is a law enforcement officer.

major controlled operation has the meaning given by subsection 15GD(2).

NACC authorising officer has the meaning given by subsection 15GF(4).

nominated Tribunal member means a person in respect of whom a nomination under subsection 15GG(1) is in force.

participant in a controlled operation means a person who is authorised under this Part to engage in controlled conduct for the purposes of the controlled operation.

person targeted, in relation to a controlled operation, means the person about whom, as a result of the controlled operation:

- (a) it is intended to obtain evidence; or
- (b) evidence is being, or has been, obtained.

principal law enforcement officer, for a controlled operation authorised under this Part, means the Australian law enforcement officer specified in the authority to conduct the controlled operation as the officer who is responsible for the conduct of the controlled operation.

serious Commonwealth offence has the meaning given by subsections 15GE(1) and (3).

serious State offence that has a federal aspect has the meaning given by subsection 15GE(4).

staff member of a target agency has the same meaning in relation to that agency as in section 12 of the *National Anti-Corruption Commission Act 2022*.

target agency means any of the following:

- (a) the ACC;
- (b) the Australian Federal Police;
- (c) the Immigration and Border Protection Department;
- (d) any other Commonwealth agency (within the meaning of the *National Anti-Corruption Commission Act 2022*).

urgent application has the meaning given by paragraph 15GH(2)(b).

urgent authority has the meaning given by paragraph 15GJ(1)(b).

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urgent variation application:

- (a) in relation to an application under subsection 15GP(1)—has the meaning given by paragraph 15GP(3)(b); and
- (b) in relation to an application under subsection 15GU(1)—has the meaning given by paragraph 15GU(3)(b).

urgent variation of authority:

- (a) in relation to a variation made by an appropriate authorising officer—has the meaning given by paragraph 15GR(1)(b); and
- (b) in relation to a variation made by a nominated Tribunal member—has the meaning given by paragraph 15GW(1)(b).

15GD Meaning of *controlled operation* and *major controlled operation*

- (1) A ***controlled operation*** is an operation that:
 - (a) involves the participation of law enforcement officers; and
 - (b) is carried out for the purpose of obtaining evidence that may lead to the prosecution of a person for a serious Commonwealth offence or a serious State offence that has a federal aspect; and
 - (c) may involve a law enforcement officer or other person in conduct that would, apart from section 15HA, constitute a Commonwealth offence or an offence against a law of a State or Territory.

Note: Section 15GN specifies when a controlled operation begins and ends.

- (2) A ***major controlled operation*** is a controlled operation that is likely to:
 - (a) involve the infiltration of an organised criminal group by one or more undercover law enforcement officers for a period of more than 7 days; or
 - (b) continue for more than 3 months; or
 - (c) be directed against suspected criminal activity that includes a threat to human life.

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Note: Section 15GN specifies when a controlled operation begins and ends.

15GE Meaning of *serious Commonwealth offence* and *serious State offence that has a federal aspect*

Meaning of serious Commonwealth offence

- (1) For the purposes of this Part, ***serious Commonwealth offence*** means a Commonwealth offence that:
 - (a) involves a matter mentioned in subsection (2); and
 - (b) is punishable on conviction by imprisonment for a period of 3 years or more.
- (2) The matters are as follows:
 - (a) theft;
 - (b) fraud;
 - (c) tax evasion;
 - (d) currency violations;
 - (e) controlled substances;
 - (f) illegal gambling;
 - (g) obtaining financial benefit by vice engaged in by others;
 - (h) extortion;
 - (i) money laundering;
 - (j) perverting the course of justice;
 - (k) bribery or corruption of, or by, an officer of the Commonwealth, of a State or of a Territory;
 - (l) bankruptcy and company violations;
 - (m) harbouring of criminals;
 - (n) forgery (including forging of passports);
 - (o) armament dealings;
 - (p) illegal importation or exportation of fauna into or out of Australia;
 - (q) espionage, sabotage or threats to national security;
 - (r) misuse of a computer or electronic communications;
 - (s) people smuggling;

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- (t) slavery;
 - (u) piracy;
 - (v) the organisation, financing or perpetration of sexual servitude or a sexual offence against a person who is under 18 outside Australia;
 - (w) dealings in child abuse material;
 - (x) importation of prohibited imports;
 - (y) exportation of prohibited exports;
 - (z) violence;
 - (za) firearms;
 - (zb) a matter that is of the same general nature as a matter mentioned in one of the preceding paragraphs;
 - (zc) a matter that is prescribed by the regulations for the purposes of this paragraph.
- (3) Without limiting subsections (1) and (2), an offence against one of the following provisions of the *Criminal Code* is a **serious Commonwealth offence** for the purposes of this Part:
- (a) Part 5.3 (Terrorism);
 - (aaa) Part 5.3A (State sponsors of terrorism);
 - (aa) Division 273A (Possession of child-like sex dolls etc.);
 - (b) Subdivision B of Division 471 (Use of postal or similar service for child abuse material);
 - (c) Subdivision C of Division 471 (Use of postal or similar service involving sexual activity with person under 16);
 - (d) Subdivision D of Division 474 (Use of carriage service for child abuse material);
 - (e) Subdivision F of Division 474 (Use of carriage service involving sexual activity with person under 16);
 - (f) Subdivision HA of Division 474 (Use of carriage service for violent extremist material);
 - (g) Subdivision HB of Division 474 (Use of carriage service for firearms and explosives manufacture material).

Meaning of serious State offence that has a federal aspect

- (4) For the purposes of this Part, ***serious State offence that has a federal aspect*** means a State offence that has a federal aspect and that would be a serious Commonwealth offence if it were a Commonwealth offence.

Note: For when a State offence has a ***federal aspect***, see section 3AA.

15GF Meaning of *authorising officer* etc.

- (1) Any of the following is an ***authorising officer*** for a controlled operation:
- (a) if the operation is a major controlled operation and the investigation of the offence to which the controlled operation relates is within the functions of the Australian Federal Police—the Commissioner or a Deputy Commissioner;
 - (b) if the operation is not a major controlled operation, but the investigation of the offence to which the controlled operation relates is within the functions of the Australian Federal Police—any AFP authorising officer;
 - (c) if the investigation of the offence to which the controlled operation relates is within the functions of the ACC—any ACC authorising officer;
 - (d) if the controlled operation relates to the conduct of a corruption investigation (within the meaning of the *National Anti-Corruption Commission Act 2022*)—any NACC authorising officer.
- (2) The following are ***AFP authorising officers***:
- (a) the Commissioner;
 - (b) a Deputy Commissioner;
 - (c) 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.
- (3) The following are ***ACC authorising officers***:
- (a) the Chief Executive Officer of the ACC;

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- (b) a member of the staff of the ACC who is an SES employee and who is authorised in writing by the Chief Executive Officer of the ACC for the purposes of this paragraph.
- (4) The following are *NACC authorising officers*:
 - (a) the National Anti-Corruption Commissioner;
 - (b) a National Anti-Corruption Deputy Commissioner (within the meaning of the *National Anti-Corruption Commission Act 2022*);
 - (c) another staff member of the NACC (within the meaning of that Act) who:
 - (i) is an SES employee; and
 - (ii) is authorised in writing by the National Anti-Corruption Commissioner for the purposes of this paragraph.

15GG ART Minister may nominate ART members

- (1) The Minister administering the *Administrative Review Tribunal Act 2024* (the *ART Minister*) may, by writing, nominate a person who holds one of the following appointments to the Administrative Review Tribunal to deal with applications under subsection 15GU(1) (which deals with extending authorities for controlled operations beyond 3 months):
 - (a) Deputy President;
 - (b) a senior member;
 - (c) a general member.
- (2) Despite subsection (1), the ART Minister must not nominate a person who holds an appointment as a senior member appointed on a sessional basis or a general 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 have effect if:

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- (a) the nominated Tribunal member ceases to hold an appointment described in subsection (1); or
 - (b) the ART Minister, by writing, withdraws the nomination.
- (4) A nominated Tribunal member has, in relation to the performance or exercise of a function or power conferred on a nominated Tribunal member by this Act, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

Division 2—Authorisation of controlled operations

Subdivision A—Authorities to conduct controlled operations

15GH Applications for authorities to conduct controlled operations

- (1) An Australian law enforcement officer of a law enforcement agency may apply to an authorising officer for an authority to conduct a controlled operation on behalf of the law enforcement agency.
- (2) An application for an authority may be made:
 - (a) by means of a written document signed by the applicant (such an application is a *formal application*); or
 - (b) if the applicant has reason to believe that the delay caused by making a formal application may affect the success of the controlled operation—orally in person, or by telephone or any other means of communication (such an application is an *urgent application*).
- (3) Nothing in this Part prevents an application for an authority being made in respect of a controlled operation that has been the subject of a previous application, but in that case the subsequent application must be a formal application.

Note: An urgent authority can be varied, but not so as to extend its duration—see sections 15GO and 15GS.
- (4) An application (whether formal or urgent) must:
 - (a) provide sufficient information to enable the authorising officer to decide whether or not to grant the application; and
 - (b) state whether or not the proposed controlled operation, or any other controlled operation with respect to the same criminal activity, has been the subject of an earlier application (whether formal or urgent) for an authority or variation of an authority and, if so, whether or not the authority was given or the variation granted; and

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- (c) state the proposed period of effect of the authority, which must not exceed:
 - (i) in the case of a formal application—3 months; and
 - (ii) in the case of an urgent application—7 days.
- (5) An authorising officer may require an applicant to provide such additional information concerning the proposed controlled operation as is necessary for the proper consideration of the application.
- (6) As soon as practicable after making an urgent application that was not made in writing, the applicant must make a written record of the application and give a copy of it to the authorising officer to whom the application was made.

15GI Determination of applications

- (1) An authorising officer may, after considering an application for an authority to conduct a controlled operation, and any additional information provided under subsection 15GH(5):
 - (a) authorise the controlled operation by granting the authority, either unconditionally or subject to conditions; or
 - (b) refuse the application.
- (2) An authorising officer must not grant an authority to conduct a controlled operation unless the authorising officer is satisfied on reasonable grounds:
 - (a) that either:
 - (i) a serious Commonwealth offence or a serious State offence that has a federal aspect has been, is being or is likely to be committed; or
 - (ii) an integrity testing authority is in effect in relation to an offence that it is suspected has been, is being or is likely to be committed by a staff member of a target agency (see the notes at the foot of this subsection); and
 - (b) that the nature and extent of the suspected criminal activity are such as to justify the conduct of a controlled operation; and

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- (c) that any unlawful conduct involved in conducting the controlled operation will be limited to the maximum extent consistent with conducting an effective controlled operation; and
- (d) so far as the conduct involved in the controlled operation is not conducted online—that the operation will be conducted in a way that ensures that, to the maximum extent possible, any illicit goods involved in the controlled operation will be under the control of an Australian law enforcement officer at the end of the controlled operation; and
- (e) that the proposed controlled conduct will be capable of being accounted for in a way that will enable the reporting requirements of Division 4 to be complied with; and
- (f) that the controlled operation will not be conducted in such a way that a person is likely to be induced to commit a Commonwealth offence or an offence against a law of a State or Territory that the person would not otherwise have intended to commit; and
- (g) that any conduct involved in the controlled operation will not:
 - (i) seriously endanger the health or safety of any person; or
 - (ii) cause the death of, or serious injury to, any person; or
 - (iii) involve the commission of a sexual offence against any person; or
 - (iv) result in significant loss of, or serious damage to, property (other than illicit goods); and
- (h) that any role assigned to a civilian participant in the operation is not one that could be adequately performed by a law enforcement officer.

Note 1: Subparagraph (a)(ii) applies in relation to offences punishable on conviction by imprisonment for 12 months or more (see section 15JG).

Note 2: The target agencies mentioned in subparagraph (a)(ii) are the ACC, the Australian Federal Police and the Immigration and Border Protection Department (see section 15GC).

(2A) To avoid doubt:

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- (a) paragraph (2)(g) only requires an authorising officer to be satisfied as to the direct and reasonably foreseeable consequences of the unlawful conduct of participants in the controlled operation; and
 - (b) nothing in subparagraph (2)(g)(iii) is intended to prevent an authorising officer from granting an authority to conduct a controlled operation that will involve a participant:
 - (i) dealing with material depicting, material describing or material otherwise involving a sexual offence against any person; or
 - (ii) facilitating a person to deal with such material.
- (2B) For the purposes of paragraph (2A)(a), a consequence is a direct consequence of unlawful conduct if the unlawful conduct causes or produces (and is not merely a minor influence on) the consequence without there being any intervening conduct or events.
- (3) To avoid doubt, an authorising officer may authorise a particular controlled operation only if he or she is an authorising officer for the controlled operation within the meaning of section 15GF.
- (4) An authority granted under this section is not a legislative instrument.

15GJ Manner of granting authority

- (1) An authority to conduct a controlled operation may be granted:
- (a) in the case of a formal application (other than a formal application referred to in subparagraph (b)(ii))—by means of a written document, signed by the authorising officer (such an authority is a **formal authority**); or
 - (b) in the case of:
 - (i) an urgent application; or
 - (ii) a formal application, if the authorising officer is satisfied that the delay caused by granting a formal authority may affect the success of the controlled operation;

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orally in person, or by telephone or any other means of communication (such an authority is an *urgent authority*).

- (2) Nothing in this Part prevents an authority being granted in respect of a controlled operation that has been the subject of a previous authority, but in that case the subsequent authority must be a formal authority.

Note: An urgent authority can be varied, but not so as to extend its duration—see sections 15GO and 15GS.

15GK Form of authority

- (1) A formal authority must:
- (a) state the name and rank or position of the person granting the authority; and
 - (b) identify the principal law enforcement officer for the controlled operation and, if the principal law enforcement officer is not the applicant for the authority, the name of the applicant; and
 - (c) state that the application was a formal application; and
 - (d) identify the nature of the criminal activity (including the relevant suspected offences) in respect of which the controlled conduct is to be engaged in; and
 - (da) in the case of an integrity testing controlled operation authority—identify the integrity testing authority concerned; and
 - (e) state the identity of the persons authorised to engage in controlled conduct for the purposes of the controlled operation; and
 - (f) specify:
 - (i) with respect to the law enforcement participants, the nature of the controlled conduct that those participants may engage in; and
 - (ii) with respect to the civilian participants, the particular controlled conduct (if any) that each such participant may engage in; and

- (g) identify (to the extent known) the person or persons targeted; and
 - (h) specify the period of effect of the authority, being a period not exceeding 3 months; and
 - (i) specify any conditions to which the conduct of the controlled operation is subject; and
 - (j) state the date and time when the authority is granted; and
 - (k) identify the following details (to the extent to which they are known and are relevant):
 - (i) the nature and quantity of any illicit goods that will be involved in the controlled operation;
 - (ii) the foreign countries through which those goods are likely to pass in the course of the controlled operation;
 - (iii) the place or places at which those goods are likely to be dealt with by an officer of Customs;
 - (iv) if subparagraph (iii) does not apply—the place or places where those goods are likely to enter into Australia;
 - (v) the time or times when, and the day or days on which, those goods are likely to be dealt with by an officer of Customs.
- (2) An urgent authority must:
- (a) state the name and rank or position of the person who granted the authority; and
 - (b) identify the principal law enforcement officer for the controlled operation and, if the principal law enforcement officer is not the applicant for the authority, the name of the applicant; and
 - (c) state whether the application was a formal application or an urgent application; and
 - (d) identify the nature of the criminal activity (including the relevant suspected offences) in respect of which the controlled conduct is to be engaged in; and
 - (da) in the case of an integrity testing controlled operation authority—identify the integrity testing authority concerned; and

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- (e) state the identity of the persons authorised to engage in controlled conduct for the purposes of the controlled operation; and
 - (f) specify:
 - (i) with respect to the law enforcement participants, the nature of the controlled conduct that those participants may engage in; and
 - (ii) with respect to the civilian participants, the particular controlled conduct (if any) that each such participant may engage in; and
 - (g) identify (to the extent known) the person or persons targeted; and
 - (h) specify the period of effect of the authority, being a period not exceeding 7 days beginning on the day on which the authority was granted; and
 - (i) specify any conditions to which the conduct of the operation is subject; and
 - (j) state the date and time when the authority was granted.
- (3) A person is sufficiently identified for the purposes of paragraph (1)(e) or (2)(e) if the person is identified:
- (a) by an assumed name under which the person is operating; or
 - (b) by a code name or code number;
- as long as the chief officer of the authorising agency for the controlled operation can match the assumed name, code name or code number to the person's identity.
- (4) An authority must not identify persons for the purposes of paragraph (1)(e) or (2)(e) by identifying a class of persons.

15GL Written record of urgent authority must be issued

If an authorising officer grants an urgent authority, the authorising officer must, within 7 days, issue a written record of the urgent authority that complies with subsection 15GK(2) to the principal law enforcement officer for the controlled operation.

15GM Change of principal law enforcement officer

If an authorising officer in relation to a controlled operation becomes satisfied that the principal law enforcement officer for the controlled operation ceases for any reason to have responsibility for the controlled operation:

- (a) the authorising officer may, by instrument in writing, nominate another person as the principal law enforcement officer for the controlled operation; and
- (b) with effect from the execution of the instrument or such later time as is specified in the instrument, that other person becomes the principal law enforcement officer for the controlled operation.

15GN Commencement and duration of authorities

- (1) An authority to conduct a controlled operation comes into force, and the controlled operation is taken to commence, at the time the authority is granted under section 15GI.
- (2) To avoid doubt, an urgent authority is granted when the authorising officer tells the applicant that the urgent authority is granted.

Note: An authority is granted under subsection 15GI(1). Paragraph 15GJ(1)(b) enables an authority to be granted orally in specified circumstances.

- (3) An authority (whether formal or urgent) has effect for the period of effect specified in it under paragraph 15GK(1)(h) or (2)(h) unless:
 - (a) it is cancelled before the end of the period of effect; or
 - (b) in the case of a formal authority—the period of effect is extended under Subdivision B or C; or
 - (c) in the case of an integrity testing controlled operation authority—the integrity testing authority concerned (the *earlier ITA*) stops being in effect under Part IABA (see section 15JJ).

Note: For integrity testing controlled operation authorities, see subparagraph 15GI(2)(a)(ii).

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- (4) Paragraph (3)(c) does not apply if a further integrity testing authority is granted under Part IABA that continues the effect of the earlier ITA.

Subdivision B—Variation of authorities by appropriate authorising officers

15GO Variation of authority by appropriate authorising officer

- (1) An appropriate authorising officer may vary an authority:
- (a) at any time on the authorising officer's own initiative; or
 - (b) on application under subsection 15GP(1).
- (2) A variation may:
- (a) extend the period of effect of the authority (subject to subsections (3) and (4)); or
 - (b) authorise additional persons to engage in controlled conduct for the purposes of the controlled operation and specify:
 - (i) with respect to additional law enforcement participants—the nature of the controlled conduct that those participants may engage in; and
 - (ii) with respect to additional civilian participants—the particular controlled conduct (if any) that each such participant may engage in; or
 - (c) provide that specified persons are no longer authorised to engage in controlled conduct for the purposes of the controlled operation; or
 - (d) authorise participants in the controlled operation to engage in additional or alternative controlled conduct.
- (3) A variation cannot be made that has the effect of extending the period of effect of an urgent authority.
- (4) A formal authority must not be varied in such a way that the period of effect of the authority will, after the variation is made, exceed 3 months (including any previous extensions).

- (5) An authority must not be varied unless the authorising officer is satisfied on reasonable grounds that the variation will not authorise a significant alteration of the nature of the controlled operation concerned, including an alteration that would change the nature of the criminal offences to which the controlled operation relates.
- (6) A variation is not a legislative instrument.

15GP Application to appropriate authorising officer

- (1) The principal law enforcement officer for a controlled operation, or any other Australian law enforcement officer acting on behalf of the principal law enforcement officer, may apply under this section to an appropriate authorising officer for a variation of an authority in respect of a matter mentioned in subsection 15GO(2).
- (2) An application cannot be made under subsection (1) for a variation that would extend the period of effect of a formal authority in such a way that the period of effect of the authority will, after the variation is made, exceed 3 months (including any previous extensions).
- (3) An application for the variation may be made:
 - (a) by means of a written document that is signed by the applicant (such an application is a ***formal variation application***); or
 - (b) if the applicant has reason to believe that the delay caused by making a formal variation application may affect the success of the controlled operation to which the authority relates— orally in person, or by telephone or any other means of communication (such an application is an ***urgent variation application***).
- (4) More than one application for a variation under this section may be made in respect of the same authority. However, if an urgent variation of authority was granted as a result of an application under this section, the next application must be a formal variation application.

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- (5) The application (whether a formal variation application or an urgent variation application) must state whether or not the controlled operation has been the subject of an earlier urgent variation application under this section and, if so:
 - (a) whether the urgent variation application was the last application under this section for a variation; and
 - (b) whether or not the variation was granted.
- (6) If the variation would extend the period of effect of a formal authority, the application (whether a formal variation application or an urgent variation application) must state the proposed period of the extension, which must not exceed:
 - (a) in the case of a formal variation application—the period that would result in the period of effect of the authority exceeding 3 months (including any previous extensions); and
 - (b) in the case of an urgent variation application—the lesser of:
 - (i) 7 days; and
 - (ii) a period that would result in the period of effect of the authority exceeding 3 months (including any previous extensions).
- (7) The authorising officer to whom the application is made may require the applicant to provide such information concerning the proposed variation as is necessary for the authorising officer's proper consideration of the application.
- (8) As soon as practicable after making an urgent variation application that was not made in writing, the applicant must make a written record of the application and give a copy of it to the authorising officer to whom the application was made.

15GQ Requirements for variation of authority

- (1) After considering an application for a variation of an authority, and any additional information provided under subsection 15GP(7), an appropriate authorising officer:
 - (a) may vary the authority in accordance with the application, either unconditionally or subject to conditions; or

- (b) may refuse the application.
- (1A) Despite subsection (1), an appropriate authorising officer must refer an application for a variation of an authority to the Commissioner or a Deputy Commissioner if varying the authority would have the effect that the controlled operation would be a major controlled operation by virtue of paragraph 15GD(2)(a).
- (2) An appropriate authorising officer must not vary an authority, whether on application or on the authorising officer's own initiative, unless the authorising officer is satisfied on reasonable grounds:
- (a) that either:
 - (i) a serious Commonwealth offence or a serious State offence that has a federal aspect has been, is being or is likely to be committed; or
 - (ii) an integrity testing authority is in effect in relation to an offence that it is suspected has been, is being or is likely to be committed by a staff member of a target agency (see the notes at the foot of this subsection); and
 - (b) that the nature and extent of the suspected criminal activity are such as to justify the variation; and
 - (c) that any unlawful conduct involved in conducting the controlled operation will be limited to the maximum extent consistent with conducting an effective controlled operation; and
 - (d) so far as the conduct involved in the controlled operation is not conducted online—that the operation will be conducted in a way that ensures that, to the maximum extent possible, any illicit goods involved in the controlled operation will be under the control of an Australian law enforcement officer at the end of the controlled operation; and
 - (e) that the proposed controlled conduct will be capable of being accounted for in a way that will enable the reporting requirements of Division 4 to be complied with; and
 - (f) that the controlled operation will not be conducted in such a way that a person is likely to be induced to commit a

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Commonwealth offence or an offence against a law of a State or Territory that the person would not otherwise have intended to commit; and

- (g) that any conduct involved in the controlled operation will not:
- (i) seriously endanger the health or safety of any person; or
 - (ii) cause the death of, or serious injury to, any person; or
 - (iii) involve the commission of a sexual offence against any person; or
 - (iv) result in significant loss of, or serious damage to, property (other than illicit goods); and
- (h) that any role assigned to a civilian participant in the operation is not one that could be adequately performed by a law enforcement officer.

Note 1: Subparagraph (a)(ii) applies in relation to offences punishable on conviction by imprisonment for 12 months or more (see section 15JG).

Note 2: The target agencies mentioned in subparagraph (a)(ii) are the ACC, the Australian Federal Police and the Immigration and Border Protection Department (see section 15GC).

(2A) To avoid doubt:

- (a) paragraph (2)(g) only requires an appropriate authorising officer to be satisfied as to the direct and reasonably foreseeable consequences of the unlawful conduct of participants in the controlled operation; and
- (b) nothing in subparagraph (2)(g)(iii) is intended to prevent an appropriate authorising officer from varying an authority to conduct a controlled operation that will involve a participant:
 - (i) dealing with material depicting, material describing or material otherwise involving a sexual offence against any person; or
 - (ii) facilitating a person to deal with such material.

(2B) For the purposes of paragraph (2A)(a), a consequence is a direct consequence of unlawful conduct if the unlawful conduct causes or

produces (and is not merely a minor influence on) the consequence without there being any intervening conduct or events.

- (3) Despite subsection (2), an appropriate authorising officer (other than the Commissioner or a Deputy Commissioner) must not vary an authority on the authorising officer's own initiative if doing so would have the effect that the controlled operation would be a major controlled operation by virtue of paragraph 15GD(2)(a).

15GR Manner of varying authority

- (1) An authority may be varied by an appropriate authorising officer (whether on application or on the authorising officer's own initiative) only:
- (a) in the case of a variation on the authorising officer's own initiative or on a formal variation application (other than a variation referred to in subparagraph (b)(ii))—by means of a written document, signed by the authorising officer (such a variation is a **formal variation of authority**); or
 - (b) in the case of a variation on:
 - (i) an urgent variation application; or
 - (ii) the authorising officer's own initiative or a formal variation application, if the authorising officer is satisfied that the delay caused by granting a formal variation of authority may affect the success of the controlled operation;
orally in person, or by telephone or any other means of communication (such a variation is an **urgent variation of authority**).
- (2) The authorising officer must, as soon as practicable, prepare and give a written document that complies with section 15GS to the applicant or, if the variation was on the initiative of the authorising officer, to the principal law enforcement officer for the controlled operation.

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15GS Form of variation of authority

- (1) A variation of an authority by an appropriate authorising officer (whether formal or urgent) must:
 - (a) identify the controlled operation to which the authority relates; and
 - (b) state the name and rank or position of the person varying the authority; and
 - (c) if the authority was varied on an application made under section 15GP, state:
 - (i) the name of the applicant; and
 - (ii) whether the application was a formal variation application or an urgent variation application; and
 - (d) state the date and time when the variation of authority is or was granted; and
 - (e) describe the variation having regard to the matters referred to in subsection 15GO(2); and
 - (f) if the variation extends the period of effect of a formal authority—state the period of the extension.
- (2) For the purposes of paragraph (1)(f), the period of the extension must not exceed:
 - (a) in the case of a formal variation of authority—the period that would result in the period of effect of the authority exceeding 3 months (including any previous extensions); and
 - (b) in the case of an urgent variation of authority—the lesser of:
 - (i) 7 days; and
 - (ii) a period that would result in the period of effect of the authority exceeding 3 months (including any previous extensions).

**Subdivision C—Variations of authorities by nominated
Tribunal member: extensions beyond 3 months**

**15GT Variation of formal authority to extend period of effect
beyond 3 months**

- (1) A nominated Tribunal member may vary a formal authority on application under subsection 15GU(1).
- (2) Subject to subsection (3), a variation may extend the period of effect of the authority.
- (3) For the purposes of subsection (2), the period of the extension must not exceed the lesser of:
 - (a) 3 months; and
 - (b) a period that would result in the period of effect of the authority exceeding 24 months (including any previous extensions under this Subdivision or Subdivision B).
- (4) A nominated Tribunal member may only vary a formal authority during the period of 2 weeks before the end of the period of effect of the authority.

15GU Application to nominated Tribunal member

- (1) The principal law enforcement officer for a controlled operation for which there is a formal authority, or any other Australian law enforcement officer acting on behalf of the principal law enforcement officer, may apply to a nominated Tribunal member for a variation of the authority that would extend its period of effect:
 - (a) if the period of effect of the authority is 3 months or more (including any previous extensions); or
 - (b) in such a way that the period of effect of the authority will, after the variation is made, be 3 months or more (including any previous extensions).

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- (2) An application cannot be made under subsection (1) for a variation that would extend the period of effect of a formal authority in such a way that the period of effect of the authority will, after the variation is made, exceed 24 months (including any previous extensions under this Subdivision or Subdivision B).
- (3) An application for the variation may be made:
- (a) by means of a written document that is signed by the applicant (such an application is a **formal variation application**); or
 - (b) if the applicant has reason to believe that the delay caused by making a formal application for the variation may affect the success of the controlled operation to which the authority relates—orally in person, or by telephone or any other means of communication (such an application is an **urgent variation application**).
- (4) More than one application for a variation under this section may be made in respect of the same authority. However, if an urgent variation of authority was granted as a result of an application under this section, the next application must be a formal variation application.
- (5) An application for a variation (whether a formal variation application or an urgent variation application) must state:
- (a) whether or not the controlled operation has been the subject of an earlier urgent variation application under this section and, if so:
 - (i) whether the urgent variation application was the last application under this section for a variation; and
 - (ii) whether or not the variation was granted; and
 - (b) the proposed period of the extension, which must be such as to comply with subsection (2) and must not exceed:
 - (i) in the case of a formal variation application—3 months; and
 - (ii) in the case of an urgent variation application—7 days.

- (6) The nominated Tribunal member may require the applicant to provide such information concerning the proposed variation as is necessary for the nominated Tribunal member's proper consideration of the application.
- (7) As soon as practicable after making an urgent variation application that was not made in writing, the applicant must make a written record of the application and give a copy of it to the nominated Tribunal member to whom the application was made.

15GV Determination of application

- (1) After considering an application for a variation of a formal authority, and any additional information provided under subsection 15GU(6), the nominated Tribunal member concerned:
 - (a) may vary the authority in accordance with the application, either unconditionally or subject to conditions; or
 - (b) may refuse the application.
- (2) The nominated Tribunal member must not grant the variation unless the nominated Tribunal member is satisfied on reasonable grounds:
 - (a) that either:
 - (i) a serious Commonwealth offence or a serious State offence that has a federal aspect has been, is being or is likely to be committed; or
 - (ii) an integrity testing authority is in effect in relation to an offence that it is suspected has been, is being or is likely to be committed by a staff member of a target agency (see the notes at the foot of this subsection); and
 - (b) that the nature and extent of the suspected criminal activity are such as to justify the variation; and
 - (c) that any unlawful conduct involved in conducting the controlled operation will be limited to the maximum extent consistent with conducting an effective controlled operation; and

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- (d) so far as the conduct involved in the controlled operation is not conducted online—that the operation will be conducted in a way that ensures that, to the maximum extent possible, any illicit goods involved in the controlled operation will be under the control of an Australian law enforcement officer at the end of the controlled operation; and
- (e) that the proposed controlled conduct will be capable of being accounted for in a way that will enable the reporting requirements of Division 4 to be complied with; and
- (f) that the controlled operation will not be conducted in such a way that a person is likely to be induced to commit a Commonwealth offence or an offence against a law of a State or Territory that the person would not otherwise have intended to commit; and
- (g) that any conduct involved in the controlled operation will not:
 - (i) seriously endanger the health or safety of any person; or
 - (ii) cause the death of, or serious injury to, any person; or
 - (iii) involve the commission of a sexual offence against any person; or
 - (iv) result in significant loss of, or serious damage to, property (other than illicit goods); and
- (h) that any role assigned to a civilian participant in the operation is not one that could be adequately performed by a law enforcement officer.

Note 1: Subparagraph (a)(ii) applies in relation to offences punishable on conviction by imprisonment for 12 months or more (see section 15JG).

Note 2: The target agencies mentioned in subparagraph (a)(ii) are the ACC, the Australian Federal Police and the Immigration and Border Protection Department (see section 15GC).

(2A) To avoid doubt:

- (a) paragraph (2)(g) only requires the nominated Tribunal member to be satisfied as to the direct and reasonably foreseeable consequences of the unlawful conduct of participants in the controlled operation; and

- (b) nothing in subparagraph (2)(g)(iii) is intended to prevent the nominated Tribunal member from varying a formal authority to conduct a controlled operation that will involve a participant:
 - (i) dealing with material depicting, material describing or material otherwise involving a sexual offence against any person; or
 - (ii) facilitating a person to deal with such material.
- (2B) For the purposes of paragraph (2A)(a), a consequence is a direct consequence of unlawful conduct if the unlawful conduct causes or produces (and is not merely a minor influence on) the consequence without there being any intervening conduct or events.
- (3) A variation is not a legislative instrument.

15GW Manner of varying formal authority

- (1) A formal authority may be varied by a nominated Tribunal member only:
 - (a) in the case of a formal variation application (other than a formal variation application referred to in subparagraph (b)(ii))—by means of a written document, signed by the nominated Tribunal member (such a variation is a **formal variation of authority**); or
 - (b) in the case of:
 - (i) an urgent variation application; or
 - (ii) a formal variation application, if the nominated Tribunal member is satisfied that the delay caused by granting a formal variation of authority may affect the success of the controlled operation;
orally in person, or by telephone or any other means of communication (such a variation is an **urgent variation of authority**).
- (2) The nominated Tribunal member must, as soon as practicable, prepare and give a written document that complies with section 15GX to the applicant.

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15GX Form of variation of formal authority

- (1) A variation of a formal authority by a nominated Tribunal member (whether formal or urgent) must:
 - (a) identify the controlled operation to which the authority relates; and
 - (b) state the name and position of the person varying the authority; and
 - (c) state the name of the applicant; and
 - (d) state whether the application for the variation was a formal variation application or an urgent variation application; and
 - (e) state the date and time when the variation of authority is or was granted; and
 - (f) state the period of the extension.
- (2) The period of the extension:
 - (a) must not exceed the period that would result in the period of effect of the authority exceeding 24 months (including any previous extensions under this Subdivision or Subdivision B); and
 - (b) must not exceed:
 - (i) in the case of a formal variation of authority—3 months; and
 - (ii) in the case of an urgent variation of authority—7 days.

Subdivision D—Other matters

15GY Cancellation of authorities

- (1) An appropriate authorising officer may, by order in writing given to the principal law enforcement officer for a controlled operation, cancel the authority to conduct the controlled operation at any time and for any reason.
- (2) Without limiting subsection (1), an appropriate authorising officer may cancel an authority at any time at the request of the principal law enforcement officer for the controlled operation concerned.

- (3) Cancellation of an authority takes effect at the time the order is made or at the later time specified in the order.

15GZ Effect of authorities

- (1) Subject to subsection (2), an authority:
- (a) authorises each law enforcement participant in the controlled operation to which the authority relates who is identified in the authority to engage in the controlled conduct specified in the authority in respect of that participant; and
 - (b) authorises each civilian participant (if any) in the controlled operation to which the authority relates who is identified in the authority to engage in the particular controlled conduct (if any) specified in the authority in respect of that participant.
- (2) A person identified in an authority as being authorised to engage in controlled conduct for the purposes of the controlled operation is authorised to do so for the period of effect of the authority, unless:
- (a) the authority specifies a shorter period during which the person is so authorised; or
 - (b) the authority is varied to provide that the person is no longer so authorised; or
 - (c) the authority is cancelled before the end of that period.
- (3) The authority to engage in controlled conduct given to a participant cannot be delegated to any other person.

15H Defect in authority

An application for an authority or variation of an authority, and any authority or variation of an authority granted on the basis of such an application, is not invalidated by any defect, other than a defect that affects the application, authority or variation in a material particular.

Division 3—Protection from criminal responsibility and related provisions

Subdivision A—Controlled operations under this Part

15HA Protection from criminal responsibility for controlled conduct during controlled operations

- (1) This section applies if:
 - (a) a participant in a controlled operation engages in conduct in the course of, and for the purposes of, the controlled operation; and
 - (b) engaging in that conduct is a Commonwealth offence or an offence against a law of a State or Territory.
- (2) Despite any other law of the Commonwealth, a State or a Territory, the participant is not criminally responsible for the offence, if:
 - (a) the participant engages in the conduct in accordance with the authority to conduct the controlled operation; and
 - (b) the participant is identified in the authority as a person authorised to engage in controlled conduct for the purposes of the controlled operation; and
 - (c) the conduct does not involve the participant intentionally inducing a person to commit a Commonwealth offence or an offence under a law of a State or Territory that the person would not otherwise have intended to commit; and
 - (d) the conduct does not involve the participant engaging in any conduct that is likely to:
 - (i) cause the death of, or serious injury to, any person; or
 - (ii) involve the commission of a sexual offence against any person; and
 - (e) if the participant is a civilian participant in the operation—he or she acts in accordance with the instructions of a law enforcement officer.

- (3) To avoid doubt, nothing in subparagraph (2)(d)(ii) is intended to prevent the participant being protected from criminal responsibility if the conduct involves the participant:
- (a) dealing with material depicting, material describing or material otherwise involving a sexual offence against any person; or
 - (b) facilitating a person to deal with such material.

15HB Indemnification of participants against civil liability

- (1) The Commonwealth must indemnify a participant in a controlled operation against any civil liability (including reasonable costs) the participant incurs because of conduct the participant engages in if:
- (a) the participant engages in the conduct in the course of, and for the purposes of, the controlled operation in accordance with the authority to conduct the controlled operation; and
 - (b) the participant is identified in the authority as a person authorised to engage in controlled conduct for the purposes of the controlled operation; and
 - (c) the conduct does not involve the participant intentionally inducing a person to commit a Commonwealth offence or an offence under a law of a State or Territory that the person would not otherwise have intended to commit; and
 - (d) the conduct does not involve the participant engaging in any conduct that is likely to:
 - (i) cause the death of, or serious injury to, any person; or
 - (ii) involve the commission of a sexual offence against any person; and
 - (e) if the participant is a civilian participant in the operation—he or she acts in accordance with the instructions of a law enforcement officer; and
 - (f) the requirements (if any) specified in the regulations have been met.
- (2) To avoid doubt, nothing in subparagraph (1)(d)(ii) is intended to prevent the participant being indemnified against civil liability if the conduct involves the participant:

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- (a) dealing with material depicting, material describing or material otherwise involving a sexual offence against any person; or
- (b) facilitating a person to deal with such material.

15HC Effect of sections 15HA and 15HB on other laws relating to criminal investigation

Sections 15HA and 15HB do not apply to a person's conduct that is, or could have been, authorised under Commonwealth law or a law of a State or Territory relating to the following:

- (a) arrest or detention of individuals;
- (b) searches of individuals;
- (c) entry onto, or searches or inspection of, premises;
- (d) searches, inspections or seizures of other property;
- (e) forensic procedure;
- (f) electronic surveillance devices or telecommunications interception;
- (g) identification procedures;
- (h) the acquisition or use of assumed identities;
- (i) any other matter concerning powers of criminal investigation.

15HD Effect of being unaware of variation or cancellation of authority

- (1) If an authority to conduct a controlled operation is varied in a way that limits its scope, this Part continues to apply to a participant in the controlled operation as if the authority had not been varied in that way, for so long as the participant:
 - (a) is unaware of the variation; and
 - (b) is not reckless about the existence of the variation.
- (2) If an authority to conduct a controlled operation is cancelled, this Part continues to apply to a person who was a participant in the controlled operation immediately before the cancellation as if the

authority had not been cancelled in that way, for so long as the person:

- (a) is unaware of the cancellation; and
 - (b) is not reckless about the existence of the cancellation.
- (3) For the purposes of this section, a person is reckless about the existence of the variation or cancellation of an authority if:
- (a) the person is aware of a substantial risk that the variation or cancellation has happened; and
 - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk that the authority has not been varied or cancelled.
- (4) In this section, a reference to an authority that is cancelled includes, in the case of an integrity testing controlled operation authority, a reference to an authority that has stopped being in effect because the integrity testing authority concerned has stopped being in effect.

Note: See paragraph 15GN(3)(c).

15HE Protection from criminal responsibility for certain ancillary conduct

- (1) This section applies if:
- (a) a person engages in conduct (the *ancillary conduct*) that relates to controlled conduct (the *related controlled conduct*) engaged in by another person; and
 - (b) engaging in the ancillary conduct is an ancillary offence in relation to the offence constituted by the related controlled conduct.
- (2) Despite any other law of the Commonwealth, a State or a Territory, the person who engaged in the ancillary conduct is not criminally responsible for the ancillary offence if, at the time the person engaged in the ancillary conduct, he or she believed the related controlled conduct was being engaged in, or would be engaged in, by a participant in a controlled operation authorised under this Part.

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(3) In this section:

ancillary offence, in relation to an offence constituted by related controlled conduct, means a Commonwealth offence or an offence under a law of a State or Territory:

- (a) of conspiring to commit the offence constituted by the related controlled conduct; or
- (b) of aiding, abetting, counselling or procuring, inciting or being in any way knowingly concerned in, the commission of the offence constituted by the related controlled conduct.

15HF Compensation for property loss or serious damage

- (1) If a person suffers loss of or serious damage to property, or personal injury, in the course of, or as a direct result of a controlled operation authorised under this Part, the Commonwealth is liable to pay to the person compensation as agreed between the Commonwealth and the person or, in default of agreement, as determined by action against the Commonwealth in a court of competent jurisdiction.
- (2) Subsection (1) does not apply if:
 - (a) the person suffered the loss, damage or injury in the course of, or as a direct result of, engaging in any criminal activity (other than criminal activity that is controlled conduct); or
 - (b) the person was a law enforcement participant at the time of suffering the loss, damage or injury.

15HG Notification requirements

- (1) If:
 - (a) any loss of or serious damage to property occurs in the course of, or as a direct result of, a controlled operation (other than property of the law enforcement agency on behalf of which the operation is conducted or a participant in the operation); or
 - (b) any personal injury occurs in the course of, or as a direct result of, such an operation;

the principal law enforcement officer for the controlled operation must report the loss, damage or injury to the chief officer of the law enforcement agency as soon as practicable.

- (2) If loss or serious damage to property is reported to the chief officer under subsection (1), the chief officer must take all reasonable steps to notify the owner of the property of the loss or damage.
- (3) If a personal injury is reported to the chief officer under subsection (1), the chief officer must take all reasonable steps to notify the person that the injury occurred in the course of, or as a direct result of, the controlled operation.
- (4) The chief officer is not required to give a notification under subsection (2) or (3) until the chief officer is satisfied that the notification would not:
 - (a) compromise or hinder the controlled operation or any related investigation; or
 - (b) compromise the identity of a participant in the controlled operation; or
 - (c) endanger the life or safety of any person; or
 - (d) prejudice any legal proceeding; or
 - (e) otherwise be contrary to the public interest.
- (5) A chief officer may, by written instrument, delegate any of the chief officer's powers or functions under this section to:
 - (a) in relation to the Australian Federal Police—a Deputy Commissioner or a person of equivalent or higher rank; or
 - (b) in relation to the Immigration and Border Protection Department—a person who holds or performs the duties of an SES Band 3 position, or an equivalent or higher position, in that Department; or
 - (c) in relation to the ACC:
 - (i) an Executive Director or a person occupying an equivalent or higher position; or
 - (ii) a person occupying a position prescribed by the regulations; or

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- (d) in relation to the National Anti-Corruption Commission—a National Anti-Corruption Deputy Commissioner (within the meaning of the *National Anti-Corruption Commission Act 2022*); or
- (e) in relation to the police force of a State or Territory—a Deputy Commissioner or a person of equivalent or higher rank.

Subdivision B—Controlled operations under a corresponding State controlled operations law

15HH Protection from criminal responsibility for conduct under a corresponding State controlled operations law

- (1) This section applies to a participant in an operation authorised under a corresponding State controlled operations law if:
 - (a) the participant engages in conduct in the course of, and for the purposes of, the operation; and
 - (b) engaging in that conduct is a Commonwealth offence.
- (2) Despite any other law of the Commonwealth, the participant is not criminally responsible for the Commonwealth offence, if:
 - (a) the conduct is authorised by, and is engaged in in accordance with, the authority to conduct the controlled operation; and
 - (b) the conduct does not involve the participant intentionally inducing a person to commit a Commonwealth offence or an offence against a law of a State or Territory that the person would not otherwise have intended to commit; and
 - (c) the conduct does not involve the participant engaging in any conduct that is likely to:
 - (i) cause the death of, or serious injury to, any person; or
 - (ii) involve the commission of a sexual offence against any person; and
 - (d) if the person is a civilian participant in the operation—he or she acts in accordance with the instructions of a law enforcement officer.

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- (3) Expressions used in this section have the same meanings as in the corresponding State controlled operations law under which the operation was authorised.

15HI Effect of section 15HH on other laws relating to criminal investigation

Section 15HH does not apply to a person's conduct that is, or could have been, authorised under a Commonwealth law or a law of a State or Territory relating to the following:

- (a) arrest or detention of individuals;
- (b) searches of individuals;
- (c) entry onto, or searches or inspection of, premises;
- (d) searches, inspections or seizures of other property;
- (e) forensic procedure;
- (f) electronic surveillance devices or telecommunications interception;
- (g) identification procedures;
- (h) the acquisition or use of assumed identities;
- (i) any other matter concerning powers of criminal investigation.

15HJ Protection from criminal responsibility for certain ancillary conduct

- (1) This section applies if:
- (a) a person engages in conduct (the *ancillary conduct*) that relates to conduct (the *related conduct*) that:
 - (i) was engaged in by another person; and
 - (ii) constitutes an offence for which a person would, but for section 15HH, be criminally responsible; and
 - (b) engaging in the ancillary conduct is an ancillary offence (within the meaning of the *Criminal Code*) in relation to the offence constituted by the related conduct.
- (2) Despite any law of the Commonwealth, the person who engaged in the ancillary conduct is not criminally responsible for the ancillary

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offence if, at the time the person engaged in the ancillary conduct, he or she believed the related conduct was being engaged in, or would be engaged in, by a participant in an operation authorised under a corresponding State controlled operations law.

- (3) Expressions used in this section have the same meanings as in the corresponding State controlled operations law under which the person believed the controlled conduct was being engaged in.

Division 4—Compliance and monitoring

15HK Unauthorised disclosure of information

Disclosures by entrusted persons

- (1) A person commits an offence if:
- (a) the person is, or has been, an entrusted person; and
 - (b) information came to the knowledge or into the possession of the person in the person's capacity as an entrusted person; and
 - (c) the person discloses the information; and
 - (d) the information relates to a controlled operation.

Note: Recklessness is the fault element for paragraphs (1)(b) and (d)—see section 5.6 of the *Criminal Code*.

Penalty: Imprisonment for 2 years.

- (1A) Strict liability applies to paragraph (1)(a).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (1B) A person commits an offence if:
- (a) the person is, or has been, an entrusted person; and
 - (b) information came to the knowledge or into the possession of the person in the person's capacity as an entrusted person; and
 - (c) the person discloses the information; and
 - (d) the information relates to a controlled operation; and
 - (e) either or both of the following subparagraphs apply:
 - (i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a controlled operation;
 - (ii) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a controlled operation.

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Note: Recklessness is the fault element for paragraphs (1B)(b) and (d) and subparagraph (1B)(e)(ii)—see section 5.6 of the *Criminal Code*.

Penalty: Imprisonment for 10 years.

(1C) Strict liability applies to paragraph (1B)(a).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Other disclosures

(1D) A person commits an offence if:

- (a) the person discloses information; and
- (b) the information relates to a controlled operation; and
- (c) the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a controlled operation.

Note: Recklessness is the fault element for paragraphs (1D)(b) and (c)—see section 5.6 of the *Criminal Code*.

Penalty: Imprisonment for 2 years.

(1E) A person commits an offence if:

- (a) the person discloses information; and
- (b) the information relates to a controlled operation; and
- (c) either or both of the following subparagraphs apply:
 - (i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a controlled operation;
 - (ii) the person knows that the disclosure will endanger the health or safety of any person or prejudice the effective conduct of a controlled operation.

Note: Recklessness is the fault element for paragraph (1E)(b)—see section 5.6 of the *Criminal Code*.

Penalty: Imprisonment for 10 years.

Exceptions—general

(2) Subsections (1) to (1E) do not apply if the disclosure was:

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- (a) in connection with the administration or execution of this Part; or
- (b) for the purposes of any legal proceedings arising out of or otherwise related to this Part or of any report of any such proceedings; or
- (c) for the purposes of obtaining legal advice in relation to the controlled operation; or
- (d) in accordance with any requirement imposed by law; or
- (e) in connection with the performance of functions or duties, or the exercise of powers, of a law enforcement agency.

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

Exceptions—integrity testing controlled operation authority

- (2A) Subsections (1) to (1E) do not apply, in the case of a controlled operation authorised by an integrity testing controlled operation authority (granted on the basis that an integrity testing authority is in effect), if the disclosure was:
- (a) in any of the circumstances mentioned in paragraphs (2)(a) to (e); or
 - (b) in connection with the administration or execution of Part IABA, or the *National Anti-Corruption Commission Act 2022*, in relation to the integrity testing authority; or
 - (c) for the purposes of any disciplinary or legal action in relation to a staff member of a target agency, if arising out of, or otherwise related to, the controlled operation; or
 - (d) in relation to the integrity testing authority:
 - (i) for the purposes of any disciplinary or legal action in relation to a staff member of a target agency, if arising out of, or otherwise related to, an integrity testing operation authorised by the authority; or
 - (ii) to an authority of the Commonwealth, a State or a Territory, if the disclosure relates to the misconduct of an employee or officer of the authority.

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

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Exception—misconduct

- (3) Subsections (1) to (1E) do not apply if:
- (a) the person (the **discloser**) discloses the information to the Ombudsman, the National Anti-Corruption Commissioner or the Inspector of the National Anti-Corruption Commission; and
 - (b) the discloser informs the person to whom the disclosure is made of the discloser's identity before making the disclosure; and
 - (c) the information concerns:
 - (i) a corruption issue (within the meaning of the *National Anti-Corruption Commission Act 2022*) or a NACC corruption issue (within the meaning of that Act) in relation to a controlled operation; or
 - (ii) misconduct in relation to a controlled operation; and
 - (d) the discloser considers that the information may assist a person referred to in paragraph (a) to perform the person's functions or duties; and
 - (e) the discloser makes the disclosure in good faith.

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

Exception—previously published information

- (4) Subsections (1D) and (1E) do not apply to a person disclosing information if:
- (a) the information has already been communicated, or made available, to the public (the prior publication); and
 - (b) the person was not involved in the prior publication (whether directly or indirectly); and
 - (c) at the time of the disclosure, the person believes that the disclosure:
 - (i) will not endanger the health or safety of any person; and
 - (ii) will not prejudice the effective conduct of a controlled operation; and

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- (d) having regard to the nature, extent and place of the prior publication, the person has reasonable grounds for that belief.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4)—see subsection 13.3(3) of the *Criminal Code*.

15HM Chief officers' 6 monthly reports to Ombudsman and Minister

- (1) As soon as practicable after 30 June and 31 December in each year, the chief officer of each authorising agency must submit a report to the Ombudsman setting out the details required by subsection (2) in relation to controlled operations for which the agency was the authorising agency during the previous 6 months.
- (2) The report must include the following details:
- (a) the number of formal authorities that were granted or varied by an authorising officer of the agency during the period to which the report relates;
 - (b) the number of formal applications for the grant of formal authorities that were refused by an authorising officer of the agency during the period to which the report relates, the date of those applications and the date of the refusals;
 - (c) the number of formal variation applications and urgent variation applications for the variation of formal authorities that were refused by an authorising officer of the agency during the period to which the report relates, the date of those applications and the date of the refusals;
 - (d) the number of urgent authorities that were granted or varied by an authorising officer of the agency during the period to which the report relates;
 - (e) the number of formal applications and urgent applications for the granting of urgent authorities that were refused by an authorising officer of the agency during the period to which the report relates, the date of those applications and the date of the refusals;
 - (f) the number of formal variation applications and urgent variation applications for the variation of urgent authorities

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- that were refused by an authorising officer of the agency during the period to which the report relates, the date of those applications and the date of the refusals;
- (g) the number of formal authorities that were varied by a nominated Tribunal member during the period to which the report relates;
 - (h) the number of formal variation applications and urgent variation applications for the variation of formal authorities that were refused by a nominated Tribunal member during the period to which the report relates, the date of those applications and the date of the refusals;
 - (i) for each authority that was in force at any time during the period to which the report relates:
 - (i) the date the controlled operation commenced; and
 - (ii) if the controlled operation ceased during that period—the date of cessation and the outcomes of the controlled operation; and
 - (iii) if subparagraph (ii) does not apply—the last day of the period of effect of the authority (including any extensions);
 - (j) for each authority that was varied by an authorising officer of the agency during the period to which the report relates—the date of the application for the variation and the date of the variation;
 - (k) for each authority in relation to which an application for variation was refused by an authorising officer of the agency during the period to which the report relates—the date of the application and the date of the refusal;
 - (l) for each authority that was varied by a nominated Tribunal member during the period to which the report relates—the date of the application for the variation and the date of the variation;
 - (m) for each authority in relation to which an application for variation was refused by a nominated Tribunal member during the period to which the report relates—the date of the application and the date of the refusal;
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- (n) the nature of the criminal activities against which the controlled operations were directed;
 - (o) the identity of each person targeted under controlled operations;
 - (p) the nature of the controlled conduct engaged in for the purposes of the controlled operations;
 - (q) if any of the controlled operations involved illicit goods, a statement (to the extent known) of:
 - (i) the nature and quantity of the illicit goods; and
 - (ii) the route through which the illicit goods passed in the course of the operations; and
 - (iii) all foreign countries through which the illicit goods passed in the course of the operation;
 - (r) details of any loss of or serious damage to property (other than property of the law enforcement agency on behalf of which the operation is conducted or a participant in the operation) occurring in the course of or as a direct result of the controlled operations;
 - (s) details of any personal injuries occurring in the course of or as a direct result of the operations;
 - (t) the number of authorities for controlled operations that were cancelled by an authorising officer of the agency or that expired during the period to which the report relates.
- (2A) If the controlled operation involved illicit goods that are narcotic goods, the report is to:
- (a) identify each law enforcement agency an officer of which had possession of the narcotic goods in the course of the controlled operation; and
 - (b) identify to the extent known any other person who had possession of the narcotic goods in the course of the controlled operation; and
 - (c) state whether the narcotic goods have been destroyed; and
 - (d) if the narcotic goods have not been destroyed—contain the information specified in subsection (2B) relating to the

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possession of the narcotic goods, or state that it is not known who has possession of them.

- (2B) If the controlled operation involved narcotic goods that have not been destroyed, and the identity of the person who has possession of the narcotic goods is known, the report is to:
- (a) if the person is a law enforcement officer—identify the law enforcement agency of which the person is an officer; or
 - (b) otherwise—identify the person.
- (2C) If the chief officer of the authorising agency is of the view that disclosing the identity of a person may:
- (a) endanger the safety of the person; or
 - (b) prejudice an investigation or prosecution;
- then the person is sufficiently identified for the purposes of paragraphs (2A)(b) and (2B)(b) if the person is identified:
- (c) by an assumed name under which the person is operating; or
 - (d) by a code name or code number;
- as long as the chief officer can match the assumed name, code name or code number to the person's identity.
- (3) The Ombudsman may require the chief officer of an authorising agency to give additional information covering any controlled operation to which a report relates.
- (4) Nothing in paragraphs (2)(o) to (t) requires particulars of a controlled operation to be included in a report for a period of 6 months if the operation had not been completed during that period, but the particulars must instead be included in the report for the period of 6 months in which the operation is completed.
- (5) A copy of a report given to the Ombudsman under this section must be given to the Minister at the same time as it is given to the Ombudsman.

15HN Chief officers' annual reports to Minister and Ombudsman

- (1) As soon as practicable after 30 June in each year, the chief officer of each authorising agency must submit a report to the Minister setting out the details required by subsections 15HM(2), (2A), (2B) and (2C) in relation to controlled operations for which the agency was the authorising agency during the previous 12 months.
- (2) Each chief officer must advise the Minister of any information in a report that, in the chief officer's opinion, should be excluded from the report before the report is laid before the Parliament because:
 - (a) the information, if made public, could reasonably be expected to:
 - (i) endanger a person's safety; or
 - (ii) prejudice an investigation or prosecution; or
 - (iii) compromise any law enforcement agency's operational activities or methodologies; or
 - (b) making the information public would be contrary to the public interest for any other reason.
- (3) The Minister must exclude information from a report if the Minister is satisfied on the advice of the chief officer of any of the grounds set out in subsection (2) and must then 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.
- (4) A report must not disclose any information that identifies any person involved in an operation or that is likely to lead to such a person being identified.
- (5) Nothing in this section requires particulars of a controlled operation to be included in a report for a year if the operation had not been completed as at 30 June in that year, but the particulars must instead be included in the report for the year in which the operation is completed.
- (6) If a report relates, in whole or in part, to the work or activities of the ACC under a corresponding State controlled operations law, the Minister must, as soon as practicable after the report is laid

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before each House of the Parliament, send a copy of the report to the State or Territory Minister with responsibility for the corresponding State controlled operations law.

- (7) A copy of a report given to the Minister under this section must be given to the Ombudsman at the same time as it is given to the Minister.

15HO Annual report by Ombudsman

- (1) The Ombudsman must, as soon as practicable after 30 June in each year:
- (a) prepare a report of the work and activities under this Part of the Ombudsman for the preceding 12 months and give a copy of the report to the Minister and to the chief officer of the law enforcement agency to which the report relates; and
 - (b) prepare a report of the work and activities of the Ombudsman for the preceding 12 months, being work or activities under a corresponding State controlled operations law, and give a copy of the report to the Minister and to the chief officer of the ACC.
- (2) A report under this section must not include information which, if made public, could reasonably be expected to:
- (a) endanger a person's safety; or
 - (b) prejudice an investigation or prosecution; or
 - (c) compromise any law enforcement agency's operational activities or methodologies.
- (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.
- (4) A report must include, for each authorising agency concerned, comments on the comprehensiveness and adequacy of the reports which were provided to the Ombudsman by the chief officer of the authorising agency under sections 15HM and 15HN.

- (5) A report must not disclose any information that identifies any person involved in an operation or that is likely to lead to such a person being identified.
- (6) Nothing in this section requires particulars of a controlled operation to be included in a report for a year if the operation had not been completed as at 30 June in that year, but the particulars must instead be included in the report for the year in which the operation is completed.
- (7) If a report relates, in whole or in part, to the work or activities of the ACC under a corresponding State controlled operations law, the Minister must, as soon as practicable after the report is laid before each House of the Parliament, send a copy of the report to the State or Territory Minister with responsibility for the corresponding State controlled operations law.

15HP Keeping documents connected with controlled operations

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

- (a) each formal application made to an authorising officer of the agency;
- (b) each written record of an urgent application made to such an authorising officer;
- (c) each formal authority granted by such an authorising officer;
- (d) each written record of an urgent authority issued under section 15GL;
- (e) each formal variation application made to such an authorising officer or to a nominated Tribunal member;
- (f) each written record of an urgent variation application made to such an authorising officer or to a nominated Tribunal member;
- (g) each formal variation of authority by such an authorising officer or by a nominated Tribunal member;

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- (h) each written document given under subsection 15GR(2) in relation to a variation of an authority by such an authorising officer;
- (i) each written document given under subsection 15GW(2) in relation to a variation of a formal authority by a nominated Tribunal member;
- (j) each order cancelling an authority granted by such an authorising officer.

15HQ General register

- (1) The chief officer of each authorising agency must cause a general register to be kept.
- (2) The general register is to specify:
 - (a) for each application under this Part made to an authorising officer of the agency (including an application for a variation of an authority):
 - (i) the date of the application; and
 - (ii) whether the application was formal or urgent; and
 - (iii) whether the application was granted, refused or withdrawn; and
 - (iv) if the application was refused or withdrawn—the date and time of the refusal or withdrawal; and
 - (b) for each authority under this Part granted by an authorising officer of the agency:
 - (i) the date and time the authority was granted; and
 - (ii) whether the authority was formal or urgent; and
 - (iii) the name and rank or position of the person who granted the authority; and
 - (iv) each serious Commonwealth offence or serious State offence that has a federal aspect in respect of which controlled conduct under the authority was to be engaged in; and
 - (v) the period of effect of the authority; and

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- (vi) the identity of each person authorised to engage in controlled conduct for the purposes of the controlled operation; and
 - (vii) with respect to the law enforcement participants, the nature of the controlled conduct that those participants were authorised to engage in; and
 - (viii) with respect to the civilian participants, the particular controlled conduct (if any) that each such participant was authorised to engage in; and
 - (viiia) the nature of the controlled conduct that was engaged in by law enforcement participants and civilian participants (if any); and
 - (ix) if the authority was cancelled, the date and time of cancellation; and
 - (x) the date and time the controlled operation began, the date on which the operation ceased, and the outcomes of the operation; and
 - (xi) if the controlled operation involved illicit goods (to the extent known), the nature and quantity of the illicit goods and the route and all foreign countries through which the illicit goods passed in the course of the operation; and
 - (xii) details of any loss of or serious damage to property (other than property of the law enforcement agency on behalf of which the operation is conducted or a participant in the operation) occurring in the course of or as a direct result of the controlled operation; and
 - (xiii) details of any personal injuries occurring in the course of or as a direct result of the operation; and
- (c) for each variation of an authority under this Part made by an authorising officer of the agency:
- (i) the date and time the variation was made; and
 - (ii) whether the variation was formal or urgent; and
 - (iii) the name and rank or position of the person who made the variation.

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- (2A) If the controlled operation involved illicit goods that are narcotic goods, the general register is to:
- (a) identify each law enforcement agency an officer of which had possession of the narcotic goods in the course of the controlled operation; and
 - (b) identify to the extent known any other person who had possession of the narcotic goods in the course of the controlled operation; and
 - (c) state whether the narcotic goods have been destroyed; and
 - (d) if the narcotic goods have not been destroyed—contain the information specified in subsection (2B) relating to the possession of the narcotic goods, or state that it is not known who has possession of them.
- (2B) If the controlled operation involved narcotic goods that have not been destroyed, and the identity of the person who has possession of the narcotic goods is known, the general register is to:
- (a) if the person is a law enforcement officer—identify the law enforcement agency of which the person is an officer; or
 - (b) otherwise—identify the person.
- (2C) If the chief officer of the authorising agency is of the view that disclosing the identity of a person may:
- (a) endanger the safety of the person; or
 - (b) prejudice an investigation or prosecution;
- then the person is sufficiently identified for the purposes of paragraphs (2A)(b) and (2B)(b) if the person is identified:
- (c) by an assumed name under which the person is operating; or
 - (d) by a code name or code number;
- as long as the chief officer can match the assumed name, code name or code number to the person's identity.
- (3) A register kept under this section is not a legislative instrument.

15HR Appointment of inspecting officers

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

15HS Inspection of records by the Ombudsman

- (1) The Ombudsman must, from time to time and at least once every 12 months, inspect the records of each authorising agency to determine the extent of compliance with this Part by the agency and by law enforcement officers.
- (2) The Ombudsman must also, from time to time and at least once every 12 months, inspect the records of the ACC to determine the extent of compliance with corresponding State controlled operations laws, in relation to any authorities (within the meaning of each such law):
 - (a) for which a law enforcement officer of the ACC applied; or
 - (b) that were granted to a law enforcement officer of the ACC;unless the corresponding State controlled operations law provides for the inspection of records of the ACC to determine the extent of compliance with that law.
- (3) For the purpose of an inspection under this section, the Ombudsman:
 - (a) may, after notifying the chief officer of the 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 member of staff 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; and

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- (d) may, despite any other law, make copies of, and take extracts from, records of the agency.
- (4) The chief officer must ensure that members of staff of the agency give the Ombudsman any assistance the Ombudsman reasonably requires to enable the Ombudsman to perform functions under this section.
- (5) Nothing in this section requires the Ombudsman to inspect records relating to operations that have not been completed at the time of the inspection.

15HT Power to obtain relevant information

- (1) If the Ombudsman has reasonable grounds to believe that a law enforcement officer of a particular law enforcement agency (whether or not the agency is an authorising agency) is able to give information relevant to an inspection under this Division of an authorising agency's records, subsections (2) and (3) have effect.
- (2) The Ombudsman may, by writing given to the law enforcement officer, require the officer to give the information to the Ombudsman:
- (a) by writing signed by the officer; and
 - (b) at a specified place and within a specified period.
- (3) The Ombudsman may, by writing given to the law enforcement officer, require the officer 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 law enforcement officer of a particular law enforcement agency (whether or not the agency is an authorising agency) is able to give

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information relevant to an inspection under this Division of an authorising agency's records; and

(b) does not know the officer'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.

15HU Offence

A person commits an offence if:

(a) the person is required under section 15HT to attend before an inspecting officer, to give information or to answer questions; and

(b) the person refuses or fails to do so.

Penalty: Imprisonment for 6 months.

15HV Ombudsman to be given information and access 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

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- (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, a Department or a prescribed authority;
 - (ii) a communication between an officer of a Department or of a prescribed authority 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;
- is not admissible in evidence against the person except in a proceeding by way of a prosecution for an offence against section 15HK of this Act or Part 7.4 or 7.7 of the *Criminal Code*.
- (3) Nothing in section 15HK or in any other law prevents an officer of an agency from:
- (a) giving information to 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 an inspecting officer;
- for the purposes of an inspection under this Division of the agency's records.
- (4) Nothing in section 15HK or in any other law prevents an officer of an 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 giving access to a document does not otherwise affect a claim of legal professional

privilege that anyone may make in relation to that information, answer or document.

(6) In this section:

prescribed authority has the same meaning as in the *Ombudsman Act 1976*.

15HW Exchange of information between Ombudsman and State inspecting authorities

(1) In this section:

State or Territory agency means a law enforcement agency of a State or Territory within the meaning of a corresponding State controlled operations law.

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 15HS when the State or Territory agency is exercising powers under a corresponding State controlled operations law.

(2) 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.

(3) The Ombudsman may only give information to an authority under subsection (2) 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.

(4) The Ombudsman may receive from a State or Territory inspecting authority information relevant to the performance of the Ombudsman's functions under this Division.

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15HX Delegation by Ombudsman

- (1) The Ombudsman may, by written instrument, delegate to an APS employee responsible to the Ombudsman all or any of the Ombudsman's powers under this Division, other than a power to report to the Minister.
- (2) 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.

15HY Ombudsman not to be sued

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.

Division 5—Miscellaneous

15HZ Evidence of authorities

A document purporting to be an authority granted under section 15GI or under a corresponding State controlled operations law:

- (a) is admissible in any legal proceedings; and
- (b) in the absence of evidence to the contrary, is proof in any proceedings (not being criminal or disciplinary proceedings against a law enforcement officer) that the person granting the authority was satisfied of the facts he or she was required to be satisfied of to grant the authority.

15J Secretary of Immigration and Border Protection Department to be notified of certain authorities

- (1) This section applies if:
 - (a) an authority is granted under section 15GI by an AFP authorising officer, an ACC authorising officer or a NACC authorising officer; and
 - (b) the applicant for the authority believes that illicit goods involved in the conduct of the operation may be dealt with by an officer of Customs.
- (2) The applicant must, as soon as practicable after the authority is granted, notify the Secretary of the Immigration and Border Protection Department, or a person (the *nominated person*) nominated by him or her for the purposes of this section, in writing of:
 - (a) the applicant's name; and
 - (b) the date on which the authority was granted; and
 - (c) to the extent to which it is known:
 - (i) the place or places at which the illicit goods will pass into customs control under the *Customs Act 1901*; and

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- (ii) the time or times when, and the day or days on which, the illicit goods are expected to pass into customs control under the *Customs Act 1901*.
- (3) A failure to comply with this section does not affect the validity of an authority.

Part IABA—Integrity testing

Division 1—Introduction

15JA Integrity testing—simplified outline

The following is a simplified outline of this Part:

This Part provides for the authorisation of operations (called integrity testing operations) that are designed to test the integrity of staff members of target agencies using controlled or simulated situations.

Operations can be authorised only if there is a reasonable suspicion that a staff member has committed, is committing or is likely to commit an offence punishable on conviction by imprisonment for 12 months or more.

Authorisations for integrity testing operations may form the basis for the authorisation of controlled operations under Part IAB.

Integrity testing operations may be authorised by the ACC, the Australian Federal Police and the Immigration and Border Protection Department in relation to their own agencies, or (if a corruption investigation is involved) the National Anti-Corruption Commission.

Law enforcement officers and others may take part in integrity testing operations.

Participants in integrity testing operations are indemnified against civil liability in relation to the conduct of the operations in accordance with the authorisations concerned.

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Information relating to an integrity testing operation may only be disclosed for the purposes of disciplinary or legal action in relation to the staff member concerned, or a number of related purposes.

15JB Integrity testing—concurrent operation of State and Territory laws

It is the intention of the Parliament that this Part is not to apply to the exclusion of a law of a State or Territory to the extent that the law is capable of operating concurrently with this Part.

15JC Integrity testing—definitions

In this Part:

appropriate authorising officer, for an integrity testing operation, has the meaning given by the table in subsection 15JE(1).

authorising officer means any of the appropriate authorising officers.

Note: These officers are listed in the table in subsection 15JE(1).

civilian participant, in an integrity testing operation, means a participant in the operation who is not a law enforcement participant (as defined in this section).

corruption investigation has the same meaning as in the *National Anti-Corruption Commission Act 2022*.

corruption issue has the same meaning as in the *National Anti-Corruption Commission Act 2022*.

Note: See section 9 of the *National Anti-Corruption Commission Act 2022*.

disciplinary or legal action, in relation to a staff member of a target agency, means any of the following:

- (a) action in respect of alleged misconduct of the staff member;
- (b) termination of the employment or appointment of the staff member;

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- (c) a disciplinary proceeding in relation to the staff member or a report of such a proceeding;
- (d) the investigation of an offence suspected to have been committed by the staff member;
- (e) a legal proceeding in relation to the staff member, or a report of such a proceeding.

Disciplinary or legal action also includes the consideration of whether an action or proceeding covered by this definition should be taken or brought.

disciplinary proceeding:

- (a) means a proceeding of a disciplinary nature under a law of the Commonwealth or of a State or Territory; and
- (b) includes action taken under Subdivision D of Division 3 of Part V of the *Australian Federal Police Act 1979*.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

integrity testing agency means any of the following:

- (a) the ACC;
- (c) the Australian Federal Police;
- (d) the Immigration and Border Protection Department;
- (e) the National Anti-Corruption Commission.

integrity testing authority means an authority granted under section 15JG to conduct an integrity testing operation.

integrity testing operation: see section 15JD.

law enforcement participant, in an integrity testing operation, means a participant in the operation who is:

- (a) a law enforcement officer; or
- (b) an employee or officer of a body (whether incorporated or not) that is established by the law of a State or Territory for purposes that include the purpose of investigating corruption in State or Territory government entities.

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Note: Staff members of integrity testing agencies (as defined in this section) are law enforcement officers. Law enforcement officers also include members of State and Territory police forces, and police forces of foreign countries (see section 3).

participant, in an integrity testing operation authorised by an integrity testing authority, means a person who is authorised under this Part to participate in the operation.

responsible staff member, for an integrity testing operation authorised by an integrity testing authority, means the staff member of an integrity testing agency identified in the authority as the staff member responsible for the conduct of the operation.

staff member of an integrity testing agency has the same meaning in relation to that agency as in section 12 of the *National Anti-Corruption Commission Act 2022*.

target agency means any of the following:

- (a) the ACC;
- (b) the Australian Federal Police;
- (c) the Immigration and Border Protection Department;
- (d) any other Commonwealth agency (within the meaning of the *National Anti-Corruption Commission Act 2022*).

15JD Integrity testing—meaning of *integrity testing operation*

- (1) An **integrity testing operation** is an operation conducted in relation to a target agency using controlled or simulated situations to test the integrity of a staff member of the agency.
- (2) An **integrity testing operation** includes an operation that offers the staff member an opportunity to engage in conduct, whether lawful or unlawful, so as to contravene principles of behaviour required (by law or otherwise) of persons occupying the position of such a staff member.

Note 1: For **target agency**, see section 15JC.

Note 2: References to a staff member include references to more than one staff member (see section 23 of the *Acts Interpretation Act 1901*).

Division 2—Integrity testing operations: authority

15JE Integrity testing authorities—circumstances in which applications may be made

(1) The following table has effect:

Integrity testing—circumstances in which applications may be made			
Item	If a proposed integrity testing operation is concerned with ...	a staff member of the following agency may apply for authority for the operation ...	from the following officer (an <i>appropriate authorising officer</i>) ...
1	the integrity of a staff member of the ACC	the ACC	(a) the Chief Executive Officer of the ACC; or (b) an SES employee in the ACC.
2	the integrity of a staff member of the Australian Federal Police	the Australian Federal Police	(a) the Commissioner; or (b) a Deputy Commissioner; or (c) an SES employee in the Australian Federal Police.
3	the integrity of a staff member of the Immigration and Border Protection Department	the Immigration and Border Protection Department	(a) the Secretary of the Immigration and Border Protection Department; or (b) an SES employee in the Immigration and Border Protection Department.

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Integrity testing—circumstances in which applications may be made

Item	If a proposed integrity testing operation is concerned with ...	a staff member of the following agency may apply for authority for the operation ...	from the following officer (an <i>appropriate authorising officer</i>) ...
4	a corruption investigation that relates to a staff member of a target agency	(a) the National Anti-Corruption Commission; or (b) if the corruption issue being investigated relates to a staff member of the ACC—the ACC; or (c) if the corruption issue being investigated relates to a staff member of the Australian Federal Police—the Australian Federal Police; or (d) if the corruption issue being investigated relates to a staff member of the Immigration and Border Protection Department—that Department	(a) the National Anti-Corruption Commissioner; or (b) a National Anti-Corruption Deputy Commissioner; or (c) an SES employee in the National Anti-Corruption Commission.

Note 1: For *target agency*, see section 15JC.

Note 2: References to a staff member include references to more than one staff member (see section 23 of the *Acts Interpretation Act 1901*).

- (2) The application of item 4 of the table in subsection (1) in relation to a staff member of the ACC, the Australian Federal Police or the Immigration and Border Protection Department does not prevent the application of any of the other items in the table in relation to the integrity of the staff member.

- (3) A reference in a cell in the table in subsection (1) to an **SES employee** of an integrity testing agency is taken to be a reference to an SES employee authorised in writing by the officer of the agency mentioned in paragraph (a) in the cell.

15JF Integrity testing authorities—application

- (1) An application under section 15JE must:
- (a) be in writing; and
 - (b) provide sufficient information to enable the authorising officer to decide whether or not to grant the application; and
 - (c) state whether or not the proposed integrity testing operation is related to any past, current or proposed:
 - (i) integrity testing operation; or
 - (ii) controlled operation under Part IAB; and
 - (d) state the proposed period of effect of the authority, which must not exceed 12 months.
- (2) The appropriate authorising officer may require the applicant to provide such additional information concerning the proposed integrity testing operation as is necessary for the proper consideration of the application.

Note: See the table in section 15JE for which staff members may apply to conduct an integrity testing operation, and to which authorising officers (called *appropriate authorising officers*) such applications may be made.

15JG Integrity testing authorities—grant

- (1) The appropriate authorising officer may, after considering an application for an authority to conduct an integrity testing operation in relation to a target agency, and any additional information provided under subsection 15JF(2):
- (a) authorise the operation by granting the authority, in writing, either unconditionally or subject to conditions; or
 - (b) refuse the application.

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- (2) The authorising officer must not grant the authority to conduct the integrity testing operation unless the authorising officer is satisfied that:
- (a) there are reasonable grounds to suspect that a Commonwealth offence or a State offence, punishable on conviction by imprisonment for 12 months or more, has been, is being or is likely to be committed by a staff member of the target agency (whether or not the identity of the staff member is suspected or known); and
 - (b) it is appropriate in all the circumstances to conduct the operation; and
 - (c) if the authorising officer is an officer of the National Anti-Corruption Commission—in addition to the matters mentioned in paragraphs (a) and (b), the operation is part of a corruption investigation.
- (3) The authorising officer may grant an integrity testing authority even if the operation has been authorised by a previous integrity testing authority, or has been the subject of a previous application for such an authority.
- Example: The authorising officer may grant an integrity testing authority that authorises the continuation or resumption of an operation authorised by an earlier authority.
- (4) An integrity testing authority is not a legislative instrument.
- Note: See the table in section 15JE for who are the appropriate authorising officers for a proposed integrity testing operation in relation to a target agency.

15JH Integrity testing authorities—form

Contents of integrity testing authority

- (1) An integrity testing authority must:
- (a) state the name and rank or position of the appropriate authorising officer; and

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- (b) identify the responsible staff member for the integrity testing operation and, if he or she is not the applicant for the authority, state the name of the applicant; and
- (c) identify the nature of the criminal activity (including the suspected offence mentioned in paragraph 15JG(2)(a)) in relation to which the integrity testing operation is to be conducted; and
- (d) identify the persons authorised to participate in the integrity testing operation; and
- (e) describe the nature of the integrity testing operation; and
- (f) identify (to the extent known) the staff member or staff members who are the target of the operation; and
- (g) state a period of effect of the authority of not more than 12 months after the day the authority is granted; and
- (h) state any conditions to which the conduct of the controlled operation is subject; and
- (i) state the day and time when the authority is granted.

Note: The period of effect may be extended (or further extended) for up to 12 months, but not so the period of effect of the authority ends more than 24 months after it is granted (see section 15JK).

Identity of persons authorised to conduct the integrity testing operation

- (2) A person is sufficiently identified for the purposes of paragraph (1)(d) if the person is identified:
 - (a) by an assumed name under which the person is operating that the authorising officer can match to the person's identity; or
 - (b) by a code name or code number that the authorising officer can match to the person's identity.
- (3) An authority must not identify persons for the purposes of paragraph (1)(d) by identifying a class of persons.

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15JI Integrity testing authorities—notice to National Anti-Corruption Commissioner

As soon as practicable after granting an integrity testing authority for an integrity testing operation, the authorising officer must give a copy of the authority to:

- (a) the responsible staff member for the operation; and
- (b) the National Anti-Corruption Commissioner (unless the authorising officer is an officer of the National Anti-Corruption Commission).

15JJ Integrity testing authorities—duration

- (1) An integrity testing authority comes into force when the authority is granted (see section 15JG).
- (2) The authority has effect for the period stated in the authority, as extended by any variation under section 15JK, unless earlier cancelled (see section 15JL).

Note: The maximum period of effect for an integrity testing authority (taking into account any extension) is 24 months after it is granted (see paragraph 15JH(1)(g) and subsection 15JK(2)).

15JK Integrity testing authorities—variation

- (1) An appropriate authorising officer for an integrity testing operation that is authorised by an integrity testing authority may, in writing, vary the authority:
 - (a) at any time on the authorising officer's own initiative; or
 - (b) on application, in writing, by the responsible staff member for the operation.
 - (2) A variation may extend, or further extend, the period of effect of the authority for up to 12 months, but not so that the period of effect ends more than 24 months after the authority was granted.
 - (3) As soon as practicable after varying an integrity testing authority for an integrity testing operation, the authorising officer must give a copy of the variation to:
-

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- (a) the responsible staff member for the operation; and
- (b) the National Anti-Corruption Commissioner (unless the authorising officer is an officer of the National Anti-Corruption Commission).

Note: If the variation has the effect of changing the responsible staff member, the authorising officer would be required to give a copy of the variation to the new responsible staff member.

- (4) Subsection 33(3) of the *Acts Interpretation Act 1901* applies in relation to the variation of the authority, subject to this Act.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* has the effect that the power to grant an instrument (such as an integrity testing authority) includes the power to vary the instrument in the like manner and subject to the like conditions.

- (5) A variation is not a legislative instrument.

15JL Integrity testing authorities—cancellation

- (1) An appropriate authorising officer for an integrity testing operation may, by order in writing given to the responsible staff member for the operation, cancel the authority at any time and for any reason.
- (2) The reasons for cancelling an integrity testing authority under subsection (1) include (but are not limited to) cancellation at the request of the responsible staff member.
- (3) Cancellation of an integrity testing authority takes effect at the time the order is made or at a later time stated in the order.

15JM Integrity testing authorities—defects

An application for an integrity testing authority or for the variation of an authority, and any integrity testing authority or variation granted on the basis of such an application, is not invalidated by any defect, other than a defect that affects the application, authority or variation in a material particular.

Division 3—Integrity testing operations: protection of participants

15JN Integrity testing operations—authorised conduct

- (1) Subject to subsection (2), an integrity testing authority for an integrity testing operation authorises each person identified in the authority as a participant to take part in the operation, subject to any conditions set out in the authority.

Note: Paragraphs 15JH(1)(d) and (e) require participants to be identified, and the nature of the operation to be described, in the authority. Subsection 15JH(2), however, allows for participants to be identified in the authority by an assumed identity, or by code.

- (2) A participant is authorised to take part in the integrity testing operation for the period of effect of the authority, unless:
 - (a) the authority states (or is varied to state) a shorter period during which the person is so authorised; or
 - (b) the authority is varied to provide that the person is no longer so authorised; or
 - (c) the authority is cancelled before the end of that period.
- (3) An integrity testing authority does not authorise a participant identified in the authority to delegate participation to another person.

15JO Integrity testing operations—indemnity against civil liability

The Commonwealth must indemnify a participant in an integrity testing operation that is authorised by an integrity testing authority against any civil liability (including reasonable costs) the participant incurs because of conduct the participant engages in if:

- (a) the participant engages in the conduct in the course of, and for the purposes of, the operation in accordance with the authority; and
- (b) the participant is identified in the authority; and

- (c) the conduct does not involve the participant intentionally inducing a person to commit a Commonwealth offence or a State offence that the person would not otherwise have intended to commit; and
- (d) the conduct does not involve the participant engaging in any conduct that is likely to:
 - (i) cause the death of, or serious injury to, any person; or
 - (ii) involve the commission of a sexual offence against any person; and
- (e) if the participant is a civilian participant in the operation—he or she acts in accordance with the instructions of a law enforcement participant in the operation; and
- (f) the requirements (if any) prescribed by regulation have been met.

15JP Integrity testing operations—participants unaware of variation or cancellation of authority

- (1) If an integrity testing authority for an integrity testing operation is varied in a way that limits the scope of the operation, this Part continues to apply to a participant in the operation as if the authority had not been varied in that way, for so long as the participant:
 - (a) is unaware of the variation; and
 - (b) is not reckless about the existence of the variation.
- (2) If an integrity testing authority to conduct an integrity testing operation is cancelled, this Part continues to apply to a person who was a participant in the operation immediately before the cancellation as if the authority had not been cancelled in that way, for so long as the person:
 - (a) is unaware of the cancellation; and
 - (b) is not reckless about the existence of the cancellation.
- (3) For the purposes of this section, a person is reckless about the existence of the variation or cancellation of an integrity testing authority if:

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- (a) the person is aware of a substantial risk that the variation or cancellation has happened; and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk that the authority has not been varied or cancelled.

Division 4—Integrity testing operations: disclosure of information

15JQ Integrity testing operations—disclosure

Disclosure—offence

- (1) A person commits an offence if:
- (a) the person discloses information; and
 - (b) the information relates to an integrity testing operation.

Penalty: Imprisonment for 2 years.

Exception—authorised disclosure

- (2) Subsection (1) does not apply if the disclosure was:
- (a) in connection with the administration or execution of this Part; or
 - (b) for the purposes of obtaining legal advice in relation to the integrity testing operation; or
 - (c) for the purposes of any disciplinary or legal action in relation to a staff member of a target agency, if arising out of, or otherwise related to, the integrity testing operation; or
 - (d) in connection with the administration or execution of the *National Anti-Corruption Commission Act 2022*; or
 - (e) to an authority of the Commonwealth, a State or a Territory, if the disclosure relates to the misconduct of an employee or officer of the authority; or
 - (f) in accordance with any requirement imposed by law; or
 - (g) in connection with the performance of functions or duties, or the exercise of powers, of the target agency in relation to which the operation was conducted.

Exception—corruption issue or misconduct

- (3) Subsection (1) does not apply if:

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- (a) the person (the *discloser*) discloses the information to the National Anti-Corruption Commissioner; and
- (b) the discloser informs the person to whom the disclosure is made of the discloser's identity before making the disclosure; and
- (c) the information concerns a corruption issue, or misconduct, in relation to an integrity testing operation; and
- (d) the discloser considers that the information may assist the National Anti-Corruption Commissioner to perform the Commissioner's functions or duties; and
- (e) the discloser makes the disclosure in good faith.

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

15JR Integrity testing operations—disclosure endangering safety etc.

Offence—disclosure endangering safety etc.

- (1) A person commits an offence if:
 - (a) the person discloses information; and
 - (b) the information relates to an integrity testing operation; and
 - (c) either:
 - (i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of an integrity testing operation; or
 - (ii) the disclosure of the information will endanger the health or safety of any person or prejudice the effective conduct of an integrity testing operation.

Penalty: Imprisonment for 10 years.

Exceptions—authorised disclosure

- (2) Subsection (1) does not apply if the disclosure was:
 - (a) in connection with the administration or execution of this Part; or

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- (b) for the purposes of obtaining legal advice in relation to the integrity testing operation; or
- (c) for the purposes of any disciplinary or legal action in relation to a staff member of a target agency, if arising out of, or otherwise related to, the integrity testing operation; or
- (d) in connection with the administration or execution of the *National Anti-Corruption Commission Act 2022*; or
- (e) a disclosure to an authority of the Commonwealth, a State or a Territory; or
- (f) in accordance with any requirement imposed by law; or
- (g) in connection with the performance of functions or duties, or the exercise of powers, of the target agency in relation to which the operation was conducted.

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

Exception—corruption issue or misconduct

- (3) Subsection (1) does not apply if:
- (a) the person (the **discloser**) discloses the information to the National Anti-Corruption Commissioner; and
 - (b) the discloser informs the person to whom the disclosure is made of the discloser's identity before making the disclosure; and
 - (c) the information concerns a corruption issue, or misconduct, in relation to an integrity testing operation; and
 - (d) the discloser considers that the information may assist the National Anti-Corruption Commissioner to perform the Commissioner's functions or duties; and
 - (e) the discloser makes the disclosure in good faith.

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

Division 5—Integrity testing operations: reporting

15JS Integrity testing operations—annual reports

- (1) As soon as practicable after 30 June in each year, the chief officer of each integrity testing agency must submit a report to the Law Enforcement Minister setting out the details required by subsection (2) in relation to integrity testing operations authorised by an authorising officer of the agency during the previous 12 months.
- (2) The details to be set out in the report are as follows:
 - (a) the number of integrity testing authorities granted by authorising officers of the agency;
 - (b) the nature of the suspected criminal activity in relation to which each authority was given;
 - (c) the period of effect of each authority (including any extension of the period granted by variation);
 - (d) if an authority was cancelled—the reasons for cancellation.
- (3) A report must not disclose any information that identifies any person involved in an integrity testing operation or that is likely to lead to such a person being identified.
- (4) Nothing in this section requires particulars of an integrity testing operation to be included in a report for a year if the operation had not been completed as at 30 June in that year, but the particulars must instead be included in the report for the year in which the operation is completed.
- (5) In this section:

chief officer, of an integrity testing agency, means:

 - (a) for the ACC—the Chief Executive Officer of the ACC; or
 - (b) for the Australian Federal Police—the Commissioner; or
 - (c) for the Immigration and Border Protection Department—the Secretary of that Department; or

(d) for the National Anti-Corruption Commission—the National Anti-Corruption Commissioner.

Law Enforcement Minister means the Minister responsible for the administration of the *National Anti-Corruption Commission Act 2022*.

Division 6—Integrity testing operations: evidence

15JT Evidence of integrity testing authorities

A document purporting to be an integrity testing authority:

- (a) is admissible in any legal proceedings; and
- (b) in the absence of evidence to the contrary, is proof in any proceedings (not being criminal or disciplinary proceedings against a law enforcement officer) that the person granting the authority was satisfied of the facts he or she was required to be satisfied of to grant the authority.

Part IAC—Assumed Identities

Division 1—Preliminary

15K Definitions

In this Part:

acquire an assumed identity, means acquire evidence of the assumed identity and includes taking steps towards acquiring evidence of the identity.

agency means one or more of the following:

- (a) an issuing agency;
- (b) an intelligence agency;
- (c) a law enforcement agency.

authorised civilian means a person who is authorised under an authority to acquire or use an assumed identity, but does not include an officer of an intelligence agency, an officer of a law enforcement agency, or a foreign officer.

authorised foreign officer means a foreign officer who is authorised under an authority to acquire or use an assumed identity.

authorised intelligence officer means an intelligence officer who is authorised under an authority to acquire or use an assumed identity.

authorised law enforcement officer means a law enforcement officer who is authorised under an authority to acquire or use an assumed identity.

authorised person means:

- (a) an authorised civilian; and
- (b) an authorised intelligence officer; and

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- (c) an authorised law enforcement officer; and
- (d) an authorised foreign officer.

authority means an authority granted under section 15KB to acquire and use an assumed identity, including the authority as varied under section 15KE.

chief officer:

- (a) of an intelligence agency—means the following:
 - (i) in relation to the Australian Security Intelligence Organisation—the Director-General of Security;
 - (ii) in relation to the Australian Secret Intelligence Service—the Director-General of Australian Secret Intelligence Service;
 - (iii) in relation to the Office of National Intelligence—the Director-General of National Intelligence;
 - (iv) in relation to the Australian Signals Directorate—the Director-General of the Australian Signals Directorate; and
- (b) of an issuing agency—means the chief executive officer (however described) of the agency; and
- (c) of a law enforcement agency—means the following:
 - (i) in relation to the Australian Federal Police—the Commissioner of the Australian Federal Police;
 - (ii) in relation to the Immigration and Border Protection Department—the Secretary of that Department;
 - (iii) in relation to the ACC—the Chief Executive Officer of the ACC;
 - (iv) in relation to the National Anti-Corruption Commission—the National Anti-Corruption Commissioner;
 - (v) in relation to the Australian Taxation Office—the Commissioner of Taxation;
 - (vi) in relation to a Commonwealth agency specified in the regulations for the purposes of the definition of **law**

enforcement agency—the officer specified in the regulations as the chief officer of that agency.

Commonwealth agency means:

- (a) the Commonwealth; or
- (b) an authority of the Commonwealth.

Commonwealth government issuing agency means a Commonwealth agency that issues evidence of identity and that is named in an authority.

conduct includes any act or omission.

corresponding assumed identity law means:

- (a) a law of a State or Territory; or
- (b) a provision or provisions of a law of a State or Territory; prescribed by the regulations for the purposes of this definition.

corresponding authority means:

- (a) an authority under a corresponding assumed identity law to acquire or use an assumed identity; or
- (b) an authority under a corresponding assumed identity law to request the production of evidence of an assumed identity from a Commonwealth government issuing agency.

doing a thing, includes failing to do the thing.

evidence of identity, means a document or other thing (such as a driver's licence, birth certificate, credit card or identity card) that evidences or indicates, or can be used to evidence or indicate, a person's identity or any aspect of a person's identity.

foreign officer means an officer, however described, of an agency that has responsibility for:

- (a) law enforcement in a foreign country; or
- (b) intelligence gathering for a foreign country; or
- (c) security of a foreign country.

intelligence agency means:

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- (a) the Australian Security Intelligence Organisation; or
- (b) the Australian Secret Intelligence Service; or
- (c) the Office of National Intelligence; or
- (d) the Australian Signals Directorate.

intelligence officer means:

- (a) for an intelligence agency other than the Office of National Intelligence—a person who is a staff member (within the meaning of the *Intelligence Services Act 2001*) of the agency; and
 - (b) for the Office of National Intelligence—a staff member (within the meaning of the *Office of National Intelligence Act 2018*) of the Office of National Intelligence;
- and includes a person who is seconded to an intelligence agency.

issuing agency means:

- (a) a Commonwealth government issuing agency; or
- (b) a non-Commonwealth government issuing agency.

jurisdiction means the Commonwealth or a State or Territory of the Commonwealth.

law enforcement agency means the following agencies:

- (a) the Australian Federal Police;
- (b) the Immigration and Border Protection Department;
- (c) the ACC;
- (d) the National Anti-Corruption Commission;
- (e) the Australian Taxation Office;
- (f) any other Commonwealth agency specified in the regulations.

law enforcement officer means:

- (a) in relation to the Australian Federal Police—the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal

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Police (all within the meaning of the *Australian Federal Police Act 1979*); and

- (b) in relation to the Immigration and Border Protection Department—an officer of Customs; and
- (c) in relation to the ACC—a member of the staff of the ACC; and
- (d) in relation to the National Anti-Corruption Commission—a staff member of the NACC; and
- (e) in relation to the Australian Taxation Office—a person engaged under the *Public Service Act 1999* and performing duties in the Australian Taxation Office; and
- (f) in relation to a Commonwealth agency specified in the regulations for the purposes of the definition of **law enforcement agency**—an officer specified in the regulations as an officer of the agency;

and includes a person who is seconded to a law enforcement agency, including (but not limited to) a member of the police force or police service or a police officer (however described) of another jurisdiction.

National Witness Protection Program means the program by that name established by the *Witness Protection Act 1994*.

non-Commonwealth government issuing agency means a person, body or entity (other than a Commonwealth government issuing agency) that issues evidence of identity and that is named in an authority.

officer of an agency, includes a person employed or engaged in the agency.

originating agency:

- (a) in relation to the transfer of an authority under subsection 15KV(1)—has the meaning given by that subsection; and
- (b) in relation to the transfer of an authority under subsection 15KV(2)—has the meaning given by that subsection.

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participating jurisdiction means a jurisdiction in which a corresponding assumed identity law is in force.

receiving agency:

- (a) in relation to the transfer of an authority under subsection 15KV(1)—has the meaning given by that subsection; and
- (b) in relation to the transfer of an authority under subsection 15KV(2)—has the meaning given by that subsection.

supervisor of an authorised civilian means the law enforcement officer or the intelligence officer who supervises or is to supervise the acquisition or use of an assumed identity by the authorised civilian.

use an assumed identity, includes representing (whether expressly or impliedly, or by saying or doing something) the assumed identity to be real when it is not.

Division 2—Authority for Assumed Identity

15KA Application for authority to acquire or use assumed identity

- (1) A law enforcement officer of a law enforcement agency may apply to the chief officer mentioned in subsection (2) for an authority for the officer or any other person to do either or both of the following:
 - (a) acquire an assumed identity;
 - (b) use an assumed identity.
- (2) An application by a law enforcement officer of a law enforcement agency under subsection (1) is to be made to:
 - (a) if the person who is to acquire or use the assumed identity is a foreign officer, or the assumed identity is to be used in a foreign country:
 - (i) if the applicant is a member of the staff of the ACC—the chief officer of the ACC; or
 - (ii) in any other case—the chief officer of the Australian Federal Police; or
 - (b) in any other case—the chief officer of the law enforcement agency.
- (3) An intelligence officer of an intelligence agency may apply to the chief officer of the agency for an authority for the officer or any other person (including a foreign officer) to do either or both of the following:
 - (a) acquire an assumed identity;
 - (b) use an assumed identity.
- (3A) An application may only be made under subsection (3) by an intelligence officer of the Office of National Intelligence (**ONI**) for the purpose of ONI carrying out its function under paragraph 7(1)(g) of the *Office of National Intelligence Act 2018*.
- (4) A separate application must be made in respect of each assumed identity to be acquired or used.

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- (5) An application:
- (a) must be in writing in the form approved by the chief officer;
and
 - (b) must contain:
 - (i) the name of the applicant; and
 - (ii) the name of the person to be authorised to acquire or use an assumed identity (if not the applicant); and
 - (iii) if the person referred to in subparagraph (ii) is not an officer of either an intelligence agency or a law enforcement agency or a foreign officer—the name and rank or position of the person proposed to be appointed as supervisor and an explanation of why it is necessary for a person who is not an officer to acquire or use the assumed identity; and
 - (iv) details of the proposed assumed identity; and
 - (v) reasons for the need to acquire or use an assumed identity; and
 - (vi) if the assumed identity is necessary for a purpose mentioned in subparagraph 15KB(2)(a)(i) or (ii)—details of the investigation or intelligence-gathering exercise in which the assumed identity will be used (to the extent known); and
 - (vii) details of any issuing agencies and the types of evidence to be issued by them; and
 - (viii) details of any application of a kind referred to in section 15KG (making entries in register of births, deaths or marriages) that is to be made under a corresponding assumed identity law.
- (6) The chief officer may require the applicant to give such additional information concerning the application as is necessary for the chief officer's proper consideration of the application.

Note: The chief officer may delegate functions under this section—see section 15LH.

15KB Determination of applications

- (1) After considering an application for an authority to acquire or use an assumed identity, and any additional information under subsection 15KA(6), the chief officer:
 - (a) may grant an authority to acquire or use the assumed identity, either unconditionally or subject to conditions; or
 - (b) may refuse the application.

- (2) An authority to acquire or use an assumed identity may not be granted unless the chief officer is satisfied on reasonable grounds:
 - (a) that the assumed identity is necessary for one or more of the following purposes:
 - (i) investigation of, or intelligence gathering in relation to, criminal activity (whether a particular criminal activity or criminal activity generally);
 - (ii) the exercise of powers and performance of functions of an intelligence agency;
 - (iii) the exercise of powers and performance of functions for the purposes of the National Witness Protection Program;
 - (iv) the training of persons for any of the purposes mentioned in subparagraphs (i) to (iii);
 - (v) any administrative function in support of any of the purposes mentioned in subparagraphs (i) to (iv); and
 - (b) that the risk of abuse of the assumed identity by the authorised person is minimal; and
 - (c) if the application is for authorisation of an assumed identity for a person who is not an officer of either an intelligence agency or a law enforcement agency—that it would be impossible or impracticable in the circumstances for an officer to acquire or use the assumed identity for the purpose sought.

- (3) If an authority is granted for an authorised civilian, the chief officer must appoint an officer of the law enforcement agency or the intelligence agency (as the case may be) to supervise the

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acquisition or use of the assumed identity by the authorised civilian.

- (4) The officer appointed as supervisor must be:
- (a) in the case of the Australian Federal Police—a person who holds the rank of sergeant or an equivalent or higher rank; or
 - (b) in the case of the Immigration and Border Protection Department—an APS employee who holds or performs the duties of an Executive Level 1 position, or an equivalent or higher position, in that Department; or
 - (c) in the case of the ACC—a person who holds the position, or performs the duties, of either a senior investigator or of an APS Executive Level 1 position, or an equivalent or higher position, in the ACC; or
 - (d) in the case of the National Anti-Corruption Commission—a staff member of the NACC who is authorised in writing by the National Anti-Corruption Commissioner to act as a supervisor; or
 - (e) in the case of the Australian Taxation Office—a person who holds the position, or performs the duties, of an APS Executive Level 2 position, or an equivalent or higher position, in the Australian Taxation Office; or
 - (f) in the case of the Australian Security Intelligence Organisation—a person who holds the position, or performs the duties, of an ASIO Executive Officer Level 1 position, or an equivalent or higher position, in the Australian Security Intelligence Organisation; or
 - (g) in the case of the Australian Secret Intelligence Service—an intelligence officer of the Australian Secret Intelligence Service who is determined by the Director-General of the Australian Secret Intelligence Service; or
 - (h) in the case of the Office of National Intelligence—a person who holds the position, or performs the duties, of an APS Executive Officer Level 1 position, or an equivalent or higher position, in the Office of National Intelligence; or
 - (i) in the case of the Australian Signals Directorate—a person who holds the position, or performs the duties, of an APS

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Executive Officer Level 1 position, or an equivalent or higher position, in the Australian Signals Directorate.

- (5) An authority may also authorise any one or more of the following:
- (a) an application of a kind referred to in section 15KG for an order for an entry in a register of births, deaths or marriages under a corresponding assumed identity law;
 - (b) a request under section 15KI or 15KX;
 - (c) the use of an assumed identity in a foreign country.

- (6) However, the chief officer of the ACC, the chief officer of the Australian Federal Police or the chief officer of an intelligence agency may only authorise the use of the assumed identity in a foreign country if he or she is satisfied that it is reasonably necessary to do so.

Note: This subsection does not affect any obligation to obtain authority to use the assumed identity in the foreign country.

- (7) A separate authority is required for each assumed identity.

Note: The chief officer may delegate functions under this section—see section 15LH.

- (8) An authority is not a legislative instrument.

15KC Form of authority

- (1) An authority must be:
- (a) in writing in the form approved by the chief officer; and
 - (b) signed by the person granting it.
- (2) An authority must state the following:
- (a) the name of the person granting the authority;
 - (b) the date of the authority;
 - (c) details of the assumed identity authorised;
 - (d) details of any evidence of the assumed identity that may be acquired under the authority;
 - (e) the conditions (if any) to which the authority is subject;
 - (f) why the authority is granted;

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- (g) if the authority relates to an authorised intelligence officer, an authorised law enforcement officer or a foreign officer—the name of the officer;
 - (h) if the authority relates to an authorised civilian whose supervisor is a law enforcement officer:
 - (i) the name of the authorised civilian; and
 - (ii) the name of his or her supervisor under the authority; and
 - (iii) the period for which the authority will remain in force, being a period not exceeding 3 months;
 - (i) if the authority relates to an authorised civilian whose supervisor is an intelligence officer:
 - (i) the name of the authorised civilian; and
 - (ii) the name of his or her supervisor under the authority.
- (3) The authority must also state the following:
- (a) each issuing agency to which a request may be made under section 15KI or 15KX;
 - (b) whether it authorises an application under a corresponding assumed identity law for an order for an entry in a register of births, deaths or marriages;
 - (c) whether the assumed identity can be used in a foreign country and the reasons for the need for this use.
- Note: The chief officer may delegate functions under this section—see section 15LH.
- (4) To avoid doubt, subparagraph (2)(h)(iii) does not prevent the grant of one or more further authorities in relation to an authorised civilian.

15KD Period of authority

- (1) An authority for an authorised person (other than an authorised civilian of a kind covered by paragraph 15KC(2)(h)) remains in force until cancelled under section 15KE.

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- (2) An authority for an authorised civilian of a kind covered by paragraph 15KC(2)(h) remains in force until the end of the period specified in the authority in accordance with subparagraph 15KC(2)(h)(iii), unless the authority is cancelled sooner under section 15KE.

15KE Variation or cancellation of authority

- (1) The chief officer of an agency:
- (a) may, at any time, vary or cancel an authority that was granted by the chief officer of the agency; and
 - (b) must cancel the authority if the chief officer is satisfied (on a review under section 15KF or otherwise) that use of the assumed identity is no longer necessary.

Note: Section 15KW modifies the effect of this provision if control of the authority is transferred.

- (2) The chief officer must give written notice of the variation or cancellation to:
- (a) where practicable, the authorised person to whom it relates; and
 - (b) if the authorised person is an authorised civilian—the authorised person's supervisor.
- (3) The notice must state why the authority is varied or cancelled.
- (4) The variation or cancellation takes effect:
- (a) if the written notice is given to the authorised person and the authorised person is not an authorised civilian—on the day the written notice is given to the authorised person or, if a later day is stated in the notice, on the later day; or
 - (b) if the authorised person is an authorised civilian and the written notice is given to the authorised person's supervisor—on the day the written notice is given to the authorised person's supervisor or, if a later day is stated in the notice, on the later day; or
 - (c) in any other case—on the day stated in the notice.

Part IAC Assumed Identities

Division 2 Authority for Assumed Identity

Section 15KF

Note 1: The chief officer may delegate functions under this section—see section 15LH.

Note 2: Despite the variation or cancellation of an authority, a person is, in certain circumstances, protected from prosecution for offences even if the person is unaware of the variation or cancellation—see section 15KU.

- (5) A variation of an authority is not a legislative instrument.

15KF Yearly review of authority

- (1) The chief officer of an agency must periodically review each authority granted by the chief officer or a delegate of the chief officer under this Part.
- (2) A review of an authority under this section is to be conducted:
- (a) in the case of an authority granted by the chief officer or a delegate of the chief officer of an intelligence agency to an authorised intelligence officer—at least once every 3 years; or
 - (b) in all other cases—at least once every 12 months.

Note: Section 15KW modifies the effect of this provision if control of the authority is transferred.

- (3) The purpose of a review is to determine whether use of the assumed identity under the authority is still necessary.
- (4) If the chief officer is satisfied on a review that use of the assumed identity under the authority is no longer necessary, he or she must cancel the authority under section 15KE.
- (5) If the chief officer is satisfied on a review that use of the assumed identity under the authority is still necessary, he or she must record his or her opinion, and the reasons for it, in writing.

Note: The chief officer may delegate functions under this section—see section 15LH.

- (6) Failure to comply with the requirements of this section does not invalidate an authority or anything lawfully done under the authority.
-

15KG Making entries in register of births, deaths or marriages

The chief officer of:

- (a) a law enforcement agency; or
- (b) an intelligence agency (other than the Office of National Intelligence or the Australian Signals Directorate);

may apply, under a corresponding assumed identity law, to the Supreme Court of a State or Territory of a participating jurisdiction for an order that an entry be made in a register of births, deaths or marriages under the relevant law of that jurisdiction in relation to the acquisition of an assumed identity under an authority or corresponding authority.

15KH Effect of authority ceasing to be in force on register of births, deaths or marriages

- (1) This section applies if:
 - (a) an authority for an assumed identity ceases to be in force; and
 - (b) there is an entry in relation to that assumed identity in a register of births, deaths or marriages because of an order under a corresponding assumed identity law.
- (2) The chief officer of a law enforcement agency or an intelligence agency (other than the Office of National Intelligence or the Australian Signals Directorate) must apply for an order under the corresponding assumed identity law to cancel the entry within 28 days after the day the authority ceases to be in force.

Division 3—Evidence of Assumed Identity

15KI Request for evidence of assumed identity

- (1) This section applies if an authority granted under section 15KB authorises a request under this section.
- (2) The person specified in subsection (2A) may request the chief officer of an issuing agency stated in the authority to:
 - (a) produce evidence of an assumed identity in accordance with the authority; and
 - (b) give evidence of the assumed identity to the following:
 - (i) the authorised person named in the authority;
 - (ii) an officer of the law enforcement agency or the intelligence agency specified by the chief officer of that agency in the request.

Note: Section 15KW modifies the effect of this provision if control of the authority is transferred.

- (2A) For the purposes of subsection (2), the person who may make the request is:
 - (a) the chief officer of a law enforcement agency who granted the authority; or
 - (b) the chief officer of an intelligence agency (other than the Office of National Intelligence or the Australian Signals Directorate) who granted the authority; or
 - (c) if the chief officer of the Office of National Intelligence granted the authority—the chief officer of the Australian Security Intelligence Organisation or the Australian Secret Intelligence Service; or
 - (d) if the chief officer of the Australian Signals Directorate granted the authority—the chief officer of the Australian Security Intelligence Organisation or the Australian Secret Intelligence Service.

Section 15KJ

- (3) The request must state a reasonable period for compliance with the request.
- (4) The request must include:
 - (a) the date of the authority granted under section 15KB; and
 - (b) details of the assumed identity authorised; and
 - (c) details of any evidence of the assumed identity that may be acquired under the authority.
- (5) A request must not be made under this section for an entry in a register of births, deaths or marriages.
- (6) In this section:

evidence means evidence similar to that ordinarily produced or given by the issuing agency.

Note: The chief officer may delegate functions under this section—see section 15LH.

15KJ Government issuing agencies to comply with request

The chief officer of a Commonwealth government issuing agency who receives a request under section 15KI must comply with the request within the reasonable period stated in the request.

15KK Non-government issuing agencies may comply with request

The chief officer of a non-Commonwealth government issuing agency who receives a request under section 15KI may comply with the request.

15KL Cancellation of evidence of assumed identity

- (1) The chief officer of an issuing agency who produces evidence of an assumed identity under this Part must cancel the evidence if directed in writing to do so by the chief officer who requested the evidence.

Note 1: The chief officer who requested the evidence may delegate functions under this section—see section 15LH.

Section 15KM

Note 2: Section 15KW modifies the effect of this provision if control of the authority is transferred.

(2) In this section:

cancel includes delete or alter an entry in a record of information.

15KM Return of evidence of assumed identity

- (1) This section applies if an authority for a person to acquire or use an assumed identity ceases to be in force.
- (2) The chief officer of a law enforcement agency or the chief officer of an intelligence agency may, in writing, request the person to return to the chief officer any evidence of the assumed identity acquired under the authority.
- (3) A person commits an offence if:
 - (a) a request has been made to the person under subsection (2); and
 - (b) the person fails to comply with the request.

Penalty: 10 penalty units.

15KN Protection from criminal liability—officers of issuing agencies

The chief officer, or an officer, of an issuing agency who does something that, apart from this section, would be a Commonwealth offence or an offence against a law of a State or Territory, is not criminally responsible for the offence if the thing is done to comply with a request under section 15KI or a direction under section 15KL.

15KO Indemnity for issuing agencies and officers

- (1) This section applies if the chief officer of either a law enforcement agency or an intelligence agency makes a request under section 15KI or gives a direction under section 15KL to the chief officer of an issuing agency.

Section 15KO

- (2) The Commonwealth must indemnify the issuing agency, or an officer of the issuing agency, for any liability incurred by the agency or officer (including reasonable costs) if:
- (a) the liability is incurred because of something done by the agency or officer in the course of duty to comply with the request or direction in the course of duty; and
 - (b) any requirements prescribed under the regulations have been met.

Division 4—Effect of Authority

15KP Assumed identity may be acquired and used

A person may acquire or use an assumed identity if:

- (a) the person is an authorised person (other than an authorised civilian) and the acquisition or use is:
 - (i) in accordance with an authority; and
 - (ii) in the course of duty; or
- (b) the person is an authorised civilian and the acquisition or use is in accordance with:
 - (i) an authority; and
 - (ii) any direction by the person's supervisor under the authority.

15KQ Protection from criminal liability—authorised persons

If an authorised person does something that, apart from this section, would be a Commonwealth offence or an offence under a law of a State or Territory, the person is not criminally responsible for the offence if:

- (a) the thing is done in the course of acquiring or using an assumed identity in accordance with an authority; and
- (b) the thing is done:
 - (i) in the case of an authorised intelligence officer, an authorised law enforcement officer or an authorised foreign officer—in the course of his or her duty; or
 - (ii) in the case of an authorised civilian—in accordance with any direction by his or her supervisor under the authority; and
- (c) doing the thing would not be an offence if the assumed identity were the person's real identity.

15KR Protection from criminal liability—third parties

If a person does something that, apart from this section, would be a Commonwealth offence or an offence under a law of a State or Territory, the person is not criminally responsible for the offence if:

- (a) the person is a Commonwealth officer; and
- (b) the thing is done in the course of the person's duty; and
- (c) the chief officer who granted the authority has authorised the doing of the thing; and
- (d) if an authorised person had done the thing in accordance with an authority, the authorised person would not have been criminally responsible for the offence because of the application of section 15KQ.

15KS Indemnity for authorised persons

- (1) This section applies if the chief officer of either a law enforcement agency or an intelligence agency grants an authority.
- (2) The Commonwealth must indemnify the authorised person under the authority for any liability incurred by the person (including reasonable costs) because of something done by the person if:
 - (a) the thing is done in the course of acquiring or using an assumed identity in accordance with the authority; and
 - (b) the thing is done:
 - (i) in the case of an authorised intelligence officer, an authorised law enforcement officer or an authorised foreign officer—in the course of his or her duty; or
 - (ii) in the case of an authorised civilian—in accordance with any direction by his or her supervisor under the authority; and
 - (c) any requirements prescribed under the regulations have been met.

Section 15KT

15KT Particular qualifications

- (1) Sections 15KQ, 15KR and 15KS do not apply to anything done by an authorised person if:
 - (a) a particular qualification is needed to do the thing; and
 - (b) the person does not have that qualification.
- (2) Subsection (1) applies whether or not the person has acquired, as evidence of an assumed identity, a document that indicates that he or she has that qualification.

Example: An officer who cannot fly a plane is not authorised to fly even though he or she has acquired a pilot's licence under an assumed identity.

15KU Effect of being unaware of variation or cancellation of authority

- (1) If an authority has been varied in a way that limits its scope, this Part continues to apply to the authorised person to whom it relates as if it had not been varied in that way, for as long as the person:
 - (a) is unaware of the variation; and
 - (b) is not reckless about the existence of the variation.
- (2) If an authority has been cancelled, this Part continues to apply to the authorised person to whom it related as if it had not been cancelled, for as long as the person:
 - (a) is unaware of the cancellation; and
 - (b) is not reckless about the existence of the cancellation.
- (3) For the purposes of this section, a person is reckless about the existence of the variation or cancellation of an authority or authorisation if:
 - (a) the person is aware of a substantial risk that the variation or cancellation has happened; and
 - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk that the authority has not been varied or cancelled.

15KV Transfer of control of authorities

- (1) The chief officer of an intelligence agency (the *originating agency*) may agree in writing with the chief officer of another intelligence agency (the *receiving agency*) to transfer control of an authority to the chief officer of the receiving agency if:
- (a) the authority was granted by the chief officer of the originating agency; or
 - (b) control of the authority was transferred to the chief officer of the originating agency under a previous application of this subsection.

Note: The chief officer may delegate functions under this section—see section 15LH.

- (2) The chief officer of a law enforcement agency (the *originating agency*) may agree in writing with the chief officer of another law enforcement agency (the *receiving agency*) to transfer control of an authority to the chief officer of the receiving agency if:
- (a) the authority was granted by the chief officer of the originating agency; or
 - (b) control of the authority was transferred to the chief officer of the originating agency under a previous application of this subsection.

Note: The chief officer may delegate functions under this section—see section 15LH.

- (3) The chief officer of the originating agency must give the chief officer of the receiving agency a written document setting out:
- (a) whether the authority has been reviewed under section 15KF, and if so, when a review was last conducted; and
 - (b) whether control of the authority has previously been transferred under this section, and if so:
 - (i) the date of each such transfer; and
 - (ii) the name of the originating agency and receiving agency in relation to each such transfer.

Section 15KW

- (4) Control of the authority is transferred at the time when the chief officer of the receiving agency signs and dates a copy of the authority.
- (5) Despite subsection (4), if the authority relates to an authorised civilian, control of the authority is not transferred until the chief officer of the receiving agency appoints an officer of that agency to be the authorised civilian's supervisor.
- (6) The chief officer of the receiving agency must vary the authority in accordance with section 15KE to state the name of the supervisor appointed under subsection (5).
- (7) Control of an authority must not be transferred under this section if:
 - (a) the person who is to acquire or use the assumed identity, or who has acquired or used the assumed identity, is a foreign officer authorised to acquire or use the assumed identity by the chief officer of a law enforcement agency; or
 - (b) the assumed identity is to be, is being or has been used in a foreign country and the authority was granted by the chief officer of a law enforcement agency.

15KW Consequences of transfer of control of authorities

- (1) This section sets out the consequences of the transfer of control of an authority under section 15KV.
- (2) The authority continues to be in force after the transfer.
- (3) The following provisions have effect, after the transfer, as if the chief officer of the receiving agency had granted the authority instead of the chief officer of the originating agency:
 - (a) section 15KE (which deals with variation and cancellation of authorities);
 - (b) section 15KF (which deals with review of authorities);
 - (c) sections 15KI and 15KX (which deal with requests for evidence of assumed identities).

Section 15KW

- (4) To avoid doubt, the obligation under section 15KF, as that section has effect because of subsection (3), for the chief officer of the receiving agency to review the authority, only arises:
- (a) in the case of an authority transferred under subsection 15KV(1):
 - (i) 3 years after the last review of the authority by the chief officer of an intelligence agency; or
 - (ii) if no such review has been undertaken—3 years after the authority was granted; and
 - (b) in the case of an authority transferred under subsection 15KV(2):
 - (i) 12 months after the last review of the authority by the chief officer of a law enforcement agency; or
 - (ii) if no such review has been undertaken—12 months after the authority was granted.
- (5) Section 15KL (which deals with cancellation of evidence of assumed identity) has effect as if the chief officer of the receiving agency had made the request under section 15KI.

Division 5—Mutual Recognition under Corresponding Laws

15KX Requests to a participating jurisdiction for evidence of assumed identity

- (1) This section applies if an authority granted under section 15KB authorises a request under this section.
- (2) The person specified in subsection (2A) may request the chief officer of an issuing agency of a participating jurisdiction stated in the authority to:
 - (a) produce evidence of the assumed identity in accordance with the authority; and
 - (b) give evidence of the assumed identity to the following:
 - (i) the authorised person named in the authority;
 - (ii) an officer of the law enforcement agency or the intelligence agency who is named in the request.

Note: Section 15KW modifies the effect of this provision if control of the authority is transferred.

- (2A) For the purposes of subsection (2), the person who may make the request is:
 - (a) the chief officer of a law enforcement agency who granted the authority; or
 - (b) the chief officer of an intelligence agency (other than the Office of National Intelligence or the Australian Signals Directorate) who granted the authority; or
 - (c) if the chief officer of the Office of National Intelligence granted the authority—the chief officer of the Australian Security Intelligence Organisation or the Australian Secret Intelligence Service; or
 - (d) if the chief officer of the Australian Signals Directorate granted the authority—the chief officer of the Australian Security Intelligence Organisation or the Australian Secret Intelligence Service.

Note: The chief officer may delegate functions under this section—see section 15LH.

- (3) The request must state that it is a request under this section.
- (4) A request must not be made under this section for an entry in a register of births, deaths or marriages.

15KY Requests from a participating jurisdiction for evidence of assumed identity

- (1) This section applies if:
 - (a) an authority under a corresponding assumed identity law authorises a request for:
 - (i) the production of evidence of an assumed identity from a Commonwealth government issuing agency; and
 - (ii) the giving of evidence of the assumed identity to the authorised person named in the authority; and
 - (b) the request is made to the chief officer of the Commonwealth government issuing agency; and
 - (c) the request states a reasonable period for compliance with the request.
- (2) Subject to subsection (3), the chief officer of the agency who receives the request must comply with the request within the reasonable period stated in the request.
- (3) This section does not require any of the following to comply with a request made as mentioned in paragraph (1)(b):
 - (a) the chief officer of an intelligence agency (other than the Office of National Intelligence);
 - (c) the chief officer of the Australian Geospatial-Intelligence Organisation.

Section 15KZ

15KZ Directions from a participating jurisdiction to cancel evidence of assumed identity

- (1) The chief officer of an issuing agency who produces evidence of an assumed identity because of a request mentioned in section 15KY must cancel the evidence if directed in writing to do so by the chief officer who authorised the request.
- (2) In this section:
cancel includes delete or alter an entry in a record of information.

15L Indemnity for issuing agencies and officers

- (1) This section applies if the chief officer of either a law enforcement agency or an intelligence agency makes a request to the chief officer of an issuing agency of a participating jurisdiction under section 15KX.
- (2) The agency that makes the request must indemnify the issuing agency and any officer of the issuing agency, for any liability incurred by the issuing agency or the officer of the issuing agency (including reasonable costs) if:
 - (a) the liability is incurred because of something done in the course of duty by the issuing agency or the officer of the issuing agency to comply with the request; and
 - (b) any requirements prescribed under the regulations have been met.

15LA Application of this Part to authorities under corresponding laws

- (1) The following provisions apply to anything done in relation to a corresponding authority as if it were an authority granted under section 15KB:
 - (a) section 15KP (assumed identity may be acquired and used);
 - (b) section 15KT (particular qualifications);

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- (c) section 15KU (effect of being unaware of variation or cancellation of authority);
 - (d) section 15LB (misuse of assumed identity);
 - (e) section 15LC (disclosing information about assumed identity).
- (2) Sections 15KN, 15KQ and 15KR apply to anything done in relation to a corresponding authority as if:
- (a) the corresponding authority were an authority granted under section 15KB; and
 - (b) references in those sections to an offence under a law of a State or Territory were omitted.

Division 6—Compliance and Monitoring

Subdivision A—Misuse of Assumed Identity and Information

15LB Misuse of assumed identity

- (1) A person commits an offence if:
- (a) the person is an authorised person (other than an authorised civilian); and
 - (b) the person acquires evidence of, or uses, an assumed identity; and
 - (c) the acquisition or use is not both:
 - (i) in accordance with an authority; and
 - (ii) in the course of duty; and
 - (d) the person is reckless as to the circumstance mentioned in paragraph (c).

Penalty: Imprisonment for 2 years.

- (2) An authorised civilian commits an offence if:
- (a) the authorised civilian acquires evidence of, or uses, an assumed identity; and
 - (b) the acquisition or use is not in accordance with both:
 - (i) an authority; and
 - (ii) the directions of the authorised civilian's supervisor under the authority; and
 - (c) the authorised civilian is reckless as to the circumstance mentioned in paragraph (b).

Penalty: Imprisonment for 2 years.

15LC Disclosing information about assumed identity

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct causes the disclosure of information; and

- (c) the information reveals, or is likely to reveal, that another person has acquired, will acquire, is using or has used an assumed identity.

Penalty: Imprisonment for 2 years.

- (2) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct causes the disclosure of information; and
 - (c) the information reveals, or is likely to reveal, that another person has acquired, will acquire, is using or has used an assumed identity; and
 - (d) the person is reckless as to whether his or her conduct will endanger the health or safety of any person.

Penalty: Imprisonment for 10 years.

- (3) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct causes the disclosure of information; and
 - (c) the information reveals, or is likely to reveal, that another person has acquired, will acquire, is using or has used an assumed identity; and
 - (d) the person is reckless as to whether his or her conduct will prejudice the effective conduct of an investigation or intelligence-gathering in relation to criminal activity.

Penalty: Imprisonment for 10 years.

- (4) A person does not commit an offence under subsection (1), (2) or (3) if the person causes the disclosure of information mentioned in paragraph (1)(c), (2)(c) or (3)(c) (as the case may be) and the disclosure is:
 - (a) in connection with the administration or execution of this Part or a corresponding assumed identity law; or
 - (b) for the purposes of any legal proceeding arising out of or otherwise related to this Part or a corresponding assumed identity law or of any report of any such proceedings; or

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- (c) made by the Commonwealth Director of Public Prosecutions for the purposes of a legal proceeding; or
- (d) in accordance with the exercise of powers or performance of functions of a law enforcement agency or an intelligence agency; or
- (da) in connection with the exercise of a power, or the performance of a function or duty, of the Inspector of the National Anti-Corruption Commission or a person assisting the NACC Inspector; or
- (db) for the purpose of an IGIS official exercising a power, or performing a function or duty, as an IGIS official; or
- (e) in accordance with any requirement imposed by law.

Note 1: A defendant bears an evidential burden in relation to the matters in subsection (4)—see subsection 13.3(3) of the *Criminal Code*.

Note 2: The mere existence of an exception under subsection (4) does not mean that a person might not commit an offence under a provision of another Act (such as under Division 1 of Part 6 of the *Intelligence Services Act 2001*) if the person causes the disclosure of information mentioned in paragraph (1)(c), (2)(c) or (3)(c).

Subdivision B—Reporting and record-keeping

15LD Reports about authorities for assumed identities etc.—law enforcement agencies

- (1) As soon as practicable after the end of each financial year, the chief officer of a law enforcement agency must submit a report to the Minister administering the *National Anti-Corruption Commission Act 2022* (the **NACC Minister**) that includes the following information for the year:
 - (a) the number of authorities granted during the year;
 - (b) a general description of the activities undertaken by authorised civilians and authorised law enforcement officers when using assumed identities under this Part during the year;
 - (c) the number of applications for authorities that were refused during the year;

Section 15LE

- (d) the number of authorities of which control was transferred by the chief officer under section 15KV during the year;
 - (e) the number of authorities of which control was transferred to the chief officer under section 15KV during the year;
 - (f) a statement whether or not any fraud or other unlawful activity was identified by an audit under section 15LG during the year;
 - (g) any other information relating to authorities and assumed identities and the administration of this Part that the NACC Minister considers appropriate.
- (2) The chief officer must advise the NACC Minister of any information in the report that, in the chief officer's opinion, should be excluded from the report before the report is laid before the Parliament because the information, if made public, could reasonably be expected to:
- (a) endanger a person's safety; or
 - (b) prejudice an investigation or prosecution; or
 - (c) compromise any law enforcement agency's operational activities or methodologies.
- (3) The NACC Minister must exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (2) and 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 day on which the NACC Minister receives the report.

**15LE Reports about authorities for assumed identities etc.—
intelligence agencies**

As soon as practicable after the end of each financial year, the chief officer of an intelligence agency must submit a report to the Inspector-General of Intelligence and Security (the *Inspector-General*) that includes the following information for the year:

- (a) the number of authorities granted during the year;

Section 15LF

- (b) a general description of the activities undertaken by authorised civilians and authorised intelligence officers when using assumed identities under this Part during the year;
- (c) the number of applications for authorities that were refused during the year;
- (d) the number of authorities of which control was transferred by the chief officer under section 15KV during the year;
- (e) the number of authorities of which control was transferred to the chief officer under section 15KV during the year;
- (f) a statement whether or not any fraud or other unlawful activity was identified by an audit under section 15LG during the year;
- (g) any other information relating to authorities and assumed identities and the administration of this Part that the Inspector-General considers appropriate.

15LF Record keeping

- (1) The chief officer of either a law enforcement agency or an intelligence agency must keep appropriate records about the operation of this Part in respect of the agency.
- (2) The records must include the following, in respect of authorities granted, varied or cancelled under this Part in respect of the agency:
 - (a) the date on which an authority was granted, varied or cancelled and the name of the person who granted, varied or cancelled it;
 - (b) the name of the authorised person under the authority, together with details of the assumed identity to which the authority applies;
 - (c) details of any request made to an issuing agency under section 15KI or 15KX (request for evidence of assumed identity) in respect of the authority;
 - (d) the general nature of the duties undertaken by the authorised person under the assumed identity;

Section 15LG

- (e) general details of relevant financial transactions entered into using the assumed identity;
 - (f) details of reviews of the authority under section 15KF (yearly review of authority).
- (3) The records must include the following in respect of authorities the control of which has been transferred to or from the chief officer of the agency under section 15KV:
- (a) the names of the chief officers of the originating agency and the receiving agency in relation to the transfer;
 - (b) the name of the originating agency and the receiving agency in relation to the transfer;
 - (c) the date of the transfer;
 - (d) if control of the authority had previously been transferred under section 15KV:
 - (i) the date of each such transfer; and
 - (ii) the name of the originating agency and receiving agency in relation to each such transfer.

15LG Audit of records

- (1) The chief officer of either a law enforcement agency or an intelligence agency must cause the records kept under section 15LF for each authority in respect of the agency to be audited:
 - (a) at least once every 6 months while the authority is in force; and
 - (b) at least once in the 6 months after the cancellation or expiry of the authority.
- (2) The audit is to be conducted by a person appointed by the chief officer.
- (3) The person appointed to conduct the audit:
 - (a) may, but need not be, an officer of the agency; and
 - (b) must not be a person:

Section 15LG

- (i) who granted, varied or cancelled any of the authorities to which the records under section 15LF relate; or
 - (ii) to whom control of any of the authorities to which the records under section 15LF relate was transferred; or
 - (iii) who is or was an authorised person under any of the authorities to which those records relate.
- (4) The results of an audit must be reported to the chief officer.

Division 7—General

15LH Delegation of chief officer's functions

- (1) Except as provided by this section (and despite any other Act or law to the contrary) the functions of a chief officer under this Part may not be delegated to any other person.
- (2) A chief officer may delegate to a senior officer of the law enforcement agency or the intelligence agency (as the case may be) any of the chief officer's functions under this Part relating to the granting, variation, cancellation and transfer of control of authorities (including, but not limited to conducting reviews under section 15KF, making applications under section 15KG, giving directions under section 15KL and making requests under section 15KI or 15KX).
- (3) In this section:

senior officer means:

- (a) in relation to the Australian Federal Police:
 - (i) any senior executive AFP employee of the Australian Federal Police within the meaning of section 25 of the *Australian Federal Police Act 1979*; or
 - (ii) any Deputy Commissioner of Police within the meaning of section 6 of the *Australian Federal Police Act 1979*; or
 - (iii) a person occupying a position in the Australian Federal Police that is equivalent to or higher than the positions mentioned in subparagraphs (i) and (ii); and
- (b) in relation to the Immigration and Border Protection Department—any SES employee in that Department; and
- (c) in relation to the ACC—any SES employee who is a member of the staff of the ACC within the meaning of section 47 of the *Australian Crime Commission Act 2002*, or a person occupying an equivalent or higher position in the ACC; and
- (d) in relation to the National Anti-Corruption Commission:

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- (i) a National Anti-Corruption Deputy Commissioner; or
- (ii) another staff member of the NACC who is an SES employee, or a person occupying an equivalent or higher position, and who is authorised in writing by the National Anti-Corruption Commissioner for the purposes of this provision; and
- (e) in relation to the Australian Taxation Office—any Deputy Commissioner as defined in section 2 of the *Taxation Administration Act 1953*, or a person occupying an equivalent or higher position in the Australian Taxation Office; and
- (f) in relation to the Australian Security Intelligence Organisation—any senior position-holder within the meaning of the *Australian Security Intelligence Organisation Act 1979*; and
- (g) in relation to the Australian Secret Intelligence Service (**ASIS**)—an intelligence officer who holds, or is acting in, a position in ASIS that is equivalent to, or higher than, a position occupied by an SES employee; and
- (ga) in relation to the Office of National Intelligence—an SES employee in the Office of National Intelligence, or a person occupying an equivalent or higher position in the Office of National Intelligence; and
- (gb) in relation to the Australian Signals Directorate—an intelligence officer who holds, or is acting in, a position in the Australian Signals Directorate that is equivalent to, or higher than, a position occupied by an SES employee in the Australian Signals Directorate; and
- (h) in relation to a Commonwealth agency specified in the regulations for the purposes of the definition of **law enforcement agency**—an officer specified in the regulations to be a senior officer of the agency.

Part IACA—Witness identity protection for operatives

Division 1—Preliminary

15M Definitions

(1) In this Part:

assumed name of an operative has the meaning given by paragraph 15MG(1)(a)(i).

chief officer of a law enforcement agency means the following:

- (a) in relation to the Australian Federal Police—the Commissioner of the Australian Federal Police;
- (b) in relation to the Immigration and Border Protection Department—Secretary of that Department;
- (c) in relation to the ACC—the Chief Executive Officer of the ACC;
- (d) in relation to the National Anti-Corruption Commission—the National Anti-Corruption Commissioner;
- (e) in relation to the Australian Taxation Office—the Commissioner of Taxation;
- (f) in relation to a Commonwealth agency specified in the regulations for the purposes of the definition of *law enforcement agency*—the officer specified in the regulations as the chief officer of that agency.

conduct includes any act or omission.

corresponding witness identity protection certificate means a certificate given under a provision of a corresponding witness identity protection law that corresponds to section 15ME.

corresponding witness identity protection law means:

- (a) a law of a State or Territory; or

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(b) a provision or provisions of a law of a State or Territory; prescribed by the regulations for the purposes of this definition.

court includes any tribunal or person authorised by law or consent of parties to receive evidence.

court name for an operative in relation to a proceeding, means a name (other than the operative's real name) or code used to identify the operative in the proceeding.

false representation does not include a representation made under an authority under:

- (a) Part IAB (about controlled operations); or
- (b) Part IAC (about assumed identities).

investigation means an investigation in relation to criminal activity, including an investigation extending beyond the Commonwealth.

jurisdiction means the Commonwealth or a State or Territory of the Commonwealth.

law enforcement agency means the following:

- (a) the Australian Federal Police;
- (b) the Immigration and Border Protection Department;
- (c) the ACC;
- (d) the National Anti-Corruption Commission;
- (e) the Australian Taxation Office;
- (f) any other Commonwealth agency specified in the regulations.

operative means a person who is or was:

- (a) a participant in a controlled operation authorised under Part IAB; or
 - (b) authorised to acquire and use an assumed identity under Part IAC by the chief officer of a law enforcement agency;
- but does not include a person who is or was an intelligence officer (within the meaning of Part IAC).

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party to a proceeding, means:

- (a) for a criminal proceeding—the prosecutor and each accused person; or
- (b) for a civil proceeding—each person who is a party to the proceeding.

presiding officer in relation to a proceeding, means the person constituting the court, or presiding over the court, in the proceeding.

proceeding means any criminal, civil or other proceeding or inquiry, reference or examination in which by law or consent of parties evidence is or may be given, and includes an arbitration.

professional misconduct means fraud, negligence, default, breach of trust, breach of duty, breach of discipline or any other misconduct in the course of duty.

security has the meaning given by section 4 of the *Australian Security Intelligence Organisation Act 1979*.

witness identity protection certificate means a certificate given under section 15ME.

- (2) For the purposes of this Part:
 - (a) anything permitted to be done by a party to a proceeding may be done by the party's lawyer; and
 - (b) any requirement to give something to a party to a proceeding is satisfied by giving the thing to the party's lawyer.

15MA Meaning of *criminal proceeding*

- (1) In this Part, ***criminal proceeding*** means a proceeding for the prosecution, whether summarily or on indictment, of an offence or offences.
- (2) To avoid doubt, each of the following is part of a ***criminal proceeding***:
 - (a) a bail proceeding;

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- (b) a committal proceeding;
- (c) the discovery, exchange, production, inspection or disclosure of intended evidence, documents and reports of persons intended to be called by a party to give evidence;
- (d) a sentencing proceeding;
- (e) an appeal proceeding;
- (f) a proceeding with respect to any matter in which a person seeks a writ of mandamus or prohibition or an injunction against an officer or officers of the Commonwealth (within the meaning of subsection 39B(1B) of the *Judiciary Act 1903*) in relation to:
 - (i) a decision to prosecute a person for one or more offences against a law of the Commonwealth; or
 - (ii) a related criminal justice process decision (within the meaning of subsection 39B(3) of that Act);
- (g) any other pre-trial, interlocutory or post-trial proceeding prescribed by regulations for the purposes of this paragraph.

15MB Meaning of *civil proceeding*

- (1) In this Part, ***civil proceeding*** means any proceeding in a court of the Commonwealth, a State or Territory, other than a criminal proceeding.
- (2) To avoid doubt, each of the following is part of a ***civil proceeding***:
 - (a) any proceeding on an ex parte application (including an application made before pleadings are filed in a court);
 - (b) the discovery, exchange, production, inspection or disclosure of intended evidence, documents and reports of persons intended to be called by a party to give evidence;
 - (c) an appeal proceeding;
 - (d) any interlocutory or other proceeding prescribed by regulations for the purposes of this paragraph.

15MC When a charge is outstanding or pending

- (1) For the purposes of this Part:
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- (a) a charge against a person for an offence is **outstanding** until the charge is finally dealt with in any of the following ways:
 - (i) the charge is withdrawn;
 - (ii) the charge is dismissed by a court;
 - (iii) the person is discharged by a court following a committal hearing;
 - (iv) the person is acquitted or found guilty of the offence by a court; and
- (b) a charge against a person for an offence is **pending** if the person has not yet been charged with the offence, but:
 - (i) the person has been arrested for the offence, unless the person has been later released without being charged with an offence; or
 - (ii) a summons to appear before a court to answer a charge for the offence has been served on the person; and
- (c) an allegation of professional misconduct against a person is **outstanding** if the allegation has not been finally dealt with in accordance with the procedures that apply for the purposes of dealing with an allegation of that kind.

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Division 2—Witness Identity Protection Certificates for Operatives

15MD Application of Part

- (1) This Part applies to a proceeding in which an operative is, or may be, required to give evidence obtained as an operative.
- (2) To avoid doubt, this Part does not affect the operation of any law in relation to the protection of a person who gives, or intends to give, evidence in a proceeding.
- (3) To avoid doubt, this Part does not, other than as expressly provided, limit the power of a court to control proceedings in relation to a matter before it.

15ME Witness identity protection certificate

- (1) The chief officer of a law enforcement agency may give a witness identity protection certificate for an operative in relation to a proceeding if:
 - (a) the operative is, or may be required, to give evidence in the proceeding; and
 - (b) the chief officer is satisfied on reasonable grounds that the disclosure in the proceeding of the operative's identity or where the operative lives is likely to:
 - (i) endanger the safety of the operative or another person; or
 - (ii) prejudice any current or future investigation; or
 - (iii) prejudice any current or future activity relating to security.
- (2) The chief officer must make all reasonable enquiries to enable the chief officer to ascertain the information required to be included in the certificate by section 15MG.

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- (3) The chief officer cannot give a certificate for an operative until the chief officer has obtained a statutory declaration from the operative under section 15MF.

Note: The chief officer may delegate functions under this section—see section 15MX.

- (4) A decision to give a witness identity protection certificate:
- (a) is final; and
 - (b) cannot be appealed against, reviewed, called into question, quashed or invalidated in any court.
- (5) Subsection (4) does not prevent a decision to give a witness identity protection certificate being called into question in the course of any proceedings of a disciplinary nature against the person who made the decision.
- (6) A witness identity protection certificate purporting to be issued under subsection (1):
- (a) must be taken to be such a certificate and to have been properly issued; and
 - (b) is prima facie evidence of the matters in the certificate.
- (7) A witness identity protection certificate is not a legislative instrument.

15MF Statutory declaration by operative

- (1) Before a witness identity protection certificate is given for an operative, the operative must make a statutory declaration of the following matters:
- (a) whether the operative has been convicted or found guilty of an offence and, if so, particulars of each offence;
 - (b) whether any charges against the operative for an offence are pending or outstanding and, if so, particulars of each charge;
 - (c) if the operative is or was a law enforcement officer:
 - (i) whether the operative has been found guilty of professional misconduct and, if so, particulars of each finding; and

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- (ii) whether, to the operative's knowledge, any allegations of professional misconduct against him or her are outstanding and, if so, particulars of each allegation;
 - (d) whether, to the operative's knowledge, a court has made any adverse comment about the operative's credibility and, if so, particulars of the comment;
 - (e) whether the operative has made a false representation when the truth was required and, if so, particulars of the representation;
 - (f) if there is anything else known to the operative that may be relevant to the operative's credibility—particulars of the thing.
- (2) Subject to subsection (3), a person cannot be compelled to disclose or produce a statutory declaration made under this section in any proceeding.
- (3) Subsection (2) does not apply to:
- (a) proceedings for perjury or otherwise in respect of the falsity of the statutory declaration; or
 - (b) proceedings of a disciplinary nature against a law enforcement officer; or
 - (c) investigations or inquiries by a person or body in any jurisdiction having jurisdiction to investigate or inquire into the conduct of a law enforcement officer.

15MG Form of witness identity protection certificate

- (1) A witness identity protection certificate for an operative in relation to a proceeding must state the following:
- (a) if the operative:
 - (i) is known to a party to the proceeding or a party's lawyer by a name other than the operative's real name—that name (the *assumed name*); or
 - (ii) is not known to any party to the proceeding or any party's lawyer by a name—the operative's court name for the proceeding;

- (b) the period the operative was involved in the investigation to which the proceeding relates;
 - (c) the name of the agency;
 - (d) the date of the certificate;
 - (e) the grounds for giving the certificate;
 - (f) whether the operative has been convicted or found guilty of an offence and, if so, particulars of each offence;
 - (g) whether any charges against the operative for an offence are pending or outstanding and, if so, particulars of each charge;
 - (h) if the operative is or was a law enforcement officer:
 - (i) whether the operative has been found guilty of professional misconduct and, if so, particulars of each finding; and
 - (ii) whether any allegations of professional misconduct against the operative are outstanding and, if so, particulars of each allegation;
 - (i) whether, to the knowledge of the person giving the certificate, a court has made any adverse comment about the operative's credibility and, if so, particulars of the comment;
 - (j) whether, to the knowledge of the person giving the certificate, the operative has made a false representation when the truth was required and, if so, particulars of the representation;
 - (k) if there is anything else known to the person giving the certificate that may be relevant to the operative's credibility—particulars of the thing.
- (2) A witness identity protection certificate for an operative must not contain information that may allow the operative's identity, or where the operative lives, to be revealed.

15MH Filing and notification

- (1) A witness identity protection certificate for an operative in relation to a proceeding must be filed in the court before the operative gives evidence in the proceeding.

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- (2) The person who files the certificate must give a copy of it to each party to the proceeding at least 14 days (or the shorter period agreed to by the party) before the day the operative is to give evidence.
- (3) The court may order the person filing the certificate to give a copy of it to a person stated in the order.
- (4) This section applies subject to section 15MI.

15MI Leave for non-compliance

- (1) The person who has filed, or proposes to file, a witness identity protection certificate may apply to the court for leave not to comply with the requirement under subsection 15MH(2) in relation to the time within which a copy of the certificate is to be given.
- (2) However, the court must not give such leave unless it is satisfied that it was not reasonably practicable to comply with the requirement referred to in subsection (1).

15MJ Effect of witness identity protection certificate

- (1) This section applies if a witness identity protection certificate for an operative in relation to a proceeding is filed in a court.
- (2) If this section applies:
 - (a) the operative may give evidence in the proceeding under the assumed name, or court name, stated in the certificate; and
 - (b) subject to section 15MM:
 - (i) a question must not be asked of a witness, including the operative, that may lead to the disclosure of the operative's identity or where the operative lives; and
 - (ii) a witness, including the operative, cannot be required to (and must not) answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the operative's identity or where the operative lives; and

- (iii) a person involved in the proceeding must not make a statement that discloses, or may lead to the disclosure of, the operative's identity or where the operative lives.
- (3) For the purposes of this section, a person involved in a proceeding includes:
 - (a) the court; and
 - (b) a party to the proceeding; and
 - (c) a person given leave to be heard or make submissions in the proceeding; and
 - (d) a lawyer representing a person referred to in paragraph (b) or (c) or a lawyer assisting the court in the proceeding; and
 - (e) any other officer of the court or person assisting the court in the proceeding; and
 - (f) a person acting in the execution of any process or the enforcement of any order in the proceeding.

15MK Orders to protect operative's identity etc.

- (1) The court in which a witness identity protection certificate is filed may make any order it considers necessary or desirable to protect the identity of the operative for whom the certificate is given or to prevent the disclosure of where the operative lives.
- (4) The court must make an order suppressing the publication of anything said when an order is made as mentioned in subsection (1).
- (5) To avoid doubt, subsection (4) does not prevent the taking of a transcript of court proceedings, but the court may make an order for how the transcript is to be dealt with, including an order suppressing its publication.
- (6) A person commits an offence if:
 - (a) an order has been made under subsection (1), (4) or (5); and
 - (b) the person engages in conduct; and

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(c) the conduct contravenes the order.

Penalty: Imprisonment for 2 years.

(7) Subsection (6) does not limit the court's powers, including, but not limited to, the court's power to punish for contempt.

15ML Disclosure of operative's identity to presiding officer

- (1) This section applies if a witness identity protection certificate for an operative in relation to a proceeding is filed in a court.
- (2) The presiding officer in the proceeding may require the operative to do one or both of the following:
 - (a) to disclose the operative's true identity to the presiding officer;
 - (b) to provide the presiding officer with photographic evidence of that identity.
- (3) The presiding officer must not:
 - (a) record information disclosed to the presiding officer under subsection (2); or
 - (b) retain or copy a document or other thing provided to the presiding officer under that subsection.

15MM Disclosure of operative's identity etc. despite certificate

- (1) This section applies if a witness identity protection certificate for an operative in relation to a proceeding is filed in a court.
- (2) A party to the proceeding, or a lawyer assisting the court in the proceeding, may apply to the court:
 - (a) for leave:
 - (i) to ask a question of a witness, including the operative, that may lead to the disclosure of the operative's identity or where the operative lives; or
 - (ii) for a person involved in the proceeding to make a statement that discloses, or may lead to the disclosure

of, the operative's identity or where the operative lives;
or

- (b) for an order requiring a witness, including the operative, to answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the operative's identity or where the operative lives.
- (3) In this section:
- person involved in the proceeding*** has the same meaning as in subsection 15MJ(3).
- (4) The court may do either or both of the following:
- (a) give leave for the party or lawyer to do anything mentioned in paragraph (2)(a);
 - (b) make an order requiring a witness to do anything mentioned in paragraph (2)(b).
- (5) However, the court must not give leave or make an order unless it is satisfied about each of the following:
- (a) there is evidence that, if accepted, would substantially call into question the operative's credibility;
 - (b) it would be impractical to test properly the credibility of the operative without allowing the risk of disclosure of, or disclosing, the operative's identity or where the operative lives;
 - (c) it is in the interests of justice for the operative's credibility to be able to be tested.
- (6) If there is a jury in the proceeding, the application must be heard in the absence of the jury.
- (7) Unless the court considers that the interests of justice require otherwise, the court must be closed when:
- (a) the application is made; and
 - (b) if leave is given or an order is made—the question is asked (and answered), the evidence is given, the information is provided or the statement is made.

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- (8) The court must make an order suppressing the publication of anything said when:
- (a) the application is made; and
 - (b) if leave is given or an order is made—the question is asked (and answered), the evidence is given, the information is provided or the statement is made.
- (9) To avoid doubt, subsection (8) does not prevent the taking of a transcript of court proceedings, but the court may make an order for how the transcript is to be dealt with, including an order suppressing its publication.
- (10) The court may make any other order it considers appropriate to protect the operative’s identity or to prevent the disclosure of where the operative lives.
- (11) A person commits an offence if:
- (a) an order has been made under subsection (8), (9) or (10); and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes the order.
- Penalty: Imprisonment for 2 years.
- (12) Subsection (11) does not limit the court’s powers, including, but not limited to, the court’s power to punish for contempt.

15MN Application for leave—joinder as respondent

- (1) This section applies if:
- (a) a witness identity protection certificate for an operative in relation to a proceeding is filed in a court; and
 - (b) a person applies:
 - (i) for leave under section 15MI or 15MM; or
 - (ii) for an order under section 15MK or 15MM.
- (2) The court in which the application is pending may allow a person to join the application as a respondent if:
- (a) the person is:

- (i) the operative in relation to whom the witness identity protection certificate is given; or
 - (ii) the chief officer of the agency who gave the witness identity protection certificate; and
 - (b) the person applies to be joined to the application as a respondent; and
 - (c) the person has sufficient interest in the subject matter of the application.
- (3) If a court allows a person to join the application as a respondent under subsection (2), the court must allow the person, or the person's legal representative, to appear and be heard.

15MO Directions to jury

- (1) This section applies if:
- (a) a witness identity protection certificate for an operative in relation to a proceeding is filed in a court; and
 - (b) there is a jury in the proceeding; and
 - (c) the operative gives evidence.
- (2) The court must (unless it considers it inappropriate) direct the jury not to give the operative's evidence any more or less weight, or draw any adverse inferences against the defendant or another party to the proceeding, because:
- (a) there is a witness identity protection certificate for the operative; or
 - (b) the court has made an order under section 15MK or subsection 15MM(8), (9) or (10).

15MP Appeals and adjournments

- (1) This section applies if, in proceedings before a court (the *original court*):
- (a) the original court gives, or refuses, leave under section 15MI or 15MM in relation to a witness identity protection certificate for an operative; or

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- (b) the original court makes, or refuses to make, an order under section 15MK or 15MM in relation to a witness identity protection certificate for an operative.
- (2) A court (the *appeal court*) that has jurisdiction to hear and determine appeals from a judgment, order or direction in the proceedings has jurisdiction to hear and determine an appeal against the decision to give or refuse leave, or to make or refuse to make the order.
- (3) The following persons may appeal against the decision to give or refuse leave, or to make or refuse to make the order:
 - (a) a party to the proceedings;
 - (b) if the appeal court is satisfied that the operative to whom the certificate relates or the chief officer who gave the certificate has a sufficient interest in the decision—the operative or the chief officer.
- (4) If a party to the proceedings appeals against the decision to give or refuse leave, or to make or refuse to make the order, the appeal court may allow the operative to whom the certificate relates, or the chief officer who gave the certificate, to join the appeal as a respondent, if the appeal court is satisfied that the operative or chief officer has a sufficient interest in the decision.
- (5) A party to the proceedings, the operative to whom the certificate relates or the chief officer who gave the certificate may apply to the original court for an adjournment:
 - (a) to appeal against the decision of the original court to give or refuse leave, or to make or refuse to make the order; or
 - (b) to decide whether to appeal or seek leave to appeal against the decision.
- (6) If an application is made under subsection (5), the original court must grant the adjournment.

15MQ Witness identity protection certificate—cancellation

- (1) This section applies if the chief officer of a law enforcement agency gives a witness identity protection certificate for an operative in relation to a proceeding.
- (2) The chief officer must cancel the witness identity protection certificate if the chief officer considers that it is no longer necessary or appropriate to prevent the disclosure of the operative's identity or where the operative lives.
- (3) If the chief officer cancels the certificate after it has been filed in a court, the chief officer must immediately give notice to the court and each party to the proceeding, in writing, that the certificate has been cancelled.

Note: The chief officer may delegate functions under this section—see section 15MX.

15MR Permission to give information disclosing operative's identity etc.

- (1) This section applies if the chief officer of a law enforcement agency gives a witness identity protection certificate for an operative in relation to a proceeding.
- (2) The chief officer may, in writing, permit a person to give information (otherwise than in the proceeding) that discloses, or may lead to the disclosure of, the operative's identity or where the operative lives if the chief officer considers it necessary or appropriate for the information to be given.
- (3) The permission:
 - (a) must name the person who may give the information; and
 - (b) must name the person to whom the information may be given; and
 - (c) must state the information that may be given; and
 - (d) may state how the information may be given.

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Note: The chief officer may delegate functions under this section—see section 15MX.

15MS Disclosure offences

- (1) A person commits an offence if:
- (a) a witness identity protection certificate for an operative in relation to a proceeding has been given; and
 - (b) the certificate has not been cancelled under section 15MQ; and
 - (c) the person engages in conduct; and
 - (d) the conduct results in the disclosure of the operative's identity or where the operative lives; and
 - (e) none of the following applies:
 - (i) the conduct is required by section 15ML;
 - (ii) the conduct is authorised by leave or by an order under section 15MM;
 - (iii) the conduct is permitted under section 15MR.

Penalty: Imprisonment for 2 years.

- (2) A person commits an offence if:
- (a) a witness identity protection certificate for an operative in relation to a proceeding has been given; and
 - (b) the certificate has not been cancelled under section 15MQ; and
 - (c) the person engages in conduct; and
 - (d) the conduct results in the disclosure of the operative's identity or where the operative lives; and
 - (e) none of the following applies:
 - (i) the conduct is required by section 15ML;
 - (ii) the conduct is authorised by leave or by an order under section 15MM;
 - (iii) the conduct is permitted under section 15MR; and
 - (f) the person is reckless as to whether his or her conduct will endanger the health or safety of another person.

Penalty: Imprisonment for 10 years.

- (3) A person commits an offence if:
- (a) a witness identity protection certificate for an operative in relation to a proceeding has been given; and
 - (b) the certificate has not been cancelled under section 15MQ; and
 - (c) the person engages in conduct; and
 - (d) the conduct results in the disclosure of the operative's identity or where the operative lives; and
 - (e) none of the following applies:
 - (i) the conduct is required by section 15ML;
 - (ii) the conduct is authorised by leave or by an order under section 15MM;
 - (iii) the conduct is permitted under section 15MR; and
 - (f) the person is reckless as to whether his or her conduct will:
 - (i) prejudice any current or future investigation; or
 - (ii) prejudice any current or future activity relating to security.

Penalty: Imprisonment for 10 years.

15MT Evidentiary certificates

- (1) A chief officer of a law enforcement agency may sign a certificate stating any of the following:
- (a) that, for the purposes of paragraph 15MS(1)(b), (2)(b) or (3)(b), a witness identity protection certificate for an operative in relation to a proceeding has not been cancelled under section 15MQ;
 - (b) whether, for the purposes of subparagraph 15MS(1)(e)(i), (2)(e)(i) or (3)(e)(i), the conduct that is the subject of the offence was required by section 15ML;
 - (c) whether, for the purposes of subparagraph 15MS(1)(e)(ii), (2)(e)(ii) or (3)(e)(ii), the conduct that is the subject of the

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offence was authorised by leave or by an order under section 15MM;

- (d) whether, for the purposes of subparagraph 15MS(1)(e)(iii), (2)(e)(iii) or (3)(e)(iii), the conduct that is the subject of the offence was permitted under section 15MR.
- (2) In any proceedings, a certificate given under this section is prima facie evidence of the matters certified in it.

15MU Reports about witness identity protection certificates

- (1) As soon as practicable after the end of each financial year, the chief officer of a law enforcement agency must submit to the Minister a report about witness identity protection certificates given by the chief officer during that year.
- (2) The report must include the following:
 - (a) the number of witness identity protection certificates given;
 - (b) on what basis the chief officer was satisfied about the matters mentioned in paragraph 15ME(1)(b) for each certificate;
 - (c) if disclosure of an operative's identity to a presiding officer was required by section 15ML—details of the proceeding in relation to which disclosure was required and details of the things that the presiding officer required the operative to do under that section;
 - (d) if leave was given or an order made under section 15MM in a proceeding in which a witness identity protection certificate for an operative was filed—details of the proceeding that relate to the leave or order;
 - (e) if leave was given for joinder of a person as a respondent to proceedings under section 15MN—details of the person who was joined and who appeared on their behalf;
 - (f) if leave was given for an adjournment under section 15MP—details of whether an appeal was made against the decision under that section;

- (g) if a witness identity protection certificate was cancelled under section 15MQ—the reasons why the certificate was cancelled;
 - (h) if a permission was given under section 15MR—the reasons why the permission was given;
 - (i) any other information relating to witness identity protection certificates and the administration of this Part that the Minister considers appropriate.
- (3) A report must not include information that discloses, or may lead to the disclosure of, an operative's identity, or where the operative lives, unless the witness identity protection certificate for the operative has been cancelled.
- (4) 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 day on which the Minister receives the report.

Division 3—Mutual Recognition under Corresponding Laws

15MW Recognition of witness identity protection certificates under corresponding laws

The following provisions apply, with any necessary changes, to a corresponding witness identity protection certificate as if it were a witness identity protection certificate given under section 15ME:

- (a) section 15MH (filing and notification);
- (b) section 15MI (leave for non-compliance);
- (c) section 15MJ (effect of witness identity protection certificate);
- (d) section 15MK (orders to protect operative's identity etc.);
- (e) section 15ML (disclosure of operative's identity to presiding officer);
- (f) section 15MM (disclosure of operative's identity etc. despite certificate);
- (g) section 15MN (application for leave—joinder as respondent);
- (h) section 15MO (directions to jury);
- (i) section 15MP (adjournment for appeal decision);
- (j) section 15MS (disclosure offences);
- (k) section 15MT (evidentiary certificates).

Division 4—General

15MX Delegation

- (1) Except as provided by this section (and despite any other Act or law to the contrary), the functions of a chief officer under this Part may not be delegated to any other person.
- (2) A chief officer may delegate any of the chief officer's functions under this Part (except this power of delegation) to a senior officer of the law enforcement agency.
- (3) In this section:

senior officer means:

- (a) in relation to the Australian Federal Police—a Deputy Commissioner, an Assistant Commissioner, or a person occupying an equivalent or higher rank in the Australian Federal Police; and
- (b) in relation to the Immigration and Border Protection Department—a person who holds or performs the duties of an SES Band 3 position, or an equivalent or higher position, in that Department; and
- (c) in relation to the ACC, either of the following:
 - (i) the Executive Director Operational Strategies, the Executive Director Intelligence Strategies, or a person occupying an equivalent or higher position in the ACC;
 - (ii) a person occupying a position prescribed by the regulations; and
- (d) in relation to the Australian Taxation Office—an Assistant Commissioner, or a person occupying an equivalent or higher position in the Australian Taxation Office; and
- (e) in relation to a Commonwealth agency specified in the regulations for the purposes of the definition of *law enforcement agency*—an officer of the agency specified in the regulations to be a senior officer of the agency.

Part IAD—Protecting vulnerable persons

Division 1—Introduction

15Y Proceedings to which this Part applies

Proceedings involving children

- (1) This Part contains special rules for children involved in proceedings to which this subsection applies. This subsection applies to proceedings for any of the following offences:
 - (b) an offence against section 71.8 of the *Criminal Code* (sexual assault of United Nations and associated personnel);
 - (ba) an offence against Division 268 of the *Criminal Code* that is:
 - (ia) genocide (within the meaning of that Code); or
 - (i) a crime against humanity (within the meaning of that Code); or
 - (ii) a war crime (within the meaning of that Code); or
 - (iii) a crime against the administration of the justice of the International Criminal Court (within the meaning of that Code);
 - (c) an offence against Division 270 of the *Criminal Code* (slavery and slavery-like offences);
 - (caa) an offence against Division 271 of the *Criminal Code* (trafficking in persons);
 - (cab) an offence against Division 272 of the *Criminal Code* (child sex offences outside Australia);
 - (cac) an offence against Division 273 of the *Criminal Code* (offences involving child abuse material outside Australia);
 - (cad) an offence against Division 273B of the *Criminal Code* (protection of children);
 - (cae) an offence against Division 274 of the *Criminal Code* (torture);

- (caf) an offence against Division 309 of the *Criminal Code* (drug offences involving children);
- (ca) an offence against Subdivision B or C of Division 471 of the *Criminal Code* (offences relating to use of postal or similar service involving sexual activity with person under 16);
- (cba) an offence against Subdivision D or F of Division 474 of the *Criminal Code* (offences relating to use of carriage service involving sexual activity with, or harm to, person under 16);
- (cbb) an offence against Part IIIA of this Act as in force at any time before the commencement of Schedule 1 to the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010*;
- (cbc) an offence against any of the following arising under section 6 of the *Crimes at Sea Act 2000*:
 - (i) Part 3 (Sexual offences) of the *Crimes Act 1900* (ACT);
 - (ii) Part 3A (Intimate image abuse) of the *Crimes Act 1900* (ACT);
 - (iii) Part 4 (Female genital mutilation) of the *Crimes Act 1900* (ACT);
 - (iv) Part 5 (Sexual servitude) of the *Crimes Act 1900* (ACT);
- (cbd) an offence against section 14 or 15 of the *Crimes (Aviation) Act 1991* arising under any of the following:
 - (i) Part 3 (Sexual offences) of the *Crimes Act 1900* (ACT);
 - (ii) Part 3A (Intimate image abuse) of the *Crimes Act 1900* (ACT);
 - (iii) Part 4 (Female genital mutilation) of the *Crimes Act 1900* (ACT);
 - (iv) Part 5 (Sexual servitude) of the *Crimes Act 1900* (ACT);
- (cb) an aggravated offence against Subdivision C of Division 12 of Part 2 of the *Migration Act 1958*;
- (d) a sexual offence specified in the regulations;
- (e) an offence that includes the commission of, or the intention to commit, an offence of a kind referred to in one of the preceding paragraphs of this subsection;

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- (f) an offence of:
 - (i) attempting to commit; or
 - (ii) conspiring to commit; or
 - (iii) inciting the commission of;
an offence of a kind referred to in one of the preceding paragraphs of this subsection.

Note: Schedule 1 to the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* commenced on 15 April 2010.

Proceedings involving adult complainants

- (2) This Part contains special rules for adult complainants involved in proceedings to which this subsection applies. This subsection applies to proceedings for any of the following offences:
 - (aa) an offence against section 71.8 of the *Criminal Code* (sexual assault of United Nations and associated personnel);
 - (ab) an offence against Division 268 of the *Criminal Code* that is:
 - (ia) genocide (within the meaning of that Code); or
 - (i) a crime against humanity (within the meaning of that Code); or
 - (ii) a war crime (within the meaning of that Code); or
 - (iii) a crime against the administration of the justice of the International Criminal Court (within the meaning of that Code);
 - (a) an offence against Division 270 of the *Criminal Code* (slavery and slavery-like offences);
 - (b) an offence against Division 271 of the *Criminal Code* (trafficking in persons);
 - (bd) an offence against Division 274 of the *Criminal Code* (torture);
 - (bi) an offence against any of the following arising under section 6 of the *Crimes at Sea Act 2000*:
 - (i) Part 3 (Sexual offences) of the *Crimes Act 1900* (ACT);
 - (ii) Part 3A (Intimate image abuse) of the *Crimes Act 1900* (ACT);

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- (iii) Part 4 (Female genital mutilation) of the *Crimes Act 1900* (ACT);
- (iv) Part 5 (Sexual servitude) of the *Crimes Act 1900* (ACT);
- (bj) an offence against section 14 or 15 of the *Crimes (Aviation) Act 1991* arising under any of the following:
 - (i) Part 3 (Sexual offences) of the *Crimes Act 1900* (ACT);
 - (ii) Part 3A (Intimate image abuse) of the *Crimes Act 1900* (ACT);
 - (iii) Part 4 (Female genital mutilation) of the *Crimes Act 1900* (ACT);
 - (iv) Part 5 (Sexual servitude) of the *Crimes Act 1900* (ACT);
- (bk) an aggravated offence against Subdivision C of Division 12 of Part 2 of the *Migration Act 1958*;
- (bl) a sexual offence specified in the regulations;
- (c) an offence that includes the commission of, or the intention to commit, an offence of a kind referred to in one of the preceding paragraphs of this subsection;
- (d) an offence of:
 - (i) attempting to commit; or
 - (ii) conspiring to commit; or
 - (iii) inciting the commission of;an offence of a kind referred to in one of the preceding paragraphs of this subsection.

Note: Schedule 1 to the *Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010* commenced on 15 April 2010.

Proceedings involving special witnesses

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

Related proceedings included

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

Example: Committal proceedings.

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

15YA Definitions

In this Part, unless the contrary intention appears:

adult means a person who is 18 or over.

child means a person who is under 18.

child complainant has the meaning given by section 15YAC.

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

child witness has the meaning given by section 15YAD.

closed-circuit television includes any similar technology specified in the regulations.

credibility has the meaning given by the *Evidence Act 1995*.

cross-examination has the meaning given by the *Evidence Act 1995*.

evidence in chief means evidence given in examination in chief within the meaning of the *Evidence Act 1995*.

evidence recording hearing means a hearing ordered under section 15YDB(1).

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

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

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

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

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

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

15YAA *Vulnerable adult complainants*

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

15YAB *Special witnesses*

Meaning of special witness

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

Part IAD Protecting vulnerable persons

Division 1 Introduction

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

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

Orders that certain protections apply to a special witness

- (3) In a special witness proceeding, the court may order that one or more of the following provisions apply to a special witness:
- (aa) Division 2A (evidence recording hearings);
 - (a) section 15YG (about unrepresented defendants);
 - (b) section 15YH (about represented defendants);
 - (ba) section 15YHA (about cross-examinations at committal proceedings);
 - (c) section 15YI (about closed-circuit television);
 - (d) section 15YL (about alternative arrangements);
 - (e) section 15YM (about use of video or audio recordings of interviews);
 - (ea) section 15YNB (about original evidence admissible in new proceedings);
 - (f) section 15YO (about accompanying adults);
 - (g) section 15YP (about excluding people from the courtroom);
 - (h) subparagraph 15YR(1)(c)(iii) (about publications that identify vulnerable persons).
- (4) An order under subsection (3) may be made on the court's own initiative or on application by or on behalf of the special witness.

15YAC Child complainants

- (1) A ***child complainant***, in relation to a child proceeding:
- (a) is a child who is, or is alleged to be, a victim of an offence, of a kind referred to in subsection 15Y(1), to which the proceeding relates (whether or not the child is involved in the

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- proceeding or was involved in the initiation of the proceeding); and
- (b) includes a person who was such a child at the time the offence concerned was alleged to have been committed.
- (2) However, a person who is 18 or over is not a ***child complainant*** if the person informs the court that the person does not wish to be treated as such a complainant.

15YAD Child witnesses

- (1) A ***child witness***, in relation to a child proceeding:
- (a) is a child (including a child complainant) who is a witness in the proceeding; and
- (b) includes a witness in the proceeding who was a child at the time the offence concerned was alleged to have been committed.
- (2) However, a person who is 18 or over is not a ***child witness*** if the person informs the court that the person does not wish to be treated as such a witness.

Division 2—Admissibility of evidence

15YB Evidence of sexual reputation—child proceedings

Evidence of a child witness' or child complainant's reputation with respect to sexual activities is inadmissible in a child proceeding.

15YC Evidence of sexual experience—child proceedings

- (1) Evidence of a child witness' or child complainant's experience with respect to sexual activities is inadmissible in a child proceeding, unless the court gives leave.
- (2) The court must not give leave unless satisfied that:
 - (a) the evidence is substantially relevant to facts in issue in the proceeding; and
 - (b) the evidence has substantial probative value; and
 - (c) either:
 - (i) the evidence is of sexual activity that is alleged to form part of a connected set of circumstances in which the alleged offence was committed; or
 - (ii) if the evidence is of sexual activities with a defendant in the proceeding—the evidence relates to sexual activity that occurred or was recent at the time of the commission of the alleged offence.
- (3) For the purposes of paragraph (2)(a), the evidence is not to be treated as being substantially relevant to facts in issue merely because of inferences it may raise as to the child witness' or child complainant's general disposition.
- (4) Without limiting the matters to which the court may have regard in deciding whether the evidence has substantial probative value for the purposes of paragraph (2)(b), it is to have regard to:
 - (a) whether the evidence tends to prove that the witness knowingly or recklessly made a false representation when the witness was under an obligation to tell the truth; and

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- (b) the period that has elapsed since the acts or events to which the evidence relates were done or occurred; and
 - (c) whether the probative value of the evidence outweighs any distress, humiliation or embarrassment to the child witness or child complainant.
- (5) This section does not apply if the child is a defendant in the proceeding.

15YCA Evidence of sexual reputation—vulnerable adult proceedings

Evidence of a vulnerable adult complainant's reputation with respect to sexual activities is inadmissible in a vulnerable adult proceeding.

15YCB Evidence of sexual experience—vulnerable adult proceedings

- (1) Evidence of a vulnerable adult complainant's experience with respect to sexual activities is inadmissible in a vulnerable adult proceeding, unless the court gives leave.
- (2) The court must not give leave unless the court is satisfied that:
 - (a) the evidence is substantially relevant to facts in issue in the proceeding; and
 - (b) the evidence has substantial probative value; and
 - (c) either:
 - (i) the evidence is of sexual activity that is alleged to form part of a connected set of circumstances in which the alleged offence was committed; or
 - (ii) if the evidence is of sexual activities with a defendant in the proceeding—the evidence relates to sexual activity that occurred or was recent at the time of the commission of the alleged offence.
- (3) For the purposes of paragraph (2)(a), the evidence is not to be treated as being substantially relevant to facts in issue merely

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because of inferences it may raise as to the vulnerable adult complainant's general disposition.

- (4) Without limiting the matters to which the court may have regard in deciding whether the evidence has substantial probative value for the purposes of paragraph (2)(b), it is to have regard to:
- (a) whether the evidence tends to prove that the vulnerable adult complainant knowingly or recklessly made a false representation when the complainant was under an obligation to tell the truth; and
 - (b) the period that has elapsed since the acts or events to which the evidence relates were done or occurred; and
 - (c) whether the probative value of the evidence outweighs any distress, humiliation or embarrassment to the vulnerable adult complainant.

15YD Leave under this Division

- (1) An application for leave under this Division:
- (a) must be in writing; and
 - (b) if there is a jury in the proceeding in question—must be made in the jury's absence; and
 - (c) must not be determined before the court has considered such submissions and other evidence as it thinks necessary for determining the application.
- (2) If the court gives leave under this Division, the court must:
- (a) state its reasons in writing; and
 - (b) cause those reasons to be entered in the court's records.

Division 2A—Evidence recording hearings

15YDA Application

This Division applies to a person (the *vulnerable person*) as follows:

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

15YDB Evidence recording hearings

- (1) The court may, if it is satisfied that it is in the interests of justice to do so, order a hearing (the *evidence recording hearing*) for the vulnerable person to give evidence.
- (2) For the purposes of subsection (1), the court must take into account:
 - (a) whether each party to the proceeding has sufficient time to prepare for the evidence recording hearing and the proceeding; and
 - (b) the availability of:
 - (i) the prosecutor in the proceeding; and
 - (ii) if the defendant has a legal representative—the defendant’s legal representative; and
 - (iii) if the defendant does not have a legal representative—the defendant; and
 - (c) the circumstances and wishes of the vulnerable person; and
 - (d) the availability of court and other facilities to enable the video or audio recording of evidence given at the evidence recording hearing.
- (3) The order may relate to some or all of the following:

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- (a) evidence in chief;
- (b) cross-examination;
- (c) re-examination.

Note: For rules about cross-examination, see Division 3.

- (4) The order may be made:
 - (a) on the court's own initiative or on application by or on behalf of a party to the proceeding; and
 - (b) at any time during the proceeding; and
 - (c) for the evidence recording hearing to be held at any time during the proceeding (including after the trial in the proceeding has begun).
- (5) To avoid doubt, evidence in chief may also include a recording of an earlier interview (see section 15YM).

Adjourning proceedings to enable recording

- (6) The court may adjourn the proceeding, or a part of the proceeding, to a court or other place that is equipped with facilities for evidence to be given in accordance with this section if:
 - (a) the court is not equipped with the necessary facilities; or
 - (b) the court otherwise considers it appropriate to do so.

15YDC Arrangements for persons at the hearing

- (1) The vulnerable person must not be able to see the defendant during the evidence recording hearing.
- (2) However, the defendant must be able to:
 - (a) if the vulnerable person gives evidence from another room—by closed-circuit television, see and hear the vulnerable person giving evidence; or
 - (b) if the vulnerable person and the defendant are in the same room—hear the vulnerable person giving evidence.
- (3) If there is a jury in the proceeding, the evidence recording hearing must be held in the jury's absence.

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- (4) Otherwise, the court may determine who is to be present at the evidence recording hearing.

15YDD Evidence must be recorded

- (1) A recording must be made of the evidence given by the vulnerable person at the evidence recording hearing.
- (1A) The recording must be a video recording unless the court is satisfied that extraordinary circumstances require the use of audio recording only.
- (2) The recording of the evidence must:
- (a) be played at the hearing of the proceeding; and
 - (b) be admitted in evidence as the vulnerable person's evidence at the hearing as if the vulnerable person gave the evidence at the hearing in person.
- (3) Subsection (2) has effect subject to section 15YDE (admissibility of evidence).

15YDE Admissibility of evidence

The court may refuse to admit the whole or part of the contents of the recording.

15YDF Access to recordings and transcripts

Defendants' access to recordings

- (1) Neither a defendant in the proceeding nor the defendant's legal representative is entitled to be given a video or audio recording (the **original recording**) made in an evidence recording hearing, or a copy of the original recording.
- (2) However, they must be given reasonable access to the original recording in order to view or listen to it.

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

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- (3) Neither the defendant nor the defendant's legal representative may:
- (a) make a recording (or other copy) of the original recording; or
 - (b) do anything (whether directly or indirectly) that would damage or alter the original recording.

Transcripts

- (4) The court must give each party to the proceeding and the jury (if any) access to, or a copy of, a transcript of the original recording.
- (5) To avoid doubt, subsections (1), (2) and (4) do not apply in relation to any part of a recording the court has refused to admit (see section 15YDE (admissibility of evidence)).

Offence

- (6) A person commits an offence if:
- (a) the person:
 - (i) makes a recording (or other copy) of the original recording, or a part of the original recording; or
 - (ii) does anything (whether directly or indirectly) to damage or alter the original recording, or a part of the original recording; or
 - (iii) possesses or supplies the original recording, or a part of the original recording; or
 - (iv) possesses or supplies a copy of the original recording, or a part of the original recording; and
 - (b) the person does so without lawful authority or excuse.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

- (7) The fault element for paragraph (6)(a) is intention.

15YDG Vulnerable person need not give further evidence unless court orders

- (1) If evidence given by the vulnerable person in an evidence recording hearing is admitted in the proceeding, the vulnerable

person need not give any further evidence in the proceeding unless the court orders that this is necessary:

- (a) to clarify the vulnerable person's evidence given in the evidence recording hearing; or
- (b) to give proper consideration of information or material that has become available since the evidence recording hearing; or
- (c) in the interests of justice.

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

- (2) If the court makes an order under subsection (1), the court must:
 - (a) order that the evidence is to be given in an evidence recording hearing; and
 - (b) ensure that the vulnerable person is questioned in the hearing only about the matters specified in the order.
- (3) An order under subsection (1) may be made on the court's own initiative or on application by or on behalf of a party to the proceeding, including the vulnerable person.

15YDH Division applies despite other rules of evidence

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

Division 3—Cross-examination

15YE Disallowing inappropriate or aggressive cross-examination

- (1) The court must disallow a question put to a person in cross-examination in a proceeding if:
 - (a) the question is inappropriate or unnecessarily aggressive; and
 - (b) the person is a person to whom subsection (3) applies.
- (2) In considering whether a question is inappropriate or unnecessarily aggressive, the court is to have regard to the person's personal characteristics, including his or her age, culture, mental capacity and gender.
- (3) This subsection applies to the following persons:
 - (a) for a child proceeding—a child witness;
 - (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
 - (c) for a special witness proceeding—a special witness.

15YF Unrepresented defendants—cross-examination of child complainants

- (1) A defendant in a child proceeding who is not represented by counsel is not to cross-examine a child complainant.

Note: A person is not to cross-examine certain persons at committal proceedings or proceedings of a similar kind—see section 15YHA.

- (2) A person appointed by the court is to ask the child any questions that the defendant requests the person to ask the child.

15YFA Unrepresented defendants—cross-examination of vulnerable adult complainants

- (1) A defendant in a vulnerable adult proceeding who is not represented by counsel is not to cross-examine a vulnerable adult complainant.

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Note: A person is not to cross-examine certain persons at committal proceedings or proceedings of a similar kind—see section 15YHA.

- (2) A person appointed by the court is to ask the vulnerable adult complainant any questions that the defendant requests the person to ask the complainant.

15YG Unrepresented defendants—cross-examination of vulnerable persons

- (1) A defendant in a proceeding who is not represented by counsel is not to cross-examine a person to whom subsection (1A) applies (the *vulnerable person*), unless the court gives leave.

Note: A person is not to cross-examine certain persons at committal proceedings or proceedings of a similar kind—see section 15YHA.

- (1A) This subsection applies to the following persons:
- (a) for a child proceeding—a child witness (other than a child complainant);
 - (c) for a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section.
- (2) The court must not give leave under subsection (1) unless satisfied that the vulnerable person’s ability to testify under cross-examination will not be adversely affected if the defendant conducts the cross-examination.
- (3) In considering whether that ability will be adversely affected, the court is to have regard to any trauma that could be caused if the defendant conducts the cross-examination.
- (4) An application for leave under this section:
- (aa) if the vulnerable person is a vulnerable adult complainant—may be made by or on behalf of the defendant or the vulnerable person; and
 - (a) must be in writing; and

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- (b) must not be determined before the court has considered such submissions and other evidence as it thinks necessary for determining the application.
- (5) If the court refuses leave, a person appointed by the court is to ask the vulnerable person any questions that the defendant requests the person to ask the vulnerable person.

15YH Represented defendants—cross-examination of vulnerable persons

- (1) A defendant in a proceeding who is represented by counsel is not to cross-examine, except through counsel, a person to whom subsection (2) applies.

Note: A person is not to cross-examine certain persons at committal proceedings or proceedings of a similar kind—see section 15YHA.

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

15YHA Committal proceedings—cross-examination of vulnerable persons

- (1) A person is not to cross-examine, at committal proceedings or proceedings of a similar kind, a person to whom subsection (2) applies.
- (2) This subsection applies to the following persons:
 - (a) for a child proceeding—a child witness;
 - (b) for a vulnerable adult proceeding—a vulnerable adult complainant;

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

Division 4—Special facilities for vulnerable persons to give evidence

15YI Closed-circuit television

- (1) Subject to Division 2A, evidence in a proceeding from a person to whom subsection (1A) applies (the *vulnerable person*) must be given by means of closed-circuit television unless:
 - (a) the vulnerable person is at least 16 and chooses not to give evidence by that means; or
 - (b) the court orders that the vulnerable person is not to give evidence by that means; or
 - (c) the court is not equipped with facilities for evidence to be given by means of closed-circuit television.

Note: Section 15YL provides for alternative arrangements if a vulnerable person does not give evidence by means of closed-circuit television.

- (1A) This subsection applies to the following persons:
 - (a) for a child proceeding—a child witness;
 - (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
 - (c) for a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section.
- (2) The court must not make an order under paragraph (1)(b) unless satisfied that it is not in the interests of justice for the vulnerable person's evidence to be given by means of closed-circuit television.
- (3) This section does not affect the operation of any law in relation to the competence of a person to give evidence.

15YJ Giving evidence by closed-circuit television

- (1) If the vulnerable person's evidence is given by means of closed-circuit television from a location outside a courtroom:
 - (a) that location is taken to be part of the courtroom in which the proceeding is being held; and
 - (b) the court may order that a court officer be present at that location; and
 - (c) the court may order that another person be present with the vulnerable person:
 - (i) to act as an interpreter; or
 - (ii) to assist the vulnerable person with any difficulty in giving evidence associated with a disability; or
 - (iii) to provide the vulnerable person with other support.
- (2) An order under paragraph (1)(b) or (c) does not limit the operation of section 15YO (about accompanying adults).
- (3) The court may adjourn the proceeding, or a part of the proceeding, to a court or other place that is equipped with facilities for evidence to be given by means of closed-circuit television if:
 - (a) the court is not equipped with facilities for evidence to be given by means of closed-circuit television; or
 - (b) the court otherwise considers it appropriate to do so.

15YK Viewing evidence given by closed-circuit television

- (1) If the vulnerable person's evidence is given by means of closed-circuit television, the facilities used are to be operated in such a way that the people who have an interest in the proceeding can see the vulnerable person, and any person present with the vulnerable person, on one or more television monitors.
- (2) The following must be allowed to see the vulnerable person, and any person present with the vulnerable person, on one or more television monitors while the evidence is given:
 - (a) a defendant and the defendant's legal representative (if any);
 - (b) if there is a jury in the proceeding—the members of the jury.

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15YL Alternative arrangements for giving evidence

- (1) If evidence in a proceeding from a person to whom subsection (3) applies is not to be given by means of closed-circuit television (or under Division 2A), the court:
 - (a) must make arrangements in order to restrict contact (including visual contact) that the person may have with any defendant while giving evidence; and
 - (b) may make arrangements in order to restrict contact (including visual contact) that the person may have with members of the public while giving evidence.
- (2) The arrangements may include either of the following:
 - (a) using screens;
 - (b) planning seating arrangements for people who have an interest in the proceeding, including:
 - (i) the level at which they are seated; and
 - (ii) the people in the person's line of vision.

Persons to whom these alternative arrangements apply

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

15YLA Recording of evidence given in person

- (1) The court must order that evidence given in person by a person to whom subsection (2) applies is to be recorded if:
 - (a) the court is satisfied that the evidence could be used in another proceeding; and

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- (b) the court is equipped with the necessary facilities; and
 - (c) the person agrees to the evidence being recorded.
- (2) This subsection applies to the following persons:
- (a) for a child proceeding—a child witness;
 - (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
 - (c) for a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section.
- (3) The recording may be a video or audio recording.
- (4) Subsection (1) applies whether or not the evidence is given by closed-circuit television.

Division 5—Use of video or audio recordings of interviews

15YM Use of video or audio recordings of interviews

(1) A video or audio recording of an interview of a person to whom subsection (1A) applies in a proceeding may be admitted as evidence in chief if a constable, or a person of a kind specified in the regulations, conducted the interview.

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

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

(2) However, a recording that is an audio recording only must not be admitted under subsection (1) unless the court is satisfied that extraordinary circumstances require the use of audio recording only.

(4) Subject to Divisions 2A and 3, if a video or audio recording of an interview of a person is admitted as evidence in chief under subsection (1), the person must be available for cross-examination and re-examination.

Note 1: Division 4 provides for this evidence to be given using closed-circuit television or other arrangements.

Note 2: Division 3 imposes limitations on cross-examinations. For example, a person is not to cross-examine certain persons at committal proceedings or proceedings of a similar kind—see section 15YHA.

Offence

(5) A person commits an offence if:
(a) the person:

- (i) makes a recording (or other copy) of a recording, or a part of a recording, to which subsection (1) applies; or
 - (ii) does anything (whether directly or indirectly) to damage or alter a recording, or a part of a recording, to which subsection (1) applies; or
 - (iii) possesses or supplies a recording, or a part of a recording, to which subsection (1) applies; or
 - (iv) possesses or supplies a copy of a recording, or a part of a recording, to which subsection (1) applies; and
- (b) the person does so without lawful authority or excuse.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

- (6) The fault element for paragraph (5)(a) is intention.

15YN Admissibility of evidence given using video or audio recordings of interviews

- (1) The admissibility of the evidence given by video or audio recording is not affected by the fact that it is evidence of previous representations that the person made in the interview that was being recorded.
- (2) Evidence given by video or audio recording under section 15YM is not admissible if the court is satisfied that:
 - (a) any defendant in the proceeding (other than the person if the person is a defendant); or
 - (b) the defendant's lawyer (if any);was not given a reasonable opportunity to view or listen to the recording.
- (3) The court may refuse to admit the whole or part of the contents of a recording adduced as evidence under section 15YM.

Division 5A—Special rules for later trials

15YNA When this Division applies

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

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

15YNB Original evidence admissible in new proceeding

- (1) For the new proceeding, the prosecutor may prepare a record of all the evidence given by any person to whom subsection (4) applies (the *vulnerable person*) in the original proceeding if:
 - (a) the record is in a form, and is authenticated in a way, prescribed under subsection (5); and
 - (b) the prosecutor gives written notice to the court, and to the defendants in the new proceeding, of the prosecutor's intention to tender that record as evidence in the new proceeding; and
 - (c) that notice is so given:
 - (i) at least 21 days before the court commences hearing the new proceeding; or
 - (ii) within such other period as the court allows.
- Note: The record would include all the evidence given in the original proceeding by the vulnerable person (whether evidence on examination in chief, on cross-examination or on re-examination), which could include evidence recorded at an evidence recording hearing or in an interview.

- (2) However, the prosecutor may alter or edit that record with the agreement of each defendant in the new proceeding.
 - (3) Both of the following are admissible as evidence in the new proceeding:
-

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- (a) a record of evidence prepared under subsection (1) and (2);
 - (b) the exhibits tendered in the original proceeding in connection with that evidence.
- (4) This subsection applies to the following persons:
- (a) if the original proceeding was a child proceeding—a child witness;
 - (b) if the original proceeding was a vulnerable adult proceeding—a vulnerable adult complainant;
 - (c) if the original proceeding was a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section.
- (5) The Minister may, in writing, prescribe the form, and ways for authenticating, records prepared under subsection (1).

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

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

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

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

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- (4) Despite subsection (1), the vulnerable person may seek leave of the court to give further evidence in the new proceeding. Subsections (1) and (2) cease to apply to the person if leave is given.

15YND Defendants' access to video or audio recordings

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

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

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

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

15YNF Division applies despite other rules of evidence

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

Division 6—Miscellaneous

15YO Adults accompanying vulnerable persons

- (1) A person to whom subsection (1A) applies may choose an adult to accompany the person while the person is giving evidence in a proceeding or at an evidence recording hearing (including while giving evidence by closed-circuit television).
- (1A) This subsection applies to the following persons:
 - (a) for a child proceeding—a child witness;
 - (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
 - (c) for a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section.
- (2) The adult chosen under subsection (1) may accompany the person as mentioned in subsection (1), unless the court determines that it is not appropriate for the adult to accompany the person.
- (3) The court may permit more than one adult to accompany the person if the court considers it in the interests of justice to do so.
- (4) An adult accompanying the person under this section must not:
 - (a) prompt the person or otherwise influence the person's answers; or
 - (b) disrupt the questioning of the person.
- (5) Any words spoken by an adult accompanying the person under this section must be able to be heard by:
 - (a) the judge; and
 - (b) if there is a jury in the proceeding—the members of the jury.

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15YOA Right to interpreter

- (1) If the court is satisfied that a person to whom subsection (2) applies is unable, because of inadequate knowledge of the English language or a disability, to communicate orally with reasonable fluency in that language, the court must arrange for the presence of an interpreter to assist the person to understand, and participate in, the proceeding.
- (2) This subsection applies to the following persons:
 - (a) for a child proceeding—a child witness;
 - (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
 - (c) for a special witness proceeding—a special witness for whom an order under subsection 15YAB(3) is in force for this section.

15YP Excluding people from the courtroom

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

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

15YQ Warnings etc. not to be given about vulnerable persons evidence

- (1) If there is a jury in a proceeding in which a person to whom subsection (2) applies has given or will give evidence, the judge is not to warn the jury, or suggest to the jury in any way:
 - (a) that the law regards persons to whom subsection (2) applies as an unreliable class of witness; or

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- (b) that the law requires greater or lesser weight to be given to evidence that is given by closed-circuit television or alternative arrangements under Division 4; or
 - (c) that the law requires greater or lesser weight to be given to evidence that is given by a video or audio recording under Division 5; or
 - (d) that the law requires greater or lesser weight to be given to evidence because an adult accompanies the person under section 15YO.
- (2) This subsection applies to the following persons:
- (a) for a child proceeding—a child witness;
 - (b) for a vulnerable adult proceeding—a vulnerable adult complainant;
 - (c) for a special witness proceeding—a special witness.

15YR Publication identifying another person as a child witness, child complainant, vulnerable adult complainant or special witness

- (1) A person commits an offence if:
- (a) the person publishes any matter; and
 - (b) the person does not have the leave of the court to publish the matter; and
 - (c) the matter identifies, or is likely to lead to the identification of, another person (the *vulnerable person*) as:
 - (i) a child witness or child complainant in a child proceeding; or
 - (ii) a vulnerable adult complainant in a vulnerable adult proceeding; or
 - (iii) in the case of a special witness in a special witness proceeding for whom an order under subsection 15YAB(3) is in force for this subparagraph—a special witness in a special witness proceeding; and
 - (d) the vulnerable person is not a defendant in the proceeding.

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Penalty: Imprisonment for 12 months, or 60 penalty units, or both.

- (2) Subsection (1) does not apply if:
- (a) the publication is in an official publication in the course of, and for the purpose of, the proceeding; or
 - (b) the publication is in a document prepared for use in particular legal proceedings (whether or not the legal proceedings are a proceeding within the meaning of this Part); or
 - (c) the vulnerable person is deceased; or
 - (d) for a vulnerable person who is an adult:
 - (i) the vulnerable person has given informed consent to the publication in accordance with subsection (2A); and
 - (ii) the publication is in accordance with the limits, if any, set by the vulnerable person; and
 - (iii) at the time the consent was given—the vulnerable person had the decision-making capacity to give such consent; or
 - (e) for a vulnerable person who is a child:
 - (i) the vulnerable person has given informed consent for the publication; and
 - (ii) the publication is in accordance with the limits, if any, set by the vulnerable person; and
 - (iii) the consent was accompanied by a supporting statement in accordance with subsection (2B).
- Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- (2A) A vulnerable person gives informed consent to a publication in accordance with this subsection if, at the time the person gives the consent, the person:
- (a) understands the options available to the person (including that the person is not required to give the consent); and
 - (b) understands the consequences of giving the consent.
- (2B) A supporting statement must:
- (a) be in writing; and

- (b) be made by a person (the *practitioner*) who is:
 - (i) a medical practitioner; or
 - (ii) a person registered or licensed as a psychologist under a law of a State or Territory that provides for the registration or licensing of psychologists; or
 - (iii) a person prescribed by the regulations; and
 - (c) include the following details:
 - (i) the name, qualification and business address of the practitioner;
 - (ii) the nature and duration of the professional relationship between the practitioner and the vulnerable person; and
 - (d) state that the practitioner is of the opinion that the vulnerable person understands:
 - (i) what it means to be identified as a vulnerable person of that kind; and
 - (ii) the consequences of losing anonymity.
- (3) The court may give leave to a person to publish the matter.
- (4) In deciding whether to give leave, the court is to have regard to:
- (a) any trauma to the vulnerable person that the publication could cause; and
 - (b) any damage to the reputation of the vulnerable person that the publication could cause; and
 - (c) whether the publication is:
 - (i) for the purpose of supplying transcripts of the proceedings to persons with a genuine interest in the proceedings; or
 - (ii) for genuine research purposes; and
 - (d) any trauma to, or damage to the reputation of, another vulnerable person (other than the defendant) in relation to the proceeding; and
 - (e) any other matter that the court thinks is relevant.

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- (5) For the purpose of giving leave after the proceeding has been completed, the court need not be constituted by the same judicial officers who constituted the court in the proceeding.
- (6) An application for leave under this section must be in writing.
- (7) A person who makes an application for leave under this section must take reasonable steps to give written notice of the application to each of the following:
 - (a) the prosecutor in the proceeding;
 - (b) each defendant in the proceeding;
 - (c) each vulnerable person in relation to the proceeding.
- (8) If a party referred to in paragraph (7)(c) is a child at the time the application is made, the notice must be given to a parent, guardian or legal representative of the party.
- (9) A notice under subsection (7) must:
 - (a) be given no later than 3 business days before the day the application is to be heard; and
 - (b) be accompanied by a copy of the application.
- (10) An application for leave under this section must not be determined unless the court:
 - (a) is satisfied the applicant has taken reasonable steps to give notice of the application in accordance with subsections (7), (8) and (9); and
 - (b) has considered such submissions and other evidence as it thinks necessary for determining the application.

15YS General powers of a court

- (1) The power of a court to control the conduct of a proceeding is not affected by this Part, except so far as this Part provides otherwise expressly or by necessary intendment.
- (2) In particular, the powers of a court to control the questioning of witnesses are not affected.

- (3) The power of a court to give leave under this Part includes the power to give such leave subject to conditions.

15YT Other video link evidence provisions are unaffected

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

Part IAE—Video link evidence in proceedings for terrorism and related offences etc.

15YU Proceedings to which this Part applies

Criminal proceedings

- (1) This Part applies to any proceedings for:
- (a) an offence against subsection 34GD(8) of the *Australian Security Intelligence Organisation Act 1979*, if the questioning warrant to which the offence relates is a PMV-related questioning warrant; or
 - (b) an offence against section 49 of the *Aviation Transport Security Act 2004*; or
 - (c) an offence against section 21 of the *Charter of the United Nations Act 1945*; or
 - (d) an offence against Subdivision A of Division 72 of the *Criminal Code*; or
 - (da) an offence against Subdivision B of Division 80 of the *Criminal Code* (treason); or
 - (db) an offence against Division 82 of the *Criminal Code* (sabotage); or
 - (e) an offence against Part 5.3 of the *Criminal Code*; or
 - (ea) an offence against Part 5.3A of the *Criminal Code* (state sponsors of terrorism); or
 - (f) an offence against Part 5.4 of the *Criminal Code*; or
 - (fa) an offence against Part 5.5 of the *Criminal Code*; or
 - (h) an offence against Division 1 of Part 2 of the *Crimes (Aviation) Act 1991*; or
 - (i) an offence against section 8 of the *Crimes (Biological Weapons) Act 1976*; or
 - (k) an offence against section 8 of the *Crimes (Hostages) Act 1989*; or

- (l) an offence against the *Crimes (Internationally Protected Persons) Act 1976*; or
- (m) an offence against section 6 of this Act that relates to an offence mentioned in any of the above paragraphs.

Note 1: For the definitions of *PMV-related questioning warrant* and *questioning warrant*, see subsection (5).

Note 2: For other ancillary offences, see section 11.6 of the *Criminal Code*.

Other proceedings

- (2) This Part also applies to:
 - (a) any proceedings, including committal proceedings or proceedings of a similar kind, connected with proceedings covered by subsection (1); and
 - (b) proceedings under the *Proceeds of Crime Act 2002* in relation to an offence referred to in subsection (1).

Timing of proceedings

- (3) It is immaterial whether proceedings covered by subsection (1) or (2) were instituted before or after the commencement of this Part.

Extended meaning of prosecutor and defendant

- (4) This Part has effect, in relation to a proceeding under the *Proceeds of Crime Act 2002*, as if:
 - (a) the responsible authority for the proceeding under that Act were the prosecutor; and
 - (b) each other party to the proceeding were a defendant in the proceeding.

Note: Under that Act, the responsible authority is the Commissioner of the Australian Federal Police or the Director of Public Prosecutions (see the definitions of *responsible authority* and *proceeds of crime authority* in section 338 of that Act). Responsibility can be transferred between these authorities (see section 315B of that Act).

Definitions

- (5) In this section:
-

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PMV-related questioning warrant means a questioning warrant that is issued in relation to politically motivated violence (within the meaning of the *Australian Security Intelligence Organisation Act 1979*).

questioning warrant has the same meaning as in Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*.

15YV When court may take evidence by video link

Application by prosecutor

- (1) In a proceeding, the court must:
- (a) direct; or
 - (b) by order, allow;
- a witness to give evidence by video link if:
- (c) both:
 - (i) the prosecutor applies for the direction or order; and
 - (ii) the court is satisfied that the prosecutor gave the court reasonable notice of his or her intention to make the application; and
 - (d) the witness is not a defendant in the proceeding; and
 - (e) the witness is available, or will reasonably be available, to give evidence by video link; and
 - (f) the facilities required by section 15YY are available or can reasonably be made available;
- unless the court is satisfied that giving the direction or making the order would have a substantial adverse effect on the right of a defendant in the proceeding to receive a fair hearing.

Application by defendant

- (2) In a proceeding, the court must:
- (a) direct; or
 - (b) by order, allow;
- a witness to give evidence by video link if:

- (c) both:
 - (i) a defendant in the proceeding applies for the direction or order; and
 - (ii) the court is satisfied that the defendant gave the court reasonable notice of his or her intention to make the application; and
- (d) the witness is not a defendant in the proceeding; and
- (e) the witness is available, or will reasonably be available, to give evidence by video link; and
- (f) the facilities required by section 15YY are available or can reasonably be made available;

unless the court is satisfied that it would be inconsistent with the interests of justice for the evidence to be given by video link.

15YW Observers

Observer

- (1) The court may, in a section 15YV direction or order, provide that the witness can give evidence under the direction or order only if, when the witness is giving evidence by video link, there is physically present, at the place where the evidence is given, a person specified in the direction or order for the purposes of this section.
- (2) If a section 15YV direction or order is in force, the court may vary the direction or order so as to provide that, after the variation, the witness can give evidence under the direction or order only if, when the witness is giving evidence by video link, there is physically present, at the place where the evidence is given, a person specified in the direction or order for the purposes of this section.

Substitution of observer

- (3) If:
 - (a) a direction or order is in force under section 15YV; and

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(b) the direction or order specifies a person for the purposes of this section;

the court may vary the direction or order so as to substitute another specified person.

Who can be an observer

- (4) A person specified for the purposes of this section may be:
- (a) an Australian diplomatic officer; or
 - (b) an Australian consular officer; or
 - (c) any other person.
- (5) The court must not specify a person for the purposes of this section unless the court is satisfied that the person is:
- (a) independent of the prosecutor; and
 - (b) independent of each defendant in the proceeding; and
 - (c) in a position to give a report to the court about what the person observes in relation to the giving of evidence by the witness; and
 - (d) reasonably available to observe the giving of evidence by the witness; and
 - (e) an appropriate person to be specified for the purposes of this section.
- (6) For the purposes of this section, the mere fact that a person is an Australian diplomatic officer or Australian consular officer does not mean that the person is not independent of the prosecutor.

Report of observer

- (7) If:
- (a) a direction or order is in force under section 15YV; and
 - (b) the direction or order specifies a person for the purposes of this section;
- the court may:
- (c) direct or allow the specified person to give the court a report, in such form and by such time as the court requires, about

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what the person observed in relation to the giving of evidence by the witness; and

- (d) make such use of the report as the court considers appropriate for the purpose of deciding whether evidence given by the witness under the section 15YV direction or order should be admitted as evidence in the proceeding.

Definitions

- (8) In this section:

Australian consular officer has the same meaning as in the *Consular Fees Act 1955*.

Australian diplomatic officer has the same meaning as in the *Consular Fees Act 1955*.

15YX Adjournment after a section 15YV direction or order etc.

Court gives a direction or makes an order

- (1) If:
- (a) a court gives a section 15YV direction or makes a section 15YV order; and
 - (b) the prosecutor applied for the direction or order;
- a defendant in the proceeding may apply to the court for an adjournment of the proceeding to allow time for the defendant to:
- (c) decide whether to appeal against the direction or order; and
 - (d) if the defendant decides to do so—make the appeal.
- (2) If:
- (a) a court gives a section 15YV direction or makes a section 15YV order; and
 - (b) a defendant in the proceeding applied for the direction or order;
- the prosecutor may apply to the court for an adjournment of the proceeding to allow time for the prosecutor to:
- (c) decide whether to:

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- (i) appeal against the direction or order; or
- (ii) withdraw the proceeding; and
- (d) if the prosecutor decides to do so—make the appeal or withdrawal.

Court refuses to give a direction or make an order

- (3) If:
- (a) a court refuses to give a section 15YV direction or refuses to make a section 15YV order; and
 - (b) the prosecutor applied for the direction or order;
- the prosecutor may apply to the court for an adjournment of the proceeding to allow time for the prosecutor to:
- (c) decide whether to:
 - (i) appeal against the refusal; or
 - (ii) withdraw the proceeding; and
 - (d) if the prosecutor decides to do so—make the appeal or withdrawal.

- (4) If:
- (a) a court refuses to give a section 15YV direction or refuses to make a section 15YV order; and
 - (b) a defendant in the proceeding applied for the direction or order;
- the defendant may apply to the court for an adjournment of the proceeding to allow time for the defendant to:
- (c) decide whether to appeal against the refusal; and
 - (d) if the defendant decides to do so—make the appeal.

Grant of adjournment

- (5) If an application is made under this section, the court must grant the adjournment.

Note: For appeals, see section 15YZD.

15YY Technical requirements for video link

- (1) A witness can give evidence under a section 15YV direction or order only if:
 - (a) the courtroom or other place where the court is sitting (the *courtroom point*); and
 - (b) the place where the evidence is given (the *witness point*);are equipped with video facilities that:
 - (c) enable appropriate persons at the courtroom point to see and hear the witness give the evidence; and
 - (d) enable appropriate persons at the witness point to see and hear appropriate persons at the courtroom point.
- (2) In subsection (1):

appropriate persons means such persons as the court considers appropriate.

15YZ Direction to jury

- (1) If:
 - (a) a proceeding involves a jury; and
 - (b) a witness gives evidence under a section 15YV direction or order; and
 - (c) the evidence is admissible in the proceeding;the judge must give the jury such direction as the judge thinks necessary to ensure that the jury gives the same weight to the evidence as if it had been given by the witness in the courtroom or other place where the court is sitting.
- (2) Disregard subsection (1) in determining:
 - (a) the directions (if any) that should be given by a judge in proceedings to which this Part does not apply; and
 - (b) the weight that should be given to evidence given by video link in proceedings to which this Part does not apply.

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15YZA Application of laws about witnesses

- (1) A person who gives evidence under a section 15YV direction or order is taken to give it at the courtroom or other place where the court is sitting.
- (2) Subsection (1) has effect, for example, for the purposes of laws relating to evidence, procedure, contempt of court and perjury.

15YZB Administration of oaths and affirmations

An oath or affirmation to be sworn or made by a witness who is to give evidence under a section 15YV direction or order may be administered either:

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

15YZC Expenses

A court may make such orders as are just for payment of expenses incurred in connection with giving evidence under a section 15YV direction given, or a section 15YV order made, by the court.

15YZD Appeals against section 15YV directions or orders etc.

Court gives a direction or makes an order

- (1) If:
 - (a) a court gives a section 15YV direction or makes a section 15YV order; and
 - (b) the prosecutor applied for the direction or order;

a defendant in the proceeding may appeal against the direction or order.

- (2) If:
- (a) a court gives a section 15YV direction or makes a section 15YV order; and
 - (b) a defendant in the proceeding applied for the direction or order;
- the prosecutor may appeal against the direction or order.

Court refuses to give a direction or make an order

- (3) If:
- (a) a court refuses to give a section 15YV direction or refuses to make a section 15YV order; and
 - (b) the prosecutor applied for the direction or order;
- the prosecutor may appeal against the refusal.

- (4) If:
- (a) a court refuses to give a section 15YV direction or refuses to make a section 15YV order; and
 - (b) a defendant in the proceeding applied for the direction or order;
- the defendant may appeal against the refusal.

Jurisdiction

- (5) A court that has jurisdiction to hear and determine appeals from a judgment, order or direction in the proceeding has jurisdiction to hear and determine any appeal under this section.

15YZE Other laws about evidence not affected

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

Part IAE Video link evidence in proceedings for terrorism and related offences etc.

Section 15YZF

15YZF Saving of other laws

This Part is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

Part IB—Sentencing, imprisonment and release of federal offenders

Division 1—Interpretation

16 Interpretation

- (1) In this Part, unless the contrary intention appears:

aggregate, in relation to 2 or more sentences or terms of imprisonment, or in relation to the unserved portions of such sentences or terms, means the total effective sentence or term of imprisonment imposed, or remaining unserved, as the case may be, having regard to whether the sentences or terms are to be served cumulatively, partly cumulatively or concurrently.

Examples demonstrating meaning of ***aggregate***

Example 1: The aggregate of 3 sentences, each of 2 years, to be served concurrently, is 2 years.

Example 2: The aggregate of 3 sentences, each of 2 years, where 2 sentences are to be served concurrently and one is to be served cumulatively, is 4 years.

Example 3: The aggregate of a one year unserved portion of a sentence, a 2 year unserved portion of another sentence, to be served concurrently with the first sentence, and a 2 year sentence to be served cumulatively, is 4 years.

Australian travel document has the same meaning as in the *Australian Passports Act 2005*.

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

federal offence means an offence against the law of the Commonwealth.

federal offender means a person convicted of a federal offence.

federal sentence means a sentence imposed for a federal offence.

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fit to be tried includes fit to plead.

harm includes:

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

law, in relation to the Commonwealth, a State or a Territory, includes the common law, and any Imperial Act or order, that comprises a part of that law.

licence means a licence granted under section 19AP.

licence period, for a person who is released on licence for a federal sentence, means the period starting on the day of release on licence and ending:

- (a) if a recognizance release order has been made for the federal sentence—at the end of the day before the person is eligible for release in accordance with the recognizance release order; and
- (b) in any other case:
 - (i) at the end of the last day of any federal sentence that is, on the day of the release, being served or to be served; or
 - (ii) if the person has been given a federal life sentence—at the end of the day specified in the licence as the day on which the licence period ends.

maximum penalty, in relation to an offence at common law, means imprisonment for life.

non-parole period, in relation to a sentence or sentences of imprisonment, means that part of the period of imprisonment for that sentence or those sentences during which the person is not to be released on parole, whether that part of the period is fixed or recommended by a court or fixed by operation of law.

offence means a federal offence, a State offence or a Territory offence.

offender means a federal offender, a State offender or a Territory offender.

parole includes probation.

parole officer means:

- (a) an officer of a State, the Australian Capital Territory or the Northern Territory in respect of whom there applies:
 - (i) an arrangement in force under paragraph 21F(1)(b); or
 - (ii) an arrangement having a substantially similar effect in force under section 3B; or
- (b) a person appointed or engaged under the *Public Service Act 1999* in respect of whom an appointment under subsection 21F(3) is in force.

parole order means an order made under subsection 19AL(1) or (1A), paragraph 19AL(2)(b) or subsection 19AL(2A), (6) or (7) directing that a person be released from prison on parole.

parole period, for a person for whom a parole order has been made, has the meaning given by section 19AMA.

pre-release period, in relation to a recognizance release order made in respect of a federal sentence or sentences, means the period of imprisonment specified in that order as the period of imprisonment in respect of that sentence or those sentences after service of which the offender may be released on the giving of security in accordance with that order.

prescribed authority means:

- (a) a person who holds office as a Magistrate of a State, the Australian Capital Territory or the Northern Territory and in respect of whom an arrangement in force under paragraph 21F(1)(a) is applicable; or
- (b) a person who holds office as a Magistrate of a Territory (other than the Australian Capital Territory or the Northern Territory); or
- (c) unless an arrangement has been entered into under paragraph 21F(1)(a) in respect of persons holding office as

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Magistrates of the Australian Capital Territory—a person who holds office as a Magistrate of the Australian Capital Territory.

prison includes gaol, lock-up or other place of detention.

recognizance release order means an order made under paragraph 20(1)(b).

released on licence means released from prison under section 19AP.

released on parole means released from prison under a parole order in accordance with section 19AM.

sentence, in sections 16B to 19AZD, means a sentence of imprisonment.

State includes the Australian Capital Territory and the Northern Territory.

State offence means an offence against the law of a State.

State offender means a person convicted of a State offence.

State sentence means a sentence imposed for a State offence.

supervision period, in relation to a person who is released on parole or on licence, means the period:

- (a) starting when the person is released from prison on parole or licence; and
- (b) ending at the earlier of the following times:
 - (i) the end of the person's parole period or licence period;
 - (ii) if the parole order or licence specifies an earlier time at which the supervision period is to end—that earlier time.

Territory does not include the Australian Capital Territory or the Northern Territory.

Territory offence means an offence against the law of a Territory.

Territory offender means a person convicted of a Territory offence.

Territory sentence means a sentence imposed for a Territory offence.

unfit to be tried includes unfit to plead.

victim impact statement has the meaning given by section 16AAAA.

- (2) In this Part, expressions in the plural do not imply that expressions in the singular do not include the plural.

16AAAA *Victim impact statements*

- (1) A ***victim impact statement***, for an individual who is a victim of an offence, is an oral or written statement for which the following requirements are satisfied:
- (a) the statement must be made by one of the following:
 - (i) the individual;
 - (ii) if the court gives leave, a member of the individual's family;
 - (iii) a person appointed by the court;
 - (b) the statement must describe the impact of the offence on the victim, including details of the harm suffered by the victim as a result of the offence;
 - (c) if the statement is written, the statement must be:
 - (i) signed or otherwise acknowledged by the maker of the statement; and
 - (ii) given to both the prosecutor and the offender (or the offender's legal representative) at a reasonable time before the hearing for determining the sentence to be passed on the offender;
 - (d) if the statement is to be oral, a written or oral summary of the statement must be given to both the prosecutor and the offender (or the offender's legal representative) at a

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reasonable time before the hearing for determining the sentence to be passed on the offender.

- (2) However, the court may order that the requirement in paragraph (1)(d) does not apply to a particular oral statement.
- (3) The Minister may, in writing, prescribe a form for victim impact statements. Such a form does not restrict how victim impact statements may be made.
- (4) The Minister may delegate, in writing, his or her power under subsection (3) to:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.

Division 2—General sentencing principles

16A Matters to which court to have regard when passing sentence etc.—federal offences

- (1) In determining the sentence to be passed, or the order to be made, in respect of any person for a federal offence, a court must impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence.

Note: Minimum penalties apply for certain offences—see sections 16AAA, 16AAB and 16AAC.

- (2) In addition to any other matters, the court must take into account such of the following matters as are relevant and known to the court:
- (a) the nature and circumstances of the offence;
 - (b) other offences (if any) that are required or permitted to be taken into account;
 - (c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character—that course of conduct;
 - (d) the personal circumstances of any victim of the offence;
 - (e) any injury, loss or damage resulting from the offence;
 - (ea) if an individual who is a victim of the offence has suffered harm as a result of the offence—any victim impact statement for the victim;
 - (f) the degree to which the person has shown contrition for the offence:
 - (i) by taking action to make reparation for any injury, loss or damage resulting from the offence; or
 - (ii) in any other manner;
 - (fa) the extent to which the person has failed to comply with:
 - (i) any order under subsection 23CD(1) of the *Federal Court of Australia Act 1976*; or
 - (ii) any obligation under a law of the Commonwealth; or

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- (iii) any obligation under a law of the State or Territory applying under subsection 68(1) of the *Judiciary Act 1903*;
about pre-trial disclosure, or ongoing disclosure, in proceedings relating to the offence;
- (g) if the person has pleaded guilty to the charge in respect of the offence:
 - (i) that fact; and
 - (ii) the timing of the plea; and
 - (iii) the degree to which that fact and the timing of the plea resulted in any benefit to the community, or any victim of, or witness to, the offence;
- (h) the degree to which the person has cooperated with law enforcement agencies in the investigation of the offence or of other offences;
- (j) the deterrent effect that any sentence or order under consideration may have on the person;
- (ja) the deterrent effect that any sentence or order under consideration may have on other persons;
- (k) the need to ensure that the person is adequately punished for the offence;
- (m) the character, antecedents, age, means and physical or mental condition of the person;
- (ma) if the person's standing in the community was used by the person to aid in the commission of the offence—that fact as a reason for aggravating the seriousness of the criminal behaviour to which the offence relates;
- (mb) if:
 - (i) the person's conduct constituting the offence was motivated, whether wholly or in part, by hatred of another person (the **target person**) or a group of persons (the **target group**); and
 - (ii) that hatred was because of the person's belief that the target person or persons in the target group are distinguished by race, or national or ethnic origin;

that fact as a reason for aggravating the seriousness of the criminal behaviour to which the offence relates;

- (n) the prospect of rehabilitation of the person;
 - (p) the probable effect that any sentence or order under consideration would have on any of the person's family or dependants.
- (2AAA) In determining the sentence to be passed, or the order to be made, in respect of any person for a Commonwealth child sex offence, in addition to any other matters, the court must have regard to the objective of rehabilitating the person, including by considering whether it is appropriate, taking into account such of the following matters as are relevant and known to the court:
- (a) when making an order—to impose any conditions about rehabilitation or treatment options;
 - (b) in determining the length of any sentence or non-parole period—to include sufficient time for the person to undertake a rehabilitation program.
- (2A) However, the court must not take into account under subsection (1) or (2), other than paragraph (2)(ma), any form of customary law or cultural practice as a reason for:
- (a) excusing, justifying, authorising, requiring or lessening the seriousness of the criminal behaviour to which the offence relates; or
 - (b) aggravating the seriousness of the criminal behaviour to which the offence relates.
- (2AA) Subsection (2A) does not apply in relation to an offence against the following:
- (a) section 22 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*;
 - (b) sections 15A, 15C, 17B, 22A, 27A, 74AA, 142A, 142B, 207B, 354A, 355A and 470 of the *Environment Protection and Biodiversity Conservation Act 1999*;
 - (c) section 48 of the *Aboriginal Land and Waters (Jervis Bay Territory) Act 1986*;

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- (d) sections 69 and 70 of the *Aboriginal Land Rights (Northern Territory) Act 1976*;
 - (e) section 30 of the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*;
 - (f) any other law prescribed by the regulations that relates to:
 - (i) entering, remaining on or damaging cultural heritage; or
 - (ii) damaging or removing a cultural heritage object.
- (2AAB) Paragraph (2)(mb) does not apply in relation to an offence against section 80.2A, 80.2B, 80.2BA, 80.2BB, 80.2BC, 80.2BD, 80.2BE, 80.2DA or 80.2DB of the *Criminal Code*.
- (2AAC) Without limiting subparagraph (2)(mb)(i), a person's conduct constituting the offence is motivated by hatred if, at the time of the conduct, or immediately before or immediately after the conduct, the person demonstrated, or expressed, hostility or malice in respect of the race, or national or ethnic origin, of the target person or the persons in the target group.
- (2AAD) For the purposes of paragraph (2)(mb), it is immaterial whether the target person, or members of the target group, actually are distinguished by the particular race, or national or ethnic origin.
- (2B) In subsection (2A):
- criminal behaviour*** includes:
- (a) any conduct, omission to act, circumstance or result that is, or forms part of, a physical element of the offence in question; and
 - (b) any fault element relating to such a physical element.
- (3) Without limiting the generality of subsections (1), (2) and (2AAA), in determining whether a sentence or order under subsection 19B(1), 20(1) or 20AB(1) is the appropriate sentence or order to be passed or made in respect of a federal offence, the court must have regard to the nature and severity of the conditions that may be imposed on, or may apply to, the offender, under that sentence or order.

- (4) For the purposes of a reference in this Part to a family, the members of a person's family are taken to include the following (without limitation):
- (a) a de facto partner of the person;
 - (b) someone who is the child of the person, or of whom the person is the child, because of the definition of *child* in section 3;
 - (c) anyone else who would be a member of the person's family if someone mentioned in paragraph (a) or (b) is taken to be a member of the person's family.

16AA Matters to which court to have regard when passing sentence etc.—Northern Territory offences

- (1) In determining the sentence to be passed, or the order to be made, in relation to any person for an offence against a law of the Northern Territory, a court must not take into account any form of customary law or cultural practice as a reason for:
- (a) excusing, justifying, authorising, requiring or lessening the seriousness of the criminal behaviour to which the offence relates; or
 - (b) aggravating the seriousness of the criminal behaviour to which the offence relates.
- (2) Subsection (1) does not apply in relation to an offence against the following:
- (a) sections 33, 34 and 35 of the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT);
 - (c) section 4 of the *Aboriginal Land Act 1978* (NT);
 - (d) sections 111, 112 and 113 of the *Heritage Act 2011* (NT);
 - (e) any other law prescribed by the regulations that relates to:
 - (i) entering, remaining on or damaging cultural heritage; or
 - (ii) damaging or removing a cultural heritage object.
- (3) In subsection (1):
- criminal behaviour*** includes:

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- (a) any conduct, omission to act, circumstance or result that is, or forms part of, a physical element of the offence in question; and
- (b) any fault element relating to such a physical element.

16AAA Minimum penalties for certain offences

Subject to section 16AAC, if a person is convicted of an offence described in column 1 of an item in the following table, the court must impose a sentence of imprisonment of at least the period specified in column 2 of that item.

Minimum penalty		
Item	Column 1 Offence	Column 2 Sentence of imprisonment
1AA	offence against subsection 80.2BE(1) or (2) of the <i>Criminal Code</i>	12 months
1A	offence against subsection 80.2H(1) of the <i>Criminal Code</i>	12 months
1B	offence against subsection 80.2HA(1) of the <i>Criminal Code</i>	12 months
1C	offence against a provision of Division 101 or 102 of the <i>Criminal Code</i> (other than an offence against subsection 102.8(1) or (2) of the <i>Criminal Code</i>)	6 years
1D	offence against subsection 102.8(1) or (2) of the <i>Criminal Code</i>	12 months
1E	offence against a provision of Division 103 of the <i>Criminal Code</i>	3 years
1F	offence against a provision of Division 111 or 112 of the <i>Criminal Code</i> (other than an offence against subsection 112.7(1) or (2) of the	6 years

Section 16AAA

Minimum penalty		
Item	Column 1 Offence	Column 2 Sentence of imprisonment
	<i>Criminal Code</i>)	
1G	offence against subsection 112.7(1) or (2) of the <i>Criminal Code</i>	12 months
1H	offence against a provision of Division 113 of the <i>Criminal Code</i>	3 years
1	offence against subsection 272.8(1) of the <i>Criminal Code</i>	6 years
2	offence against subsection 272.8(2) of the <i>Criminal Code</i>	6 years
3	offence against subsection 272.9(1) of the <i>Criminal Code</i>	5 years
4	offence against subsection 272.9(2) of the <i>Criminal Code</i>	5 years
5	offence against section 272.10 of the <i>Criminal Code</i>	7 years
6	offence against section 272.11 of the <i>Criminal Code</i>	7 years
7	offence against section 272.18 of the <i>Criminal Code</i>	6 years
8	offence against section 272.19 of the <i>Criminal Code</i>	6 years
9	offence against section 273.7 of the <i>Criminal Code</i>	7 years
10	offence against section 471.22 of the <i>Criminal Code</i>	7 years
11	offence against section 474.23A of the <i>Criminal Code</i>	5 years
12	offence against section 474.24A of the <i>Criminal Code</i>	7 years
13	offence against subsection 474.25A(1) of the <i>Criminal Code</i>	5 years

Section 16AAB

Minimum penalty		
Item	Column 1 Offence	Column 2 Sentence of imprisonment
14	offence against subsection 474.25A(2) of the <i>Criminal Code</i>	5 years
15	offence against section 474.25B of the <i>Criminal Code</i>	7 years

16AAB Second or subsequent offence

- (1) This section applies in respect of a person if:
 - (a) the person is convicted of a Commonwealth child sexual abuse offence (a **current offence**); and
 - (b) the person has, at an earlier sitting, been convicted previously of a child sexual abuse offence.
- (2) Subject to section 16AAC, if the person is convicted of a current offence described in column 1 of an item in the following table, the court must impose for the current offence a sentence of imprisonment of at least the period specified in column 2 of that item.

Minimum penalty		
Item	Column 1 Current offence	Column 2 Sentence of imprisonment
1	offence against subsection 272.12(1) of the <i>Criminal Code</i>	3 years
2	offence against subsection 272.12(2) of the <i>Criminal Code</i>	3 years
3	offence against subsection 272.13(1) of the <i>Criminal Code</i>	2 years
4	offence against subsection 272.13(2) of the <i>Criminal Code</i>	2 years
5	offence against subsection 272.14(1)	4 years

Section 16AAB

Minimum penalty		
Item	Column 1	Column 2
	Current offence	Sentence of imprisonment
	of the <i>Criminal Code</i>	
6	offence against subsection 272.15(1) of the <i>Criminal Code</i>	4 years
7	offence against subsection 272.15A(1) of the <i>Criminal Code</i>	4 years
8	offence against subsection 272.20(1) of the <i>Criminal Code</i>	3 years
9	offence against subsection 272.20(2) of the <i>Criminal Code</i>	1 year
10	offence against subsection 273.6(1) of the <i>Criminal Code</i>	4 years
10A	offence against section 273A.1 of the <i>Criminal Code</i>	4 years
11	offence against subsection 471.19(1) of the <i>Criminal Code</i>	4 years
12	offence against subsection 471.19(2) of the <i>Criminal Code</i>	4 years
13	offence against subsection 471.20(1) of the <i>Criminal Code</i>	4 years
14	offence against subsection 471.24(1) of the <i>Criminal Code</i>	4 years
15	offence against subsection 471.24(2) of the <i>Criminal Code</i>	4 years
16	offence against subsection 471.24(3) of the <i>Criminal Code</i>	4 years
17	offence against subsection 471.25(1) of the <i>Criminal Code</i>	4 years
18	offence against subsection 471.25(2) of the <i>Criminal Code</i>	4 years
19	offence against subsection 471.25(3) of the <i>Criminal Code</i>	4 years

Part IB Sentencing, imprisonment and release of federal offenders

Division 2 General sentencing principles

Section 16AAB

Minimum penalty		
Item	Column 1	Column 2
	Current offence	Sentence of imprisonment
20	offence against subsection 471.25A(1) of the <i>Criminal Code</i>	4 years
21	offence against subsection 471.25A(2) of the <i>Criminal Code</i>	4 years
22	offence against subsection 471.25A(3) of the <i>Criminal Code</i>	4 years
23	offence against subsection 471.26(1) of the <i>Criminal Code</i>	3 years
24	offence against subsection 474.22(1) of the <i>Criminal Code</i>	4 years
24A	offence against subsection 474.22A(1) of the <i>Criminal Code</i>	4 years
25	offence against subsection 474.23(1) of the <i>Criminal Code</i>	4 years
26	offence against subsection 474.26(1) of the <i>Criminal Code</i>	4 years
27	offence against subsection 474.26(2) of the <i>Criminal Code</i>	4 years
28	offence against subsection 474.26(3) of the <i>Criminal Code</i>	4 years
29	offence against subsection 474.27(1) of the <i>Criminal Code</i>	4 years
30	offence against subsection 474.27(2) of the <i>Criminal Code</i>	4 years
31	offence against subsection 474.27(3) of the <i>Criminal Code</i>	4 years
32	offence against subsection 474.27AA(1) of the	4 years

Section 16AAC

Minimum penalty		
Item	Column 1	Column 2
	Current offence	Sentence of imprisonment
	<i>Criminal Code</i>	
33	offence against subsection 474.27AA(2) of the <i>Criminal Code</i>	4 years
34	offence against subsection 474.27AA(3) of the <i>Criminal Code</i>	4 years
35	offence against subsection 474.27A(1) of the <i>Criminal Code</i>	3 years

16AAC Exclusions and reductions—minimum penalties

People aged under 18

- (1) Section 16AAA and subsection 16AAB(2) do not apply to a person who was aged under 18 years when the offence that the relevant provision specifies a minimum penalty for was committed.

Reduction of minimum penalty

- (2) A court may impose a sentence of imprisonment of less than the period specified in column 2 of an item of a table in section 16AAA or subsection 16AAB(2) only if the court considers it appropriate to reduce the sentence because of either or both of the following:
- (a) the court is taking into account, under paragraph 16A(2)(g), the person pleading guilty;
 - (b) the court is taking into account, under paragraph 16A(2)(h), the person having cooperated with law enforcement agencies in the investigation of:
 - (i) in relation to any of items 1AA to 1H of the table in section 16AAA—the offence or an offence against

Section 16AB

- subsection 80.2H(1) or 80.2HA(1) or Part 5.3 or 5.5 of the *Criminal Code*; or
- (ii) in relation to any of items 1 to 15 of the table in section 16AAA or any of the items in the table in subsection 16AAB(2)—the offence or a Commonwealth child sex offence.
- (3) If a court may reduce a sentence, the court may reduce the sentence as follows:
- (a) if the court is taking into account, under paragraph 16A(2)(g), the person pleading guilty—by an amount that is up to 25% of the period specified in column 2 of the applicable item in the relevant table;
- (b) if the court is taking into account, under paragraph 16A(2)(h), the person having cooperated with law enforcement agencies in the investigation of:
- (i) in relation to any of items 1AA to 1H of the table in section 16AAA—the offence or an offence against subsection 80.2H(1) or 80.2HA(1) or Part 5.3 or 5.5 of the *Criminal Code*; or
- (ii) in relation to any of items 1 to 15 of the table in section 16AAA or any of the items in the table in subsection 16AAB(2)—the offence or a Commonwealth child sex offence;
- by an amount that is up to 25% of the period specified in column 2 of the applicable item in the relevant table;
- (c) if the court is taking into account both of the matters in paragraphs (a) and (b)—by an amount that is up to 50% of the period specified in column 2 of the applicable item in the relevant table.

16AB Matters relating to victim impact statements

- (1) This section applies in relation to victim impact statements made known to a court as described in paragraph 16A(2)(ea).
- (2) Only one victim impact statement may be made for each victim of an offence, unless the court gives leave.

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

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

16AC Reduction for cooperation with law enforcement agencies

- (1) This section applies if a court imposing a sentence, or making an order, for a federal offence:
 - (a) reduces the severity of the sentence or order; or
 - (b) reduces the non-parole period in relation to the sentence (if applicable);because the offender has undertaken to cooperate with law enforcement agencies in proceedings (including confiscation proceedings) relating to any offence.

Section 16AC

- (2) The court must:
- (a) state that the sentence, order or non-parole period is being reduced for that reason; and
 - (b) specify the sentence that would have been imposed, the order that would have been made or the non-parole period that would have been fixed but for that reduction.

Example: The court imposes a fine of \$1,000 and specifies that, but for the offender undertaking to cooperate with law enforcement agencies, the court would have imposed a fine of \$10,000.

Promised cooperation refused

- (3) The Director of Public Prosecutions may appeal against the inadequacy of the reduced sentence, reduced order or reduced non-parole period if:
- (a) after the imposing of the sentence or the making of the order, the offender, without reasonable excuse, does not cooperate in accordance with the undertaking; and
 - (b) the Director of Public Prosecutions is of the opinion that appealing is in the interests of the administration of justice.
- (4) The court hearing the appeal:
- (a) if it is satisfied that the person has failed entirely to cooperate in accordance with the undertaking—must substitute for the reduced sentence, reduced order or reduced non-parole period the sentence, order or non-parole period that would have been imposed, made or fixed but for that reduction; and
 - (b) if it is satisfied that the person has failed in part to cooperate in accordance with the undertaking—may substitute:
 - (i) for the reduced sentence or reduced order such a sentence or order, not exceeding in severity the sentence or order that could be imposed or made under paragraph (a), as the court thinks appropriate; or
 - (ii) for the reduced non-parole period such a non-parole period, not exceeding the parole period that could be fixed under paragraph (a), as the court thinks appropriate.

Meaning of confiscation proceedings

(5) In this Act:

confiscation proceedings includes:

- (a) proceedings for freezing orders, forfeiture orders, pecuniary penalty orders, literary proceeds orders and restraining orders under the *Proceeds of Crime Act 2002*; and
- (b) proceedings for forfeiture orders, pecuniary penalty orders and restraining orders under the *Proceeds of Crime Act 1987*; and
- (c) proceedings for restraining orders and pecuniary penalty orders under Part XIII of the *Customs Act 1901*.

16B Court to have regard to other periods of imprisonment required to be served

In sentencing a person convicted of a federal offence, a court must have regard to:

- (a) any sentence already imposed on the person by the court or another court for any other federal offence or for any State or Territory offence, being a sentence that the person has not served; and
- (b) any sentence that the person is liable to serve because of the revocation of a parole order made, or licence granted, under this Part or under a law of a State or Territory.

16BA Taking other offences into account

- (1) Where a person is convicted of a federal offence or federal offences, and the court before which the person is convicted is satisfied that:
 - (a) there has been filed in the court a document in, or to the effect of, the form prescribed for the purposes of this section;
 - (b) the document contains a list of other federal offences, or offences against the law of an external Territory that is prescribed for the purposes of this section, which the person convicted is believed to have committed;

Section 16BA

- (c) the document has been signed:
 - (i) by the Director of Public Prosecutions;
 - (ii) for and on behalf of the Director of Public Prosecutions, by a person authorized by the Director of Public Prosecutions, by instrument in writing, to sign documents under this subsection; or
 - (iii) by a person appointed under section 69 of the *Judiciary Act 1903* to prosecute indictable federal offences; and by the person convicted;
 - (d) a copy of the document has been given to the person; and
 - (e) in all the circumstances it is proper to do so;
- the court may, with the consent of the prosecutor and before passing sentence on the person, ask him or her whether he or she admits his or her guilt in respect of all or any of the offences specified in the list and wishes them to be taken into account by the court in passing sentence on him or her for the offence or offences of which he or she has been convicted.
- (2) Subject to subsection (3), if the person admits his or her guilt in respect of all or any of the offences specified in the list and wishes to have them taken into account by the court in passing sentence on him or her for the offence or offences of which he or she has been convicted, the court may, if it thinks fit, in passing sentence on him or her for the offence or offences of which he or she has been convicted, take into account all or any of the offences in respect of which the person has admitted his or her guilt.
 - (3) The court shall not take into account under this section any indictable offence that it would not have jurisdiction to try even if the defendant consented to the court hearing and determining proceedings for the offence or the prosecutor requested the court to hear and determine those proceedings.
- (3A) Subsection (3) does not prevent a court from taking into account an indictable offence where the court has jurisdiction to sentence a person charged with that offence.

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- (4) Where the court takes into account under this section all or any of the offences in respect of which the person has admitted his or her guilt, the sentence passed on him or her for any of the offences of which he or she has been convicted shall not exceed the maximum penalty that the court would have been empowered to impose on him or her for the offence if no offence had been so taken into account.
- (5) Where an offence is taken into account under this section, the court may make such orders with respect to reparation, restitution, compensation, costs and forfeiture as it would have been empowered to make if the person had been convicted before the court of the offence, but shall not otherwise impose any separate punishment for the offence.
- (6) Where the court makes an order under subsection (5) in respect of an offence taken into account under this section, there shall be such rights of appeal in respect of the order as there would have been if the order had been an order made upon the conviction of the person for that offence.
- (7) An order made under subsection (5) in respect of an offence taken into account under this section lapses, by force of this subsection, if the conviction or each conviction, as the case may be, in respect of which the offence was taken into account is quashed or set aside.
- (8) Where an offence is taken into account under this section, the court shall certify, upon the document filed in the court, the offence taken into account and the conviction or convictions in respect of which the offence was taken into account and thereafter no proceedings shall be taken or continued in respect of the offence unless the conviction or each conviction, as the case may be, in respect of which the offence has been taken into account has been quashed or set aside.
- (9) An admission of guilt made under and for the purposes of this section is not admissible in evidence in any proceedings taken or continued in respect of the offence in respect of which the

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admission was made or in respect of any other offence specified in the list contained in the document filed in the court.

- (10) An offence taken into account under this section shall not, by reason of its so being taken into account, be regarded for any purpose as an offence of which a person has been convicted.
- (11) In or in relation to any criminal proceeding, reference may lawfully be made to, or evidence may lawfully be given of, the fact that an offence was taken into account under this section in passing sentence for an offence for which a person was convicted if, in or in relation to that proceeding:
 - (a) reference may lawfully be made to, or evidence may lawfully be given of, the fact that the person was convicted of the last-mentioned offence; and
 - (b) had the person been convicted of the offence so taken into account, reference could lawfully have been made to, or evidence could lawfully have been given of, the fact that the person had been convicted of that offence.
- (12) The fact that an offence was taken into account under this section may be proved in the same manner as the conviction or any of the convictions, as the case may be, in relation to which it was taken into account may be proved.

16C Fines

- (1) Subject to subsection (2), before imposing a fine on a person for a federal offence, a court must take into account the financial circumstances of the person, in addition to any other matters that the court is required or permitted to take into account.
- (2) Nothing in subsection (1) prevents a court from imposing a fine on a person because the financial circumstances of the offender cannot be ascertained by the court.

16D No corporal punishment

- (1) A court must not impose any form of corporal punishment for a federal offence.
- (2) A person serving a federal sentence must not be subjected to any form of corporal punishment.

Division 3—Sentences of imprisonment

16E Commencement of sentences

- (1) Subject to subsections (2) and (3), the law of a State or Territory relating to the commencement of sentences and of non-parole periods applies to a person who is sentenced in that State or Territory for a federal offence in the same way as it applies to a person who is sentenced in that State or Territory for a State or Territory offence.
- (2) Where the law of a State or Territory has the effect that a sentence imposed on a person for an offence against the law of that State or Territory or a non-parole period fixed in respect of that sentence:
 - (a) may be reduced by the period that the person has been in custody for the offence; or
 - (b) is to commence on the day on which the person was taken into custody for the offence;the law applies in the same way to a federal sentence imposed on a person in that State or Territory or to a non-parole period fixed in respect of that sentence.
- (3) Where the law of a State or Territory does not have the effect mentioned in subsection (2), a court (including a federal court) in that State or Territory that imposes a federal sentence on a person or fixes a non-parole period in respect of such a sentence must take into account any period that the person has spent in custody in relation to the offence concerned.

16F Court to explain sentence

- (1) Where a court imposes a federal sentence on a person and fixes a non-parole period in respect of the sentence, it must explain or cause to be explained to the person, in language likely to be readily understood by the person, the purpose and consequences of fixing that non-parole period including, in particular, an explanation:

- (a) that service of the sentence will entail a period of imprisonment of not less than the non-parole period and, if a parole order is made, a period of service in the community, called the parole period, to complete service of the sentence; and
- (b) that, if a parole order is made, the order will be subject to conditions; and
- (c) that the parole order may be amended or revoked; and
- (d) of the consequences that may follow if the person fails, without reasonable excuse, to fulfil those conditions.

Note: A court that is sentencing a person who has been convicted of an offence referred to in paragraph 105A.3(1)(a) of the *Criminal Code* must warn the person about continuing detention orders and extended supervision orders (see section 105A.23 of the Code).

- (2) Where a court imposes a federal sentence on a person and makes a recognizance release order in respect of that sentence, it must explain or cause to be explained to the person, in language likely to be readily understood by the person, the purpose and consequences of making the recognizance release order including, in particular, an explanation:
 - (a) that service of the sentence will entail a period of imprisonment equal to the pre-release period (if any) specified in the order and a period of service in the community equal to the balance of the sentence; and
 - (b) of the conditions to which the order is subject; and
 - (c) of the consequences that may follow if the person fails, without reasonable excuse, to fulfil those conditions; and
 - (d) that any recognizance given in accordance with the order may be discharged or varied under section 20AA.

17A Restriction on imposing sentences

- (1) A court shall not pass a sentence of imprisonment on any person for a federal offence, or for an offence against the law of an external Territory that is prescribed for the purposes of this section, unless the court, after having considered all other available

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sentences, is satisfied that no other sentence is appropriate in all the circumstances of the case.

- (2) Where a court passes a sentence of imprisonment on a person for a federal offence, or for an offence against the law of an external Territory that is prescribed for the purposes of this section, the court:
 - (a) shall state the reasons for its decision that no other sentence is appropriate; and
 - (b) shall cause those reasons to be entered in the records of the court.
- (3) The failure of a court to comply with the provisions of this section does not invalidate any sentence.
- (4) This section applies subject to any contrary intention in the law creating the offence.

17B Restriction on imposing sentences for certain minor offences

- (1) If:
 - (a) a person is convicted of one or more section 17B offences relating to property, money or both, whose total value is not more than \$2,000; and
 - (b) the person has not previously been sentenced to imprisonment for any federal, State or Territory offence;the court convicting the person is not to pass a sentence of imprisonment for that offence, or for any of those offences, unless the court is satisfied that there are exceptional circumstances that warrant it.
- (2) In calculating the total value for the purposes of paragraph (1)(a), a section 17B offence which the court, with the consent of the person charged, has taken into account in passing sentence on the person for another federal offence (whether a section 17B offence or not) is taken to be an offence of which the person is convicted.

- (3) In this section:

section 17B offence means an offence against section 29 of this Act, an offence against section 131.1, 132.1, 132.6, 132.7, 134.1, 134.2, 135.1, 135.2, 135.4, 145.4 or 145.5 of the *Criminal Code* or an offence against a provision of a federal law prescribed for the purposes of this section.

18 Sentence of imprisonment

- (1) Where imprisonment is imposed in respect of any offence against any law of the Commonwealth it may (unless the contrary intention appears in the law) be imposed either with or without hard labour.
- (2) Where under the law of a State or Territory a convicted person may in particular cases be imprisoned in a particular kind or class of prison, a person convicted of an offence against the law of the Commonwealth may, in corresponding cases, be imprisoned in the kind or class of prison appropriate to the circumstances.

19 Cumulative, partly cumulative or concurrent sentences

General requirements

- (1) Where a person who is convicted of a federal offence or federal offences is at the time of that conviction or those convictions, serving, or subject to, one or more federal, State or Territory sentences, the court must, when imposing a federal sentence for that federal offence, or for each of those federal offences, by order direct when the federal sentence commences, but so that:
 - (a) no federal sentence commences later than the end of the sentences the commencement of which has already been fixed or the last to end of those sentences; and
 - (b) if a non-parole period applies in respect of any State or Territory sentences—the first federal sentence to commence after the end of that non-parole period commences immediately after the end of the period.

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(2) Where:

- (a) a person is convicted of 2 or more federal offences at the same sitting; and
- (b) the person is sentenced to imprisonment for more than one of the offences;

the court must, by order, direct when each sentence commences, but so that no sentence commences later than the end of the sentences the commencement of which has already been fixed or of the last to end of those sentences.

(3) Where:

- (a) a person is convicted of a federal offence or offences, and a State or Territory offence or offences, at the same sitting; and
- (b) the person is sentenced to imprisonment for more than one of the offences;

the court must, by order, direct when each federal sentence commences but so that:

- (c) no federal sentence commences later than the end of the sentences the commencement of which has already been fixed or the last to end of those sentences; and
- (d) if a non-parole period applies in respect of any State or Territory sentences—the first federal sentence to commence after the end of that non-parole period commences immediately after the end of the period.

- (4) For the purpose of fixing the commencement of a sentence under this section, a reference in this section to a sentence the commencement of which has already been fixed includes a reference to another sentence imposed at the same time as the first-mentioned sentence.

Additional requirements for Commonwealth child sex offences

- (5) An order must not have the effect that a term of imprisonment imposed on a person for a Commonwealth child sex offence be served partly cumulatively, or concurrently, with an uncompleted term of imprisonment that is, or has been, imposed on the person for:

- (a) another Commonwealth child sex offence; or
 - (b) a State or Territory registrable child sex offence.
- (6) Subsection (5) does not apply if the court is satisfied that imposing the sentence in a different manner would still result in sentences that are of a severity appropriate in all the circumstances.
- (7) If the court imposes a term of imprisonment other than in accordance with subsection (5), the court must:
- (a) state its reasons for imposing the sentence in that manner; and
 - (b) cause the reasons to be entered in the records of the court.

19A Detention of person in State or Territory prisons

A federal offender who is ordered by a court or a prescribed authority to be detained in prison in a State or Territory, may be detained in any prison in that State or Territory and may be removed from one prison to another prison in that State or Territory as if the person were detained as a State offender or Territory offender.

Division 4—The fixing of non-parole periods and the making of recognizance release orders

19AB When court must fix non-parole period

- (1) Subject to subsection (3), a court must fix a single non-parole period in respect of a federal sentence or federal sentences if:
 - (a) a person is convicted of a federal offence, or of 2 or more federal offences at the same sitting; and
 - (b) the court imposes the sentence or sentences on the person; and
 - (c) either or both of the following subparagraphs apply:
 - (i) any of the sentences is a federal life sentence;
 - (ii) the sentences, in the aggregate, exceed 3 years; and
 - (d) when the court imposes the sentence or sentences, the person is not already serving or subject to a federal sentence.
- (2) Subject to subsection (3), a court must fix a single non-parole period in respect of all federal sentences a person is to serve or complete if:
 - (a) while the person is in prison and is serving or subject to a federal sentence, the court imposes a further federal sentence on the person; and
 - (b) the result is that the person is to serve or to complete:
 - (i) a federal life sentence; or
 - (ii) federal sentences the unserved portions of which, in the aggregate, exceed 3 years; and
 - (c) when the court imposes the further federal sentence, the person is not already subject to a non-parole period or recognizance release order in respect of a federal sentence.

Non-parole period not appropriate

- (3) A court may decline to fix a non-parole period under this section if:

- (a) the court is satisfied that a non-parole period is not appropriate, having regard to:
 - (i) the nature and circumstances of the offence or offences; and
 - (ii) the antecedents of the person; or
 - (b) the person is expected to be serving a State or Territory sentence on the day after the end of the federal sentence, or the last to be served of the federal sentences.
- (4) If the court declines to fix a non-parole period, the court must:
- (a) state its reasons for so declining; and
 - (b) cause the reasons to be entered in the records of the court.

19AC When court must fix a recognizance release order

- (1) Subject to subsections (3) and (4), where:
- (a) a person is convicted of a federal offence, or of 2 or more federal offences at the same sitting; and
 - (b) the court imposes on the person a federal sentence that does not exceed, or federal sentences that, in the aggregate, do not exceed, 3 years; and
 - (c) at the time the sentence or sentences are imposed the person is not already serving or subject to a federal sentence;
- the court must make a single recognizance release order in respect of that sentence or those sentences and must not fix a non-parole period.
- (2) Subject to subsections (3) and (4), where:
- (a) while a person is in prison and is serving or subject to a federal sentence, a further federal sentence is imposed on the person; and
 - (b) the result is that the person is to serve or to complete federal sentences the unserved portions of which do not exceed, in the aggregate, 3 years; and

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- (c) at the time the further federal sentence is imposed, the person is not already subject to a recognizance release order in respect of a federal sentence;
- the court imposing the further sentence must make a single recognizance release order in respect of all federal sentences to be served or completed by the person and must not fix a non-parole period.
- (3) Where:
- (a) the federal sentence or federal sentences referred to in paragraph (1)(b); or
 - (b) the unserved portions of the federal sentences referred to in paragraph (2)(b);
- in the aggregate, do not exceed 6 months, the court is not required to make a recognizance release order.
- (4) A court may decline to make a recognizance release order in respect of a person if:
- (a) the court is satisfied that such an order is not appropriate, having regard to:
 - (i) the nature and circumstances of the offence or offences concerned; and
 - (ii) the antecedents of the person; or
 - (b) the person is expected to be serving a State or Territory sentence on the day after the end of the federal sentence, or the last to be served of the federal sentences.
- (5) If the court declines to make a recognizance release order, the court must:
- (a) state its reasons for so declining; and
 - (b) cause the reasons to be entered in the records of the court.

19AD Persons already subject to a non-parole period

- (1) Where:
 - (a) a non-parole period (in this section called the *existing non-parole period*) has been fixed in respect of a federal sentence or federal sentences; and
 - (b) while the offender is serving the existing non-parole period, a court imposes a further federal sentence on the person;
this section applies.
- (2) Where this section applies, the court must, after considering the relevant circumstances, including:
 - (a) the existing non-parole period; and
 - (b) the nature and circumstances of the offence or offences concerned; and
 - (c) the antecedents of the person;
do one of the following things:
 - (d) make an order confirming the existing non-parole period;
 - (e) fix a new single non-parole period in respect of all federal sentences the person is to serve or complete;
 - (f) where the court decides that, in the circumstances, a non-parole period is not appropriate—cancel the existing non-parole period and decline to fix a new non-parole period.
- (3) Where, under paragraph (2)(e), the court fixes a new single non-parole period, it:
 - (a) is to be treated as having superseded the existing non-parole period; and
 - (b) must not be such as to allow the person to be released on parole earlier than would have been the case if the further sentence had not been imposed.
- (4) Where this section applies, the court must not make a recognizance release order.

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- (5) Where, under paragraph (2)(f), the court declines to fix a new non-parole period, the court must:
- (a) state its reasons for deciding that a non-parole period is not appropriate; and
 - (b) cause the reasons to be entered in the records of the court.

19AE Persons already subject to recognizance release order

- (1) Where:
- (a) a person is subject to a recognizance release order (in this section called the *existing recognizance release order*) made in respect of a federal sentence or federal sentences; and
 - (b) before the person is released under that order, the court imposes a further federal sentence on the person;
- this section applies.
- (2) Where this section applies, the court must, after considering the relevant circumstances, including:
- (a) the existing recognizance release order; and
 - (b) the nature and circumstances of the offence or offences concerned; and
 - (c) the antecedents of the person;
- do one of the following things:
- (d) make an order confirming the existing recognizance release order;
 - (e) make a new recognizance release order in respect of all federal sentences the person is to serve or complete;
 - (f) where, as a result of the further federal sentence being imposed, the person is to serve or to complete a federal life sentence or federal sentences the unserved portions of which, in the aggregate, exceed 3 years and the court decides that it is appropriate to fix a non-parole period—fix a single non-parole period in respect of all federal sentences the person is to serve or complete;
 - (g) where the court decides that, in the circumstances, neither a recognizance release order nor a non-parole period is

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appropriate—cancel the existing recognizance release order and decline to make a new recognizance release order.

- (3) Where, under paragraph (2)(e), the court makes a new recognizance release order, that order:
 - (a) is to be treated as having superseded the existing recognizance release order; and
 - (b) must not be such as to allow the person to be released earlier than would have been the case if the further sentence had not been imposed.
- (4) Where, under paragraph (2)(f), the court fixes a single non-parole period, it:
 - (a) is to be treated as having superseded the existing recognizance release order; and
 - (b) must not be such as to allow the person to be released on parole earlier than he or she would have been released if the further sentence had not been imposed.
- (5) Where, under paragraph (2)(g), the court declines to make a new recognizance release order, the court must:
 - (a) state its reasons for deciding that neither a recognizance release order nor a non-parole period is appropriate; and
 - (b) cause the reasons to be entered in the records of the court.

19AF Non-parole period or pre-release periods not to exceed sentence

- (1) Where a court is required to fix a non-parole period or make a recognizance release order in respect of a federal sentence or sentences, the court must fix a non-parole period that ends, or make a recognizance release order such that the pre-release period ends, not later than the end of the sentence, or of the last to be served of the sentences.
- (2) This section does not restrict the length of the non-parole period or the pre-release period in respect of a life sentence or sentences that include such a sentence.

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19AG Non-parole periods for sentences for certain offences

(1) This section applies if a person is convicted of one of the following offences (each of which is a *minimum non-parole offence*) and a court imposes a sentence for the offence:

- (b) a terrorism offence;
- (c) an offence against Division 80 (other than Subdivision CA) of the *Criminal Code*;
- (d) an offence against subsection 91.1(1) or 91.2(1) of the *Criminal Code*.

Note: A sentence for a minimum non-parole offence is a federal sentence, because such an offence is a federal offence.

(2) The court must fix a single non-parole period of at least $\frac{3}{4}$ of:

- (a) the sentence for the minimum non-parole offence; or
- (b) if 2 or more sentences have been imposed on the person for minimum non-parole offences—the aggregate of those sentences.

The non-parole period is in respect of all federal sentences the person is to serve or complete.

(3) For the purposes of subsection (2):

- (a) a sentence of imprisonment for life for a minimum non-parole offence is taken to be a sentence of imprisonment for 30 years for the offence; and
- (b) it does not matter:
 - (i) whether or not the sentences mentioned in that subsection were imposed at the same sitting; or
 - (ii) whether or not the convictions giving rise to those sentences were at the same sitting; or
 - (iii) whether or not all the federal sentences mentioned in that subsection are for minimum non-parole offences.

(4) If the person was subject to a recognizance release order, the non-parole period supersedes the order.

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Fixing non-parole periods for persons under 18 years of age

- (4A) In imposing a sentence for an offence covered by this section on a person who is under 18 years of age, the court must comply with subsection (2) unless the court is satisfied that exceptional circumstances exist to justify fixing a shorter single non-parole period.
- (4B) In determining whether exceptional circumstances exist to justify fixing a shorter single non-parole period in relation to the person, without limiting the matters the court may have regard to, the court must have regard to:
- (a) the protection of the community as the paramount consideration; and
 - (b) the best interests of the person as a primary consideration.

Relationship with sections 19AB, 19AC, 19AD, 19AE and 19AR

- (5) Sections 19AB, 19AC, 19AD, 19AE and 19AR have effect subject to this section.

- Note: The effects of this include preventing a court from:
- (b) confirming (under paragraph 19AD(2)(d)) a pre-existing non-parole period; or
 - (c) confirming (under paragraph 19AE(2)(d)) a recognizance release order; or
 - (ca) making a recognizance release order under paragraph 19AE(2)(e); or
 - (d) declining (under subsection 19AB(3) or 19AC(1) or (2) or paragraph 19AD(2)(f)) to fix a non-parole period.

19AH Failure to fix non-parole period or make recognizance release order

- (1) Where a court fails to fix, or properly to fix, a non-parole period, or to make, or properly to make, a recognizance release order, under this Act:
- (a) that failure does not affect the validity of any sentence imposed on a person; and

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- (b) the court must, at any time, on application by the Attorney-General, the Director of Public Prosecutions or the person, by order, set aside any non-parole period or recognizance release order that was not properly fixed or made and fix a non-parole period or make a recognizance release order under this Act.
- (2) A court shall not, for the purposes of subsection (1), be taken to have failed to fix a non-parole period in respect of a sentence or sentences in respect of which it has made a recognizance release order or to have failed to make a recognizance release order in respect of a sentence or sentences in respect of which it has fixed a non-parole period.
- (3) Application under subsection (1) to the court that has sentenced a person may be dealt with by that court whether or not it is constituted in the way in which it was constituted when the person was sentenced.

19AHA Rectification of errors etc. in sentences, non-parole periods and recognizance release orders

- (1) This section applies if a sentencing order made by a court under this Part in relation to a person:
 - (a) reflects an error of a technical nature made by the court; or
 - (b) has a defect of form; or
 - (c) contains an ambiguity.
- Note: For paragraph (a), the following are examples of errors of a technical nature: a clerical mistake, an accidental slip or omission, a material miscalculation of figures or a material mistake in the description of a person, thing or matter.
- (2) An error, defect or ambiguity mentioned in subsection (1) does not affect the validity of any sentence imposed on the person.
 - (3) The court may, on its own initiative, at any time, by order, amend the sentencing order to rectify the error, defect or ambiguity.

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- (4) The court must, at any time, on application by the Attorney-General, the Director of Public Prosecutions or the person, by order, amend the sentencing order to rectify the error, defect or ambiguity.
- (5) The court may amend the sentencing order whether or not the court is constituted in the way in which it was constituted when the person was sentenced.
- (6) An amendment of a sentencing order under this section does not affect any right of appeal against a sentence.
- (7) Unless the court orders otherwise, an amendment of a sentencing order under this section is taken to have had effect from the date of effect of the sentencing order.
- (8) In this section:
sentencing order means any of the following:
 - (a) an order imposing, or purporting to impose, a sentence;
 - (b) an order fixing a non-parole period;
 - (c) a recognizance release order.

19AJ Court may only fix non-parole periods or make recognizance release orders for federal sentences of imprisonment

This Division does not authorise a court to fix a single non-parole period, or make a recognizance release order, in respect both of federal sentences of imprisonment and State or Territory sentences of imprisonment.

19AK Possible deportation no impediment to fixing non-parole period

Where a person is convicted of a federal offence, a court is not precluded from fixing a non-parole period in respect of the sentence imposed for that offence merely because the person is, or may be, liable to be deported from Australia.

Division 5—Conditional release on parole or licence

Subdivision A—Release on parole or licence

19AKA Purposes of parole

The purposes of parole are the following:

- (a) the protection of the community;
- (b) the rehabilitation of the offender;
- (c) the reintegration of the offender into the community.

19AL Release on parole—making of parole order

- (1) The Attorney-General must, before the end of a non-parole period fixed for one or more federal sentences imposed on a person, either make, or refuse to make, an order directing that the person be released from prison on parole (a *parole order*).

Note 1: See subsection (5) if the person is subject to a State or Territory sentence.

Note 2: See also sections 19ALA (matters that may be considered in decisions about parole orders) and 19ALB (decisions about parole orders—terrorism and control orders).

- (1A) If the Attorney-General does not, under subsection (1), make, or refuse to make, a parole order for a person before the end of the non-parole period referred to in that subsection, the Attorney-General must, as soon as practicable after the end of that period, make, or refuse to make, a parole order for the person.
- (2) If the Attorney-General refuses to make a parole order for a person under subsection (1) or (1A), paragraph (b) of this subsection, or subsection (2A), (6) or (7), the Attorney-General must:
 - (a) give the person a written notice, within 14 days after the refusal, that:
 - (i) informs the person of the refusal; and
 - (ii) includes a statement of reasons for the refusal; and

(iii) sets out the effect of paragraph (b) of this subsection;
and

(b) reconsider the making of a parole order for the person and either make, or refuse to make, such an order, within 12 months after the refusal.

Note: See subsection (5) if the person is subject to a State or Territory sentence.

(2A) If the Attorney-General does not, under paragraph (2)(b), reconsider the making of a parole order for a person and either make, or refuse to make, such an order before the end of the 12 month period referred to in that paragraph, the Attorney-General must, as soon as practicable after the end of that period, reconsider and either make, or refuse to make, a parole order for the person.

Contents of parole order

- (3) A parole order must:
- (a) be in writing; and
 - (b) specify whether or not the person is to be released subject to supervision; and
 - (c) if it is proposed that the supervision period for a person released on parole subject to supervision should end before the end of the person's parole period—specify the day on which the supervision period ends.

Note 1: For when a person is released on parole in accordance with a parole order, see section 19AM.

Note 2: A person released on parole must comply with any conditions of the parole order during the parole period (see sections 19AMA, 19AN and 19AU).

(3A) If the Attorney-General considers that in all the circumstances it is appropriate to do so, the Attorney-General may specify in a parole order that a person is to be released from prison on a day that is before the end of the non-parole period, but is not earlier than 30 days before the end of the non-parole period.

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Person subject to State or Territory sentence

- (4) Subsections (5) to (7) apply if the person is subject to a State or Territory sentence.
- (5) The Attorney-General is not required to make, or to refuse to make, a parole order under subsection (1) or (1A), paragraph (2)(b) or subsection (2A) if:
- (a) the State or Territory sentence is a life sentence for which a non-parole period has not been fixed; or
 - (b) the State or Territory sentence ends after the end of the last of the federal sentences to end; or
 - (c) the non-parole period for the State or Territory sentence ends after the end of the federal non-parole period; or
 - (d) the State or Territory sentence ends after the end of the federal non-parole period.
- (6) However, the Attorney-General must either make, or refuse to make, a parole order before:
- (a) if paragraph (5)(c) applies (and paragraphs (5)(a) and (b) do not)—the end of the non-parole period for the State or Territory sentence; or
 - (b) if paragraph (5)(d) applies (and paragraphs (5)(a), (b) and (c) do not)—the person's expected release from prison for the State or Territory offence.
- (7) If the Attorney-General does not, in accordance with subsection (6), make, or refuse to make, a parole order for a person before:
- (a) the end of the period referred to in paragraph (6)(a); or
 - (b) the date of the expected release referred to in paragraph (6)(b);
- the Attorney-General must, as soon as practicable after the end of that period or the date of that expected release, make, or refuse to make, a parole order for the person.

Note: The effect of subsections (4) to (7) and subsection 19AM(2) is that a parole order may sometimes still be made for a person while the person is serving a State or Territory sentence, but the person will not

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be released in accordance with the parole order until the person is released from prison for the State or Territory sentence.

19ALA Matters that may be considered in decisions about parole orders

- (1) In making a decision under section 19AL in relation to a person, the Attorney-General may have regard to any of the following matters that are known to the Attorney-General and relevant to the decision:
 - (a) the risk to the community of releasing the person on parole;
 - (b) the person's conduct while serving his or her sentence;
 - (c) whether the person has satisfactorily completed programs ordered by a court or recommended by the relevant State or Territory corrective services or parole agency;
 - (d) the likely effect on the victim, or victim's family, of releasing the person on parole;
 - (e) the nature and circumstances of the offence to which the person's sentence relates;
 - (f) any comments made by the sentencing court;
 - (g) the person's criminal history;
 - (h) any report or information in relation to the granting of parole that has been provided by the relevant State or Territory corrective services or parole agency;
 - (i) the behaviour of the person when subject to any previous parole order or licence;
 - (j) the likelihood that the person will comply with the conditions of the parole order;
 - (k) whether releasing the person on parole is likely to assist the person to adjust to lawful community life;
 - (l) whether the length of the parole period is sufficient to achieve the purposes of parole;
 - (m) any special circumstances, including the likelihood that the person will be subject to removal or deportation upon release.
 - (2) Subsection (1) does not limit the matters that the Attorney-General may consider in making a decision under section 19AL.
-

Section 19ALB

19ALB Decisions about parole orders—terrorism and control orders

- (1) Despite any law of the Commonwealth, the Attorney-General must not make a parole order in relation to a person covered by subsection (2) unless the Attorney-General is satisfied that exceptional circumstances exist to justify making a parole order.
- (2) This subsection covers the following persons:
 - (a) a person who has been convicted of a terrorism offence, including a person currently serving a sentence for a terrorism offence;
 - (b) a person who is subject to a control order within the meaning of Part 5.3 of the *Criminal Code* (terrorism);
 - (c) a person who the Attorney-General is satisfied has made statements or carried out activities supporting, or advocating support for, terrorist acts within the meaning of that Part.

Determining exceptional circumstances in relation to persons under 18 years of age

- (3) In determining whether exceptional circumstances exist to justify making a parole order in relation to a person who is under 18 years of age, without limiting the matters the Attorney-General may have regard to, the Attorney-General must have regard to:
 - (a) the protection of the community as the paramount consideration; and
 - (b) the best interests of the person as a primary consideration.

19AM Release on parole—when is a person released

- (1) A person must be released from prison on parole in accordance with a parole order on whichever of the following days is applicable (subject to subsections (2) and (3) and 19AZD(2)):
 - (a) for a parole order made before the end of the non-parole period—the earlier of the following days:
 - (i) the last day of the non-parole period;

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- (ii) an earlier day (if any) specified in the parole order under subsection 19AL(3A);
- (b) for a parole order made after the end of the non-parole period—the later of the following days:
 - (i) the day after the parole order is made;
 - (ii) a later day (if any) specified in the parole order for the purposes of this subparagraph (not being later than 30 days after the order is made).

Note 1: Subsection (2) of this section provides a different release day if the person is imprisoned for a State or Territory offence on the release day that would otherwise apply under this subsection.

Note 2: Subsection (3) requires the person to certify his or her acceptance of the parole order conditions before he or she may be released.

Note 3: Subsection 19AZD(2) may allow a person to be released slightly earlier than the day that would otherwise apply under this subsection (for example if the release day would otherwise fall on a weekend or public holiday).

- (2) However, if the person is imprisoned for a State or Territory offence on the day he or she would otherwise be eligible for release under subsection (1), the person must be released from prison on parole in accordance with the parole order on the same day he or she is released from prison (including on parole) for the State or Territory offence.
- (3) Despite subsections (1) and (2), the person must not be released from prison on parole in accordance with the parole order unless, before, on or after the release day provided by subsection (1) or (2), the person certifies on the parole order (or a copy of the order) that he or she accepts the conditions to which the order is subject.

Note: A person released on parole must comply with any conditions of the parole order during the parole period (see sections 19AN and 19AU).

19AMA Release on parole—parole period

- (1) For the purposes of this Part, the *parole period* for a person for whom a parole order has been made is the period starting in

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accordance with subsection (2) and ending in accordance with subsection (3).

Note: A person released on parole must comply with any conditions of the parole order during the parole period (see sections 19AN and 19AU).

- (2) The person's parole period starts at the earlier of the following times:
- (a) when the person is released from prison on parole;
 - (b) if the person is serving a State or Territory sentence at the time the parole order is made—when the person certifies on the parole order (or a copy of the order) that he or she accepts the conditions to which the order is subject.
- (3) The person's parole period ends:
- (a) at the end of the last day of any federal sentence that is, on the day of the release, being served or to be served; or
 - (b) if the person has been given a federal life sentence—at the later of the following times:
 - (i) 5 years after the person is released from prison on parole in accordance with section 19AM;
 - (ii) the end of a later day (if any) specified in the parole order for the purposes of this subparagraph (not being a day earlier than 5 years after the person's expected release from prison in accordance with the order).

19AN Parole order is subject to conditions

A parole order:

- (a) is subject to the condition that the offender must, during the parole period, be of good behaviour and not violate any law; and
- (b) if the parole order specifies in accordance with subsection 19AL(3) that the person is to be released subject to supervision—is subject to the condition that the offender must, during the supervision period, be subject to the supervision of a parole officer or other person specified in the

order and obey all reasonable directions of that officer or other person; and

- (c) is subject to such other conditions (if any) as the Attorney-General specifies in the order.

19AP Release on licence

- (1) Where a person is serving a federal sentence (whether or not a non-parole period has been fixed, or a recognizance release order made, in relation to that sentence), the Attorney-General may grant a licence under this subsection for the person to be released from prison.
- (2) A person who is serving a federal sentence of imprisonment (whether or not a non-parole period has been fixed, or a recognizance release order made, in relation to that sentence), or another person acting on that person's behalf, may apply to the Attorney-General for a licence under this subsection for the first-mentioned person to be released from prison.
- (3) An application under subsection (2) must:
 - (a) be in writing; and
 - (b) specify the exceptional circumstances relied on to justify the grant of the licence.
- (4) The Attorney-General must not grant a licence under this section unless he or she is satisfied that exceptional circumstances exist which justify the grant of the licence.
- (4A) Without limiting the matters to which the Attorney-General may have regard for the purposes of subsection (4), the Attorney-General may have regard to:
 - (a) any extensive cooperation by the person with law enforcement agencies before sentencing that the sentencing court did not take into account; or
 - (b) any extensive cooperation by the person with law enforcement agencies after sentencing; or

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- (c) any serious medical condition the person has that cannot adequately be treated or managed within the prison system.
- (5) The Attorney-General is not required to consider an application under subsection (2) in respect of a person if an application has been made under that subsection in respect of that person within one year before the first-mentioned application.
- (6) A licence in relation to a person:
 - (a) if the person is subject to a federal life sentence—must specify the day on which the licence period ends, being a day not earlier than 5 years after the person is released on licence; and
 - (b) specify whether or not the person is to be released subject to supervision; and
 - (c) if it is proposed that the supervision period for a person released on licence subject to supervision should end before the end of the person's licence period—specify the day on which the supervision period ends.
- (7) A licence:
 - (a) is subject to the condition that the offender must, during the licence period, be of good behaviour and not violate any law; and
 - (b) if the licence specifies in accordance with subsection (6) that the person is to be released subject to supervision—is subject to the condition that the offender must, during the supervision period, be subject to the supervision of a person specified in the licence and obey all reasonable directions of that person; and
 - (c) is subject to such other conditions (if any) as the Attorney-General specifies in the licence.
- (10) A licence directing that the offender be released from prison is sufficient authority for the release.

19APA Amendment of parole orders and licences

Amendment of conditions

- (1) The Attorney-General may, at any time before the end of:
- (a) a parole period for a person for whom a parole order has been made; or
 - (b) a licence period for a person who is released on licence for a federal sentence;
- by order in writing, amend the parole order or licence by doing any or all of the following:
- (c) imposing additional conditions on the parole order or licence;
 - (d) varying or revoking a condition of the parole order or licence specified under paragraph 19AN(c) or 19AP(7)(c) or imposed under paragraph (c);
 - (e) if the supervision period has not ended—changing the day on which the supervision period ends.

Amendments to rectify errors etc.

- (2) If a parole order or licence:
- (a) contains an error of a technical nature; or
 - (b) has a defect of form; or
 - (c) contains an ambiguity;
- the Attorney-General may, at any time, by order in writing, amend the parole order or licence to rectify the error, defect or ambiguity.

Note: For paragraph (a), the following are examples of errors of a technical nature: a clerical mistake, an accidental slip or omission, a material miscalculation of figures or a material mistake in the description of a person, thing or matter.

When amendments take effect

- (3) An amendment of a parole order or licence under subsection (1) takes effect when notice in writing of the amendment is given to the offender.

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- (4) An amendment of a parole order or licence under subsection (2) is taken to have had effect from the date of effect of the parole order or licence.

19APB Effect of parole order and licence on sentence

- (1) If a parole order is made, or a licence is granted, in relation to a person:
- (a) the person is taken to be still under sentence and not to have served the part of any sentence that remained to be served at the beginning of the parole period or licence period, until:
 - (i) the parole period or licence period ends without the parole order or licence being revoked; or
 - (ii) the person is otherwise discharged from imprisonment; and
 - (b) the person is taken:
 - (i) to have served the part of any sentence that remained to be served at the beginning of the parole period or licence period; and
 - (ii) to have been discharged from imprisonment; if the parole period or licence period ends without the parole order or licence being revoked.
- (2) Subsection (1) has effect as if the parole period or the licence period had not ended without the parole order or licence being revoked, if in relation to the parole order or licence:
- (a) a determination referred to in subsection 19AQ(1) or (2) is made at a time after the end of the parole period or licence period; and
 - (b) the time the parole order or licence is taken to have been revoked under subsection 19AQ(1) or (2) is during the parole period or licence period.

Subdivision B—Revocation of parole order or licence

19AQ Parole order or licence revoked following further offence

Revocation time

- (1) If a person to whom a parole order relates is sentenced to life imprisonment or to a sentence of, or sentences aggregating, more than 3 months in respect of a federal, State or Territory offence (the ***new offence***) committed during the parole period, the court that sentences the person for the new offence must determine the time (the ***revocation time***) when the parole order is taken to have been revoked.
- (2) If a person to whom a licence relates is sentenced to life imprisonment or to a sentence of, or sentences aggregating, more than 3 months in respect of a federal, State or Territory offence (the ***new offence***) committed during the licence period, the court that sentences the person for the new offence must determine the time (the ***revocation time***) when the licence is taken to have been revoked.
- (3) A revocation time determined under subsection (1) or (2) must be one of the following times:
 - (a) the time at which the court determines the new offence was committed;
 - (b) the time at which the court determines the new offence was most likely to have been committed;
 - (c) the time at which the court determines the new offence was most likely to have first begun to have been committed.

Time person liable to serve

- (4) If the parole order or licence relating to a person is taken to have been revoked under subsection (1) or (2), the person becomes liable to serve:

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- (a) that part of the sentence or of each sentence for a federal offence that the person had not served at the time of his or her release under that order or licence; or
- (b) if the court considers it appropriate taking into account the good behaviour of the person during the period (the *clean street period*) starting at the time the person was released under that order or licence and ending at the revocation time—the sentence or aggregate sentence that would be imposed under paragraph (a) reduced by the period that is the same as the clean street period.

Suspended sentences

- (5) This section does not apply where the sentence or each sentence referred to in subsection (1) or (2) is a suspended sentence.

19AR Fixing of non-parole period etc. where parole or licence taken to be revoked under section 19AQ

New federal offence etc.

- (1) Subject to subsection (4), if:
 - (a) a person who is serving or is to serve a federal sentence or federal sentences is released on parole or licence under this Act; and
 - (b) the person is later sentenced (the *new sentence or sentences*) to a term of imprisonment in respect of a federal offence or federal offences committed during the parole period or licence period; and
 - (c) under section 19AQ:
 - (i) the parole order or licence is to be taken to have been revoked; and
 - (ii) the person becomes liable to serve a part of a sentence or sentences (the *outstanding sentence or sentences*);the court imposing the new sentence or sentences:
 - (d) must not make a recognizance release order; and

- (e) must fix a single new non-parole period in respect of the new sentence or sentences and the outstanding sentence or sentences having regard to the total period of imprisonment that the person is liable to serve.

New State or Territory offence etc.

- (3) Subject to subsection (4), if:
 - (a) a person who is serving or is to serve a federal sentence or federal sentences is released on parole or licence under this Act; and
 - (b) the person is later sentenced (the ***new sentence or sentences***) to a term of imprisonment in respect of one or more State or Territory offences committed during the parole period or licence period; and
 - (c) under section 19AQ:
 - (i) the parole order or licence is to be taken to have been revoked; and
 - (ii) the person becomes liable to serve a part of a sentence or sentences (the ***outstanding sentence or sentences***);the court imposing the new sentence or sentences:
 - (d) must not make a recognizance release order; and
 - (e) must fix a single new non-parole period in respect of the outstanding sentence or sentences having regard to the total period of imprisonment that the person is liable to serve.

General

- (4) A court may decline to fix a non-parole period if:
 - (a) the court is satisfied that doing so is appropriate, having regard to:
 - (i) the serious nature and circumstances of the offence or offences; and
 - (ii) the antecedents of the person; or
 - (b) the person is expected to be serving a State or Territory sentence on the day after the end of the federal sentence, or the last to be served of the federal sentences.

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- (5) Where a court decides, under this section, that it is inappropriate to fix a non-parole period, the court:
 - (a) must state its reasons for so deciding; and
 - (b) must cause these reasons to be entered in the records of the court.
- (6) Without limiting, by implication, the application of any other provision of Division 4, sections 19AF, 19AJ and 19AK apply, according to their terms, in relation to the fixing of non-parole periods under this section in the same way as they apply to the fixing of such periods under Division 4.
- (7) Without limiting, by implication, the application of any other provision of Division 4, section 19AH applies, according to its terms, in relation to the failure to fix, or properly to fix, non-parole periods under this section in the same way as it applies to such failures in relation to the fixing of such periods under Division 4.

19AS Court to issue warrant of detention where person required to serve balance of sentence

- (1) If:
 - (a) a person who is serving or is to serve a federal sentence or federal sentences is released on parole or licence under this Act; and
 - (b) the person is later sentenced (the *new sentence or sentences*) to a term of imprisonment in respect of one or more federal, State or Territory offences committed during the parole period or licence period; and
 - (c) under section 19AQ:
 - (i) the parole order or licence is to be taken to have been revoked; and
 - (ii) the person becomes liable to serve a part of a sentence or sentences (the *outstanding sentence or sentences*);then:
 - (d) the court imposing the new sentence or sentences must issue a warrant authorising the person to be detained in prison to

- undergo imprisonment for the unserved part of the outstanding sentence or sentences; and
- (e) the person must begin to serve the unserved part of the outstanding sentence or of the first to be served of the outstanding sentences on the day that the new sentence is, or the new sentences are, imposed; and
 - (f) the unserved part of the outstanding sentence or of each of the outstanding sentences must be served in the State or Territory where the new sentence is, or the new sentences are, imposed.
- (2) Where the court fails to issue a warrant under paragraph (1)(d), the Director of Public Prosecutions may apply to that court for such a warrant.

19AT What happens when later conviction is quashed?

- (1) Where:
- (a) a person who is serving or is to serve a federal sentence or federal sentences is released on parole or licence under this Act; and
 - (b) the person is later sentenced (the *new sentence or sentences*) to a term of imprisonment in respect of one or more federal, State or Territory offences committed during the parole period or licence period; and
 - (ba) under section 19AQ:
 - (i) the parole order or licence is to be taken to have been revoked; and
 - (ii) the person becomes liable to serve a part of a sentence or sentences (the *outstanding sentence or sentences*);
- then:
- (c) if the person appeals against the conviction or each conviction giving rise to a new sentence and is granted bail, pending the hearing of the appeal or appeals:
 - (i) this Act has effect, pending the hearing of that appeal or those appeals, as if the revoked order or licence had not been revoked and as if any warrant for the detention of

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- the person issued under section 19AS were of no effect;
and
- (ii) the person must be released from prison on the day the person is granted bail; and
- (d) if the appeal court sets aside the conviction or each of the convictions and the person concerned is granted bail or bail is extended pending a retrial of the offence or offences concerned:
- (i) this Act has effect, or continues to have effect, pending the completion of the retrial, as if the revoked order or licence had not been revoked and as if any warrant for the detention of the person issued under section 19AS were of no effect; and
 - (ii) if the person had not already been released from prison under paragraph (c), the person is to be released on the day the person is granted bail or bail is extended; and
- (e) if the conviction or each conviction appealed against is quashed on appeal or the person is found, on a retrial, not to be guilty of the offence or each of the offences:
- (i) this Act has effect, or continues to have effect, as if the revoked order or licence had not been revoked and as if any warrant for the detention of the person issued under section 19AS were of no effect; and
 - (ii) if the person had not already been released from prison under paragraph (c) or (d), the person must be released from prison on the day the conviction or each conviction is quashed on appeal or the person is found, on a retrial not to be guilty of the offence or offences; and
- (f) if paragraph (c), (d) or (e) applies—the unserved part of the outstanding sentence or sentences shall (except in the case of an outstanding sentence of life imprisonment) be reduced by the period spent in prison after the day the new sentence is or the new sentences are imposed and before the day of the person’s release on bail or, if the person is not so released, before the resolution of the appeal.

- (2) If the appeal against the conviction or each conviction giving rise to a new sentence is unsuccessful, section 19AS applies, with effect from the day the appeal proceedings are completed, as if the new sentence or new sentences were imposed on that day by the court to which the appeal was made.
- (3) Nothing in subsection (1) prevents a person from being detained in prison under any other law.

19AU Attorney-General may revoke parole order or licence

- (1) The Attorney-General may, by instrument in writing, revoke a parole order or licence at any time before the end of the parole period or licence period:
 - (a) if the offender has, during that period, failed to comply with a condition of the order or licence; or
 - (b) if there are reasonable grounds for suspecting that the offender has, during that period, so failed to comply;and the instrument of revocation must specify the condition that was breached or is suspected of having been breached.
- (2) Before revoking a parole order or a licence, the Attorney-General must, subject to subsection (3), by notice in the prescribed form, notify the person to whom the order or licence relates of:
 - (a) the condition of the order or licence alleged to have been breached; and
 - (b) the fact that the Attorney-General proposes to revoke the order or licence at the end of 14 days after the day the notice is issued unless the person, within that period, gives the Attorney-General written reasons why the order or licence should not be revoked and those reasons are accepted by the Attorney-General.
- (3) Subsection (2) does not apply where:
 - (a) the person's whereabouts are and remain, after reasonable inquiries on behalf of the Attorney-General, unknown to the Attorney-General; or

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- (b) there are circumstances of urgency that, in the opinion of the Attorney-General, require the parole order or licence to be revoked without notice being given to the person; or
- (ba) in the opinion of the Attorney-General it is necessary to revoke the parole order or licence without giving notice to the person in the interests of ensuring the safety and protection of the community or of another person; or
- (c) the person has left Australia; or
- (d) in the opinion of the Attorney-General it is necessary, in the interests of the administration of justice, to revoke the parole order or licence without giving notice to the person.

19AV Arrest of person whose parole order or licence revoked by Attorney-General

- (1) A constable may, without warrant, arrest a person whose parole order or licence has been revoked by the Attorney-General.
- (2) The Attorney-General or the Director of Public Prosecutions may, in relation to a person whose parole order or licence has been revoked by the Attorney-General, apply to a prescribed authority for a warrant in the form prescribed for the purposes of this subsection for the arrest of the person.
- (3) A person who is arrested under subsection (1) or (2), must, as soon as practicable after that arrest, be brought before a prescribed authority in the State or Territory in which the person is arrested.

19AW Where person on parole or licence notified of revocation

- (1) Where a prescribed authority before whom a person is brought under section 19AV because of an order revoking a parole order or licence is satisfied:
 - (a) that the person is the person named in that revocation order; and
 - (b) that the person was notified by the Attorney-General of the proposal to make the revocation order; and
 - (c) that the revocation order is still in force;

the prescribed authority must issue a warrant, in the prescribed form:

- (d) authorising any constable to take the person to a specified prison in the State or Territory in which the person was arrested; and
 - (e) directing that the person be detained in prison in that State or Territory to undergo imprisonment for the unserved part of the sentence, or of each sentence, of imprisonment (in this section called the *outstanding sentence or sentences*) that the person was serving or had yet to serve at the time of his or her release; and
 - (f) subject to subsections (3) and (3A), fixing a non-parole period in respect of the outstanding sentence or sentences.
- (2) If the prescribed authority cannot complete the hearing under subsection (1) immediately, the prescribed authority must issue a warrant for the remand of the person in custody pending completion of the hearing.
- (3) The prescribed authority is not required to fix a non-parole period under paragraph (1)(f) if:
- (a) the prescribed authority considers it inappropriate to do so because of the serious nature of the breach of the conditions of the order or licence that led to its revocation; or
 - (b) the unserved part of the outstanding sentence or sentences is, or aggregates, 3 months or less.
- (3A) Before fixing a non-parole period under paragraph (1)(f) in respect of the outstanding sentence or sentences, the prescribed authority must have regard to the period of time spent by the person on parole or licence before the parole order or licence was revoked under subsection 19AU(1).
- (4) Where a prescribed authority issues a warrant, the prescribed authority must specify in the warrant the particulars of the unserved part of each outstanding sentence and, if a non-parole period is fixed, particulars of that period.

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- (5) A non-parole period fixed under this section has effect as if it had been fixed by a court in respect of the outstanding sentence or sentences and section 19AL applies in relation to that non-parole period according to its terms.
- (6) Where a person brought before a prescribed authority under section 19AV is dealt with in accordance with this section, the unserved part of any outstanding sentence or sentences that the person was serving or had yet to serve at the time of his or her release, is to be reduced by any period of remand under subsection (2).

19AX Where person on parole or licence not notified of revocation

- (1) Where a prescribed authority before whom a person is brought under section 19AV because of an order revoking a parole order or licence is satisfied that the person so brought is the person named in that revocation order but is not satisfied that the person was notified by the Attorney-General of the proposal to make that revocation order, the prescribed authority must:
 - (a) immediately notify the Attorney-General that the person has been brought before that prescribed authority; and
 - (b) order that the person be detained in custody until the Attorney-General orders that the revocation order be rescinded or until the completion of proceedings under subsection 19AW(1) as applied by subsection (6) of this section.
- (2) Where the Attorney-General is notified that a person has been brought before a particular prescribed authority, the Attorney-General must, as soon as practicable, notify the person, in writing, of the conditions of the parole order or licence alleged to have been breached and request that the person give him or her, within 14 days of notification of those reasons, a written submission stating why that parole order or licence should not have been revoked.
- (3) If, within 14 days of a person receiving notification under subsection (2), the person fails to make a written submission to the

Attorney-General, the Attorney-General must, as soon as practicable after the end of that period, notify the prescribed authority of a decision not to rescind the revocation order.

- (4) If, within 14 days of notification under subsection (2), the person makes a written submission to the Attorney-General, the Attorney-General must decide, as soon as practicable after receiving that submission, and on the basis of that submission and any other material the Attorney-General considers to be relevant, whether or not to rescind the revocation order and must, as soon as practicable after so deciding, inform the prescribed authority and the person, in writing, of the decision.
- (5) If the prescribed authority is notified of a decision to rescind the revocation order, the prescribed authority must immediately order the person to be released from prison.
- (6) If the prescribed authority is notified of a decision not to rescind the revocation order made in respect of the person, subsection 19AW(1) applies to the person so as to authorise the issue of a warrant as if the prescribed authority had been satisfied of the matters referred to in paragraphs 19AW(1)(a), (b) and (c) and subsections 19AW(3), (4), (5) and (6) apply to that person according to their terms.

19AY Appeals in respect of warrants issued under subsection 19AW(1) or that subsection as applied

- (1) Where a prescribed authority issues a warrant in respect of a person under subsection 19AW(1), or under that subsection as applied by section 19AX, the person may appeal to the Supreme Court of the State or Territory in which the person was arrested against:
 - (a) the issue of the warrant; or
 - (b) the calculation, for the purposes of the warrant, of the unserved part of any outstanding sentence; or
 - (c) the fixing, for the purposes of the warrant, of a non-parole period or the refusal to fix such a period.

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- (2) An appeal may be begun by lodging a notice of appeal with the court within 21 days after the day on which the warrant to which the appeal relates was issued.
- (3) An appeal is to be by way of rehearing, but the court may have regard to any evidence given before the prescribed authority.
- (4) The court may, on the application of the person making the appeal, order the release of the person from prison pending the disposal of the appeal, on such conditions as the court determines, and, upon the court's so doing, the warrant appealed against shall not, unless the person breaks a condition of his or her release, be executed or further executed before the appeal is disposed of.
- (5) The court must:
 - (a) if the appeal is against the issue of the warrant—either confirm or revoke the warrant; or
 - (b) if the appeal is against the calculation of the unserved part of any outstanding sentence—either confirm the warrant or vary the warrant, so far as it relates to that calculation, as specified in the order; or
 - (c) if the appeal is against the fixing of a non-parole period or the refusal to fix such a period—either confirm the warrant or vary the warrant, if it fixes a non-parole period, as specified in the order.
- (6) Where a warrant is revoked under paragraph (5)(a), the person to whom the warrant relates, if the court has not already ordered the person's release under subsection (4), is to be released from prison immediately.
- (7) In this section:

outstanding sentence has the same meaning as in section 19AW.

19AZ Evidence before prescribed authority

- (1) A prescribed authority exercising any powers under this Division may take evidence on oath or affirmation and for that purpose may administer an oath or affirmation.
- (2) A prescribed authority exercising any powers under this Division may summon a person to appear before the prescribed authority to give evidence and to produce such documents and articles (if any) as are referred to in the summons.
- (3) A summons under this section shall be served in the same manner as a summons to a witness to appear before a court of summary jurisdiction in the State or Territory where the summons under this section is issued.

19AZA Disobedience of summons etc.

- (1) A person who has been served with a summons to appear before a prescribed authority must not fail to appear in obedience to the summons.

Penalty: 10 penalty units.
- (2) A person who has been served with a summons to produce a document or article to a prescribed authority shall not fail to produce the document or article.

Penalty: 10 penalty units.
- (3) A person who appears before a prescribed authority shall not refuse to be sworn or make an affirmation or refuse to produce documents or articles, or to answer questions, that he or she is required by the prescribed authority to produce or answer.

Penalty: 10 penalty units.
- (4) Subsections (1), (2) and (3) do not apply if the person has a reasonable excuse.

Part IB Sentencing, imprisonment and release of federal offenders

Division 5 Conditional release on parole or licence

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

(5) Subsections (1) and (2) are offences of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

19AZB Can person be released on parole or licence if earlier parole order or licence revoked?

A parole order may be made or a licence granted, even if a previous parole order or licence has been revoked.

Subdivision C—State and Territory laws providing for leave of absence, pre-release etc.

19AZD State and Territory laws providing for leave of absence, pre-release etc. to apply to federal offenders

- (1) A law of a State or Territory providing for a State or Territory offender to be granted leave of absence from prison, including leave of absence granted by order of a court, applies to a federal offender who is serving a sentence in that State or Territory as if the federal offender were a State or Territory offender serving an equivalent State or Territory sentence in that State or Territory.
- (2) A law of a State or Territory providing for a State or Territory offender imprisoned in that State or Territory to be released:
 - (a) up to 24 hours before the time at which his or her sentence would otherwise have ended; or
 - (b) where the release day falls on a Saturday, a Sunday or a day which is a public holiday—on the last day before such a day which is not a Saturday, a Sunday or a public holiday;applies to a federal offender who is serving a sentence in that State or Territory as if the federal offender were a State or Territory offender serving an equivalent State or Territory sentence in that State or Territory.

- (3) A law of a State or Territory providing for a State or Territory offender to be released from prison under a pre-release permit scheme (however called) that is prescribed for the purposes of this subsection, applies to a federal offender who is serving a sentence in that State or Territory, subject to any conditions relating to eligibility to participate that are specified in the regulations that prescribe that scheme, as if the federal offender were a State or Territory offender serving an equivalent State or Territory sentence in that State or Territory.

Subdivision D—Discharge without conviction, conditional release and sentencing alternatives

19B Discharge of offenders without proceeding to conviction

- (1) Where:
- (a) a person is charged before a court with a federal offence or federal offences; and
 - (b) the court is satisfied, in respect of that charge or more than one of those charges, that the charge is proved, but is of the opinion, having regard to:
 - (i) the character, antecedents, age, health or mental condition of the person;
 - (ii) the extent (if any) to which the offence is of a trivial nature; or
 - (iii) the extent (if any) to which the offence was committed under extenuating circumstances;that it is inexpedient to inflict any punishment, or to inflict any punishment other than a nominal punishment, or that it is expedient to release the offender on probation;
- the court may, by order:
- (c) dismiss the charge or charges in respect of which the court is so satisfied; or
 - (d) discharge the person, without proceeding to conviction in respect of any charge referred to in paragraph (c), upon his or her giving security, with or without sureties, by recognizance

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or otherwise, to the satisfaction of the court, that he or she will comply with the following conditions:

- (i) that he or she will be of good behaviour for such period, not exceeding 3 years, as the court specifies in the order;
 - (ii) that he or she will make such reparation or restitution, or pay such compensation, in respect of the offence or offences concerned (if any), or pay such costs in respect of his or her prosecution for the offence or offences concerned (if any), as the court specifies in the order (being reparation, restitution, compensation or costs that the court is empowered to require the person to make or pay):
 - (A) on or before a date specified in the order; or
 - (B) in the case of reparation or restitution by way of money payment or in the case of the payment of compensation or an amount of costs—by specified instalments as provided in the order; and
 - (iii) that he or she will, during a period, not exceeding 2 years, that is specified in the order in accordance with subparagraph (i), comply with such other conditions (if any) as the court thinks fit to specify in the order, which conditions may include the condition that the person will, during the period so specified, be subject to the supervision of a probation officer appointed in accordance with the order and obey all reasonable directions of a probation officer so appointed.
- (1A) However, the court must not take into account under subsection (1) any form of customary law or cultural practice as a reason for:
- (a) excusing, justifying, authorising, requiring or lessening the seriousness of the criminal behaviour to which the offence relates; or
 - (b) aggravating the seriousness of the criminal behaviour to which the offence relates.

(1B) In subsection (1A):

criminal behaviour includes:

- (a) any conduct, omission to act, circumstance or result that is, or forms part of, a physical element of the offence in question; and
 - (b) any fault element relating to such a physical element.
- (2) Where a court proposes to discharge a person in pursuance of an order made under subsection (1), it shall, before making the order, explain or cause to be explained to the person, in language likely to be readily understood by him or her:
- (a) the purpose and effect of the proposed order;
 - (b) the consequences that may follow if he or she fails, without reasonable cause or excuse, to comply with the conditions of the proposed order; and
 - (c) that any recognizance given in accordance with the order may be discharged or varied under section 20AA.
- (2A) A person is not to be imprisoned for a failure to pay an amount required to be paid under an order made under this section.
- (3) Where a charge or charges against a person is or are dismissed, or a person is discharged, in pursuance of an order made under subsection (1):
- (a) the person shall have such rights of appeal on the ground that he or she was not guilty of the offence or offences concerned with which he or she was charged as he or she would have had if the court had convicted him or her of the offence or offences concerned; and
 - (b) there shall be such rights of appeal in respect of the manner in which the person is dealt with for the offence or offences concerned as there would have been if:
 - (i) the court had, immediately before so dealing with him or her, convicted him or her of the offence or offences concerned; and
 - (ii) the manner in which he or she is dealt with had been a sentence or sentences passed upon that conviction.

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- (4) Where a person is discharged in pursuance of an order made under subsection (1), the court shall, as soon as practicable, cause the order to be reduced to writing and a copy of the order to be given to, or served on, the person.

20 Conditional release of offenders after conviction

- (1) Where a person is convicted of a federal offence or federal offences, the court before which he or she is convicted may, if it thinks fit:
- (a) by order, release the person, without passing sentence on him or her, upon his or her giving security, with or without sureties, by recognizance or otherwise, to the satisfaction of the court, that he or she will comply with the following conditions:
 - (i) that he or she will be of good behaviour for such period, not exceeding 5 years, as the court specifies in the order;
 - (ii) that he or she will make such reparation or restitution, or pay such compensation, in respect of the offence or offences (if any), or pay such costs in respect of his or her prosecution for the offence or offences (if any), as the court specifies in the order (being reparation, restitution, compensation or costs that the court is empowered to require the person to make or pay):
 - (A) on or before a date specified in the order; or
 - (B) in the case of reparation or restitution by way of money payment or in the case of the payment of compensation or an amount of costs—by specified instalments as provided in the order;
 - (iii) that he or she will pay to the Commonwealth such pecuniary penalty (if any) as the court specifies in the order (being a penalty not exceeding the maximum amount of the penalty that, in accordance with subsection (5), the court may specify in respect of the offence or offences) on or before a date specified in the

order or by specified instalments as provided in the order;

- (iv) that he or she will, during a period, not exceeding 2 years, that is specified in the order, comply with such other conditions (if any) as the court thinks fit to specify in the order; or

Example: A condition under subparagraph (iv) could be that the person will undertake a specified counselling, education or treatment program during a specified part of, or throughout, the specified period.

- (b) sentence the person to imprisonment in respect of the offence or each offence but direct, by order, that the person be released, upon giving security of the kind referred to in paragraph (a):

- (i) if none of the offences is a Commonwealth child sex offence—either immediately or after the person has served a specified period of imprisonment that is calculated in accordance with subsection 19AF(1); or
- (ii) if at least one of the offences is a Commonwealth child sex offence and the court is not satisfied that there are exceptional circumstances—after the person has served a specified period of imprisonment that is calculated in accordance with subsection 19AF(1); or
- (iii) if at least one of the offences is a Commonwealth child sex offence and the court is satisfied that there are exceptional circumstances—immediately.

- (1A) Subject to subsection (1B), if the court specifies under paragraph (1)(a) or (b), as mentioned in subparagraph (1)(a)(iv), the condition that the person will, during the specified period:

(a) be subject to the supervision of a probation officer appointed in accordance with the order; and

(b) obey all reasonable directions of the probation officer;

the court must also specify the condition that the person will not travel interstate or overseas without the written permission of the probation officer.

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- (1B) If at least one of the offences the person is convicted of is a Commonwealth child sex offence, the court must specify under paragraph (1)(b), as mentioned in subparagraph (1)(a)(iv), the conditions that the person will, during the specified period:
- (a) be subject to the supervision of a probation officer appointed in accordance with the order; and
 - (b) obey all reasonable directions of the probation officer; and
 - (c) not travel interstate or overseas without the written permission of the probation officer; and
 - (d) undertake such treatment or rehabilitation programs that the probation officer reasonably directs.
- (2) Where a court proposes to release a person by order made under paragraph (1)(a), it shall, before making the order, explain or cause to be explained to the person, in language likely to be readily understood by him or her:
- (a) the purpose and effect of the proposed order;
 - (b) the consequences that may follow if he or she fails, without reasonable cause or excuse, to comply with the conditions of the proposed order; and
 - (c) that any recognizance given in accordance with the order may be discharged or varied under section 20AA.
- (2A) A person is not to be imprisoned for a failure, under an order made under subsection (1), to pay an amount by way of reparation, restitution or compensation or an amount in respect of costs.
- (3) Where a person is released in pursuance of an order made under subsection (1) without sentence being passed on him or her, there shall be such rights of appeal in respect of the manner in which the person is dealt with for the offence or each offence in respect of which the order is made as there would have been if the manner in which he or she is dealt with had been a sentence passed upon his or her conviction for that offence.
- (4) Where an order is made under subsection (1) in respect of a person, the court shall, as soon as practicable, cause the order to be reduced

to writing and a copy of the order to be given to, or served on, the person.

- (5) The maximum amount of the penalty that a court may specify in respect of the offence or each offence in an order made under subsection (1) in relation to a person is:
- (a) where the offence is punishable by a fine—the amount of the maximum fine that the court is empowered to impose on the person for the offence; or
 - (b) where the offence is not punishable by a fine:
 - (i) if the court is not a court of summary jurisdiction—300 penalty units; or
 - (ii) if the court is a court of summary jurisdiction—60 penalty units.
- (6) Paragraph (1)(b) does not apply in relation to a minimum non-parole offence mentioned in section 19AG, or offences that include one or more such minimum non-parole offences. This subsection has effect despite subsection (1) and sections 19AC and 19AE (which permit or require a court to make a recognizance release order in certain circumstances).

Note: If the court sentences the person to imprisonment for a minimum non-parole offence, it must fix a non-parole period under section 19AG.

20A Failure to comply with condition of discharge or release

- (1) Where a person has been discharged in pursuance of an order made under subsection 19B(1), or released in pursuance of an order made under subsection 20(1), and information is laid before a magistrate alleging that the person has, without reasonable cause or excuse, failed to comply with a condition of the order, the magistrate may:
- (a) issue a summons directing the person to appear, on a date, at a time and at a place fixed in the summons, before the court by which the order was made; or
 - (b) if the information is laid on oath and the magistrate is of the opinion that proceedings against the person by summons

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might not be effective—issue a warrant for the apprehension of the person.

- (1A) Subsection (1) does not apply to a failure by a person to comply with a condition of an order (other than a failure constituted by the commission by the person of an offence) unless the information is laid before the end of the period for which the person is required by the order to give security to be of good behaviour.
- (2) Where:
- (a) a person who is served with a summons issued under subsection (1) fails to attend before the court as required by the summons; or
 - (b) a person who has been admitted to bail under subsection (4) fails to attend before the court as required by the conditions of his or her bail;
- the court may, on proof of the service of the summons or of the admission of the person to bail, as the case may be, issue a warrant for the apprehension of the person.
- (3) A warrant issued under subsection (1) or (2) shall authorize the apprehension of the person, the bringing of the person before the court as soon as practicable after his or her apprehension and the detention of the person in custody until he or she is released by order of the court or in accordance with subsection (4).
- (4) Where a person is apprehended in pursuance of a warrant issued under subsection (1) or (2) and the court before which he or she is to be brought is not sitting at the time of his or her arrest, the person shall be brought before a magistrate, who may:
- (a) admit the person to bail, on such recognizance (with or without sureties) as the magistrate thinks fit and on the condition that the person appears, on such date, at such time and at such place as the magistrate specifies, before that court; or
 - (b) direct that the person be kept in custody in accordance with the warrant.

- (5) Where, in accordance with this section, a person who has been discharged in pursuance of an order made under subsection 19B(1), or released in pursuance of an order made under subsection 20(1), appears or is brought before the court by which the order was made, the court (whether or not constituted by the judge or magistrate who made the order), if it is satisfied that the person has, without reasonable cause or excuse, failed to comply with a condition of the order, may:
- (a) in the case of a person who has been discharged in pursuance of an order made under subsection 19B(1):
 - (i) revoke the order, convict the person of the offence or offences in respect of which the order was made and, subject to subsection (6), deal with the person, for that offence or those offences, in any manner in which he or she could have been dealt with for that offence or those offences if the order had not been made; or
 - (ii) take no action; or
 - (b) in the case of a person who has been released in pursuance of an order made under paragraph 20(1)(a):
 - (i) without prejudice to the continuance of the order, impose a pecuniary penalty not exceeding 10 penalty units on the person;
 - (ii) revoke the order and, subject to subsection (6), deal with the person, for the offence or offences in respect of which the order was made, in any manner in which he or she could have been dealt with for that offence or those offences if the order had not been made and he or she was before the court for sentence in respect of the offence or offences; or
 - (iii) take no action; or
 - (c) in the case of a person who has been released by an order made under paragraph 20(1)(b):
 - (ia) impose on the person a monetary penalty of not more than \$1000; or

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- (ib) subject to subsection (5A), amend the order so as to extend the period for which the person is required to give security to be of good behaviour; or
 - (ic) revoke the order and make an order under section 20AB; or
 - (i) revoke the order and deal with the person for the offence or offences in respect of which the order was made by ordering that the person be imprisoned for that part of each sentence of imprisonment fixed under paragraph 20(1)(b) that the person had not served at the time of his or her release; or
 - (ii) take no action.
- (5A) The court may not, under subparagraph (5)(c)(ib), extend a period so that the period as extended would be more than 5 years.
- (5B) If a court, under subparagraph (5)(c)(ib), amends an order made in respect of a person under paragraph 20(1)(b), the security given by the person under that subsection is, by this section, taken to be a security that the person will be of good behaviour for the period stated in the order as amended.
- (6) Where a person who has been discharged in pursuance of an order made under subsection 19B(1), or released in pursuance of an order made under subsection 20(1), is dealt with under subsection (5) for the offence or offences in respect of which the order was made, the court, in so dealing with the person, shall, in addition to any other matters that the court considers should be taken into account, take into account:
- (a) the fact that the order was made;
 - (b) anything done under the order; and
 - (c) any other order made in respect of the offence or offences.
- (7) Where a person who has been discharged in pursuance of an order made under subsection 19B(1), or released in pursuance of an order made under subsection 20(1), is dealt with under subsection (5) for the offence or offences in respect of which the order was made, the court may, in addition to dealing with him or

her for that offence or those offences, order that any recognizance entered into by him or her, or by a surety for him or her, shall be estreated and any other security given by or in respect of him or her shall be enforced.

- (8) Where a person who has been discharged in pursuance of an order made under subsection 19B(1), or released in pursuance of an order made under subsection 20(1), is dealt with under subsection (5) for the offence or offences in respect of which the order was made, there shall be such rights of appeal in respect of the manner in which the person is dealt with for that offence or those offences as there would have been if:
- (a) in the case of a person who has been discharged in pursuance of an order made under subsection 19B(1)—the manner in which he or she is dealt with had been a sentence or sentences passed upon his or her conviction for the offence; or
 - (b) in the case of a person who has been released in pursuance of an order made under subsection 20(1):
 - (i) the court had, immediately before so dealing with him or her, convicted him or her of the offence or offences; and
 - (ii) the manner in which he or she is dealt with had been a sentence or sentences passed upon that conviction.
- (9) A pecuniary penalty imposed on a person by virtue of subparagraph (5)(b)(i) shall, for the purposes of the laws of the Commonwealth, and of the States and Territories, with respect to the enforcement and recovery of fines ordered to be paid by offenders, be deemed to be a fine imposed on the person upon his or her conviction for an offence against the law of the Commonwealth.

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20AA Power to discharge or vary conditions of recognizance

- (1) Where a person has entered into a recognizance in pursuance of an order made under subsection 19B(1) or 20(1), any of the following persons may apply to the court by which the order was made for the discharge of the recognizance or for a variation of its terms:
 - (a) an authorized person;
 - (b) the person who entered into the recognizance;
 - (c) a surety for the person who entered into the recognizance;
 - (d) a probation officer appointed in accordance with the order (in this section referred to as a *probation officer*).
- (2) Where an application is made under subsection (1) for the discharge of a recognizance, the court (whether or not constituted by the judge or magistrate who made the order in pursuance of which the recognizance was entered into) may, if it is satisfied that notice as required by subsection (5) or (6) has been given and that the conduct of the person who entered into the recognizance has been such as to make it unnecessary that he or she should remain bound by the recognizance, discharge the recognizance.
- (3) Where an application is made under subsection (1) for a variation of the terms of a recognizance, the court (whether or not constituted by the judge or magistrate who made the order in pursuance of which the recognizance was entered into) may, if it is satisfied that notice as required by subsection (5) or (6) has been given and it thinks fit to do so, vary the terms of the recognizance in all or any of the following ways:
 - (a) by extending or reducing the duration of the recognizance;
 - (b) by altering the conditions of the recognizance;
 - (c) by inserting additional conditions in the recognizance;
 - (d) by reducing any liability to make reparation or restitution, by reducing any instalment of any reparation or restitution or by reducing the amount of, or of any instalment of, any costs, compensation or penalty; or
 - (e) by altering the manner in which any reparation, restitution, compensation, costs or penalty, or any instalment or any

reparation, restitution, compensation, costs or penalty, is or are to be made or paid.

- (4) The court shall not extend the duration of a recognizance beyond:
- (a) in the case of a recognizance entered into in pursuance of an order made under subsection 19B(1)—the period of 3 years from the date on which the recognizance was entered into; or
 - (b) in the case of a recognizance entered into in pursuance of an order made under subsection 20(1)—the period of 5 years from the date on which the recognizance was entered into.
- (5) Where an application is made under subsection (1) by an authorized person, the authorized person shall cause notice of the application and the date, time and place fixed for the hearing of the application, to be served on the person who entered into the recognizance in relation to which the application is made and:
- (a) if that person has a surety in respect of the recognizance—on the surety; and
 - (b) if that person has a probation officer in respect of the recognizance—on the probation officer.
- (6) Where an application is made under subsection (1) by a person other than an authorized person, the person making the application shall cause notice of the application, and of the date, time and place fixed for the hearing of the application, to be served on the Director of Public Prosecutions or, if the Director of Public Prosecutions has not established an office in the State or Territory in which the application is made, on the Director of Legal Services, in that State or Territory, in the Attorney-General's Department, and:
- (a) if the application is made by the person who entered into the recognizance and that person has a surety—on the surety;
 - (b) if the application is made by a surety in respect of the recognizance—on the person who entered into the recognizance; or
 - (c) if the application is made by a probation officer in respect of the recognizance—on the person who entered into the

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recognizance and, if that person has a surety in respect of the recognizance, on the surety.

- (7) Where notice of an application under subsection (1) is served on a surety, the surety is entitled to appear on the hearing of the application and seek to be released from his or her liability as a surety in respect of the recognizance.
- (8) Subject to subsections (9) and (10), where under this section a court varies the terms of a recognizance, a person who is a surety in respect of the recognizance, and is not released by the court from his or her liability, continues to be liable as a surety in respect of the recognizance as so varied.
- (9) Where under this section a court varies the terms of a recognizance in respect of which a person is a surety:
- (a) if the recognizance is varied by extending its duration—the surety ceases to be liable after the expiration of the period for which he or she agreed to be liable when he or she became a surety;
 - (b) if the recognizance is varied by altering a condition—the surety is not liable in respect of non-compliance with that condition as altered; and
 - (c) if the recognizance is altered by the addition of a condition—the surety is not liable in respect of non-compliance with the additional condition;
- unless he or she agrees to be liable in respect of the recognizance as so varied.
- (10) Where under this section a court varies the terms of a recognizance in respect of which a person is a surety by altering a condition, the court shall give directions as to the extent (if any) to which the surety is to continue to be liable in respect of the condition as it existed before the alteration, and the surety continues to be liable in respect of the condition to that extent but not otherwise.
- (11) Where under this section a court varies the terms of a recognizance:

- (a) corresponding variations shall, by force of this subsection, be deemed to have been made to the conditions of the order in pursuance of which the recognizance was entered into; and
 - (b) section 20A applies to and in relation to the order, in respect of acts or things done or omitted to be done after the variation, as if references in that section to the conditions of the order were references to the conditions of the order as so deemed to be varied.
- (12) In this section, **authorized person** means the Attorney-General, the Director of Public Prosecutions or a person appointed under section 69 of the *Judiciary Act 1903* to prosecute indictable offences against the laws of the Commonwealth.

20AB Additional sentencing alternatives

- (1) A court may pass a sentence, or make an order, in respect of a person convicted before the court in a participating State or participating Territory of a federal offence, if:
- (a) subsection (1AA) applies to the sentence or order; and
 - (b) under the law of the State or Territory, a court is empowered to pass such a sentence, or make such an order, in respect of a State or Territory offender in corresponding cases; and
 - (c) the first-mentioned court is:
 - (i) empowered as mentioned in paragraph (b); or
 - (ii) a federal court.
- (1AA) This subsection applies to a sentence or order that is:
- (a) known as any of the following:
 - (i) an attendance centre order or attendance order;
 - (ii) a community based order;
 - (iii) a community correction order;
 - (iv) a community custody order;
 - (v) a community service order;
 - (vi) a community work order;
 - (vii) a drug or alcohol treatment order or rehabilitation order;

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- (viiia) a residential treatment order;
 - (viii) a good behaviour order;
 - (ix) an intensive correction order;
 - (x) an intensive supervision order;
 - (xi) a sentence of periodic detention or a periodic detention order;
 - (xii) a sentence of weekend detention or a weekend detention order;
 - (xiii) a work order; or
 - (b) similar to a sentence or order to which paragraph (a) applies; or
 - (c) prescribed for the purposes of this subsection.
- (1A) Where the law of a participating State or a participating Territory requires that before passing a sentence, or making an order, of the kind referred to in paragraph (1)(b) a court must first pass another sentence or make another order (whether or not that other sentence or other order is suspended upon the making of the first-mentioned sentence or order), then, a court is not required, before passing or making that first-mentioned sentence or order in respect of a person convicted by that court for a federal offence, to pass that other sentence or make that other order.
- (1B) A court is not precluded from passing a sentence, or making an order, under subsection (1) only because the court is empowered under section 20AC, in relation to a person who has failed to comply with such a sentence or order, to take action that is, or may be, inconsistent with action that, under the law of a participating State or participating Territory, a court of that State or Territory is empowered to take for such a failure by a State or Territory offender.
- (2) Where a court proposes to pass a sentence, or make an order, under subsection (1), it shall, before passing the sentence or making the order, explain or cause to be explained to the person in respect of whom it is proposed to pass the sentence or make the order, in language likely to be readily understood by him or her:

- (a) the purpose and effect of the proposed sentence or order;
 - (b) the consequences that may follow if he or she fails, without reasonable cause or excuse, to comply with the proposed sentence or order or with any requirements made in relation to the proposed sentence or order by or under the provisions of the laws of the relevant State or Territory that will apply in relation to the proposed sentence or order by virtue of subsection (3); and
 - (c) if the proposed sentence or order may be revoked or varied under those provisions—that the proposed sentence or order may be so revoked or varied.
- (3) Where a sentence or order referred to in subsection (1) is passed or made under that subsection in respect of a person convicted in a State or Territory of a federal offence, the provisions of the laws of the State or Territory with respect to such a sentence or order that is passed or made under those laws shall, so far as those provisions are capable of application and are not inconsistent with the laws of the Commonwealth, apply, by virtue of this subsection, to and in relation to the sentence or order passed or made under subsection (1).
- (4) Where a court passes a sentence, or makes an order, under subsection (1) in respect of a person convicted of an offence against the law of the Commonwealth, the court may also do all or any of the following:
- (a) impose any fine or other pecuniary penalty that the court is empowered to impose on the person for the offence;
 - (b) make any order requiring the person to make reparation or restitution, or pay compensation, in respect of the offence that the court is empowered to make;
 - (c) make any other order that the court is empowered to make.
- (5) Where a court passes a sentence, or makes an order, under subsection (1) in respect of a person, the court shall, as soon as practicable, cause the sentence or order to be reduced to writing and a copy of the sentence or order to be given to, or served on, the person.
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- (6) Subsection (1) does not permit a court (including a federal court) to pass a sentence, or make an order, that involves detention or imprisonment, in respect of the conviction of a person before the court of a minimum non-parole offence mentioned in section 19AG.

Note: If the court sentences the person to imprisonment for the minimum non-parole offence, it must fix a non-parole period under section 19AG.

20AC Failure to comply with sentence passed, or order made, under subsection 20AB(1)

- (1) In this section, *the applied provisions*, in relation to a sentence passed or an order made under subsection 20AB(1), means the provisions of the laws of a State or Territory that apply to and in relation to the sentence or order by virtue of subsection 20AB(3).
- (2) Where a sentence has been passed, or an order has been made, under subsection 20AB(1) in respect of a person and information is laid before a magistrate, whether before or after the expiration of the period for which the sentence or order is to operate or operated, alleging that the person has, without reasonable cause or excuse, failed to comply with the sentence or order or with any requirements made in relation to the sentence or order by or under the applied provisions, the magistrate may:
- (a) issue a summons directing the person to appear, on a date, at a time and at a place fixed in the summons, before the court by which the sentence was passed or the order was made; or
 - (b) if the information is laid on oath and the magistrate is of the opinion that proceedings against the person by summons might not be effective—issue a warrant for the apprehension of the person.
- (3) Where:
- (a) a person who is served with a summons issued under subsection (2) fails to attend before the court as required by the summons; or

- (b) a person who has been admitted to bail under subsection (5) fails to attend before the court as required by the condition of his or her bail;
- the court may, on proof of the service of the summons or of the admission of the person to bail, as the case may be, issue a warrant for the apprehension of the person.
- (4) A warrant issued under subsection (2) or (3) shall authorize the apprehension of the person, the bringing of the person before the court as soon as practicable after his or her apprehension and the detention of the person in custody until he or she is released by order of the court or in accordance with subsection (5).
- (5) Where a person is apprehended in pursuance of a warrant issued under subsection (2) or (3) and the court before which he or she is to be brought is not sitting at the time of his or her arrest, the person shall be brought before a magistrate, who may:
- (a) admit the person to bail, on such recognizance (with or without sureties) as the magistrate thinks fit, on the condition that the person appears, on such date, at such time and at such place as the magistrate specifies, before that court; or
 - (b) direct that the person be kept in custody in accordance with the warrant.
- (6) Where, in accordance with this section, a person in respect of whom a sentence has been passed, or an order has been made, under subsection 20AB(1) appears or is brought before the court by which the sentence was passed or the order was made, the court (whether or not constituted by the judge or magistrate who passed the sentence or made the order), if it is satisfied that the person has, without reasonable cause or excuse, failed to comply with the sentence or order or with any requirements made in relation to the sentence or order by or under the applied provisions, may:
- (a) without prejudice to the continuance of the sentence or order, impose a pecuniary penalty not exceeding 10 penalty units on the person;
 - (b) revoke the sentence or order and, subject to subsection (7), deal with the person, for the offence in respect of which the

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sentence was passed or the order was made, in any manner in which he or she could have been dealt with for that offence if the sentence had not been passed or the order had not been made and he or she was before the court for sentence in respect of the offence; or

- (c) take no action.
- (7) Where a person in respect of whom a sentence has been passed, or an order has been made, under subsection 20AB(1) is dealt with under subsection (6) for the offence in respect of which the sentence was passed or the order was made, the court, in so dealing with the person, shall, in addition to any other matters that the court considers should be taken into account, take into account:
- (a) the fact that the sentence was passed or the order was made;
 - (b) anything done under the sentence or order; and
 - (c) any fine or other pecuniary penalty imposed, and any other order made, for or in respect of the offence.
- (8) Where a person in respect of whom a sentence has been passed, or an order has been made, under subsection 20AB(1) is dealt with under subsection (6) for the offence in respect of which the sentence was passed or the order was made, there shall be such rights of appeal in respect of the manner in which the person is dealt with for that offence as there would have been if:
- (a) the court had, immediately before so dealing with him or her, convicted him or her of the offence; and
 - (b) the manner in which he or she is dealt with had been a sentence passed upon that conviction.
- (9) Nothing in this section shall be taken to prevent a sentence passed, or an order made, under subsection 20AB(1) being revoked or varied under the applied provisions otherwise than for a failure to comply with the sentence or order or with any requirements made in relation to the sentence or order by or under the applied provisions.
- (10) A pecuniary penalty imposed on a person by virtue of paragraph (6)(a) shall, for the purposes of the laws of the

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Commonwealth, and of the States and Territories, with respect to the enforcement and recovery of fines ordered to be paid by offenders, be deemed to be a fine imposed on the person upon his or her conviction for a federal offence.

Division 6—Unfitness to be tried

20B Consequences of preliminary finding that person unfit to be tried

- (1) Where, in proceedings for the commitment of a person for trial of a federal offence on indictment, being proceedings begun after this section commences, the question of the person's fitness to be tried in respect of the offence, is raised by the prosecution, the person or the person's legal representative, the magistrate must refer the proceedings to the court to which the proceedings would have been referred had the person been committed for trial.
- (2) If the court to which the proceedings have been referred finds the person charged to be fit to be tried, the court must remit the proceedings to the magistrate and proceedings for the commitment must be continued as soon as practicable.
- (3) Where a court:
 - (a) to which proceedings have been referred under subsection (1); or
 - (b) before which a person appears in proceedings for trial of a federal offence on indictment, being proceedings begun after this section commences;finds the person charged unfit to be tried, the court must determine whether there has been established a prima facie case that the person committed the offence concerned.
- (4) Where a magistrate refers proceedings to a court under subsection (1), the magistrate may order the person charged to be detained in prison or in hospital for so long only as is reasonably necessary to allow the court to which the person is referred to determine whether it will make an order under subsection (2) remitting the person to the magistrate, an order under section 20BA dismissing the charge or an order under section 20BB detaining the person in prison or hospital or granting the person bail.

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- (5) Where a court finds a person, other than a person in respect of whom proceedings have been referred to it by a magistrate under subsection (1), to be unfit to be tried, the court may order the person to be detained in prison or hospital for so long only as is reasonably necessary to allow the court to determine whether it will make an order under section 20BA dismissing the charge or an order under section 20BB detaining the person in prison or hospital or granting the person bail.
- (6) For the purposes of subsection (3), a prima facie case is established if there is evidence that would (except for the circumstances by reason of which the person is unfit to be tried) provide sufficient grounds to put the person on trial in relation to the offence.
- (7) In proceedings to determine whether, for the purposes of subsection (3), a prima facie case has been established:
 - (a) the person may give evidence or make an unsworn statement; and
 - (b) the person may raise any defence that could properly be raised if the proceedings were a trial for that offence; and
 - (c) the court may seek such other evidence, whether oral or in writing, as it considers likely to assist in determining the matter.

20BA Upon determining prima facie case, court to dismiss charge or to determine fitness within 12 months

- (1) Where the court determines that there has not been established a prima facie case that the person committed the offence, the court must, by order, dismiss the charge against the person and, if the person is in custody, order the release of the person from custody.
- (2) Where the court determines that there has been established a prima facie case that the person committed the offence, but the court is of the opinion, having regard to:
 - (a) the character, antecedents, age, health or mental condition of the person; or

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- (b) the extent (if any) to which the offence is of a trivial nature;
or
 - (c) the extent (if any) to which the offence was committed under extenuating circumstances;
- that it is inappropriate to inflict any punishment, or to inflict any punishment other than a nominal punishment, the court must, by order, dismiss the charge and, if the person is in custody, order the release of the person from custody.
- (3) Where the court orders that the person be released from custody, the person must be released accordingly.
 - (4) Where the court determines that there has been established a prima facie case that the person committed the offence, but the court does not dismiss the charge under subsection (2), the court must, as soon as practicable after making that first-mentioned determination, determine whether, on the balance of probabilities, the person will become fit to be tried, within the period of 12 months after the day the person was found to be unfit to be tried.
 - (5) A court must not make a determination under subsection (4) unless the court has obtained, and considered, written or oral evidence from a duly qualified psychiatrist and one other duly qualified medical practitioner.
 - (6) Nothing in subsection (5) prevents a court from obtaining written or oral evidence from such other persons, bodies or organisations as the court considers appropriate.

20BB Persons found by a court to be likely to be fit within 12 months

- (1) Where a court determines, under subsection 20BA(4), that a person charged with a federal offence who was found unfit to be tried will become fit to be tried within a period of 12 months after that finding, the court must, at the time of making that determination, also determine:

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- (a) whether the person is suffering from a mental illness, or a mental condition, for which treatment is available in a hospital; and
 - (b) if so—whether the person objects to being detained in a hospital.
- (2) Where a court has made a determination under subsection (1), the court must:
- (a) where the court has determined that the person is suffering from a mental illness, or a mental condition, for which treatment is available in a hospital and that the person does not object to being detained in a hospital—order that the person be taken to and detained in a hospital, or continue to be detained in a hospital, as the case requires; or
 - (b) otherwise:
 - (i) order that the person be taken to and detained in a place other than a hospital (including a prison); or
 - (ii) grant the person bail on condition that the person live at an address or in a place specified by the court;
- for a period ending:
- (c) when the person becomes fit to be tried; or
 - (d) when, as soon as practicable after the end of the 12 months referred to in subsection (1), the court makes an order under subsection 20BC(2) or (5) as applied under subsection (4);
- whichever happens first.
- (3) Where a court determines, under subsection 20BA(4), that a person charged with a federal offence who was found unfit to be tried will become fit to be tried within 12 months after that finding then, if the person becomes fit within that period:
- (a) if the person had been indicted on the charge before being found unfit—the proceedings on the indictment must be continued as soon as practicable; and
 - (b) if proceedings for the commitment of the person had been referred to the court under section 20B—those proceedings must be continued as soon as practicable as if they had not been so referred.

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- (4) Where a court determines, under subsection 20BA(4), that a person who was found unfit to be tried will become fit to be tried, within 12 months after that finding but the person does not become fit within that period, then, at the end of that period, subsections 20BC(2) and (5) apply as if the court had originally determined, at that time, that the person would not become fit to be tried and had made, under subsection 20BC(1), a further determination of the kind that it made under subsection (1) of this section.
- (5) Where subsections 20BC(2) and (5) apply in relation to a person in the circumstances set out in subsection (4), then:
- (a) in an order under subsection 20BC(2) as so applied the court must, in fixing the period of detention, have regard to any period of detention already served under paragraph (2)(a) or (b) of this section; and
 - (b) in an order under subsection 20BC(5) as so applied the court must:
 - (i) in the case of a person already on bail—order, in lieu of the person’s release from custody, the continuance of the person’s release on bail; and
 - (ii) in fixing the period of the person’s release for which conditions apply, have regard to any period of detention already served under paragraph (2)(a) or (b) of this section.
- (6) Where a court determines, under subsection 20BA(4), that a person who was found unfit to be tried will become fit to be tried within 12 months after that finding but the person does not become fit within that period, the finding that there is, on the balance of probabilities, a prima facie case for the commission of the offence charged acts as a stay against any proceedings, or any further proceedings, against the person in respect of the offence.

20BC Persons found by a court not to be likely to be fit within 12 months

- (1) Where a court determines, under section 20BA, that a person who was found unfit to be tried will not become fit to be tried within 12 months after that finding, the court must, at the time of making that determination, also determine:
 - (a) whether the person is suffering from a mental illness, or a mental condition, for which treatment is available in a hospital; and
 - (b) if so—whether the person objects to being detained in a hospital.
- (2) Where a court has made a determination under subsection (1), the court must:
 - (a) if the court has determined that the person is suffering from a mental illness, or a mental condition, for which treatment is available in a hospital and that the person does not object to being detained in a hospital—order that the person be taken to and detained in a hospital, or continue to be detained in a hospital, as the case requires; or
 - (b) otherwise—order that the person be detained in a place other than a hospital, including a prison;
for a period specified in the order, not exceeding the maximum period of imprisonment that could have been imposed if the person had been convicted of the offence charged.
- (3) The Attorney-General may, at any time, by order in writing, vary the hospital or other place of detention at which a person is detained under this section.
- (4) Where, for urgent medical or security reasons, it becomes necessary to do so, an officer of the State or Territory in which a person is detained under this section may vary the hospital or other place of detention of that person but, where the officer does so, the officer must forthwith notify the Attorney-General, in writing, of the variation and of the reasons for the variation.

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- (5) Despite subsection (2), the court may, if in the court's opinion it is more appropriate to do so than to make an order under subsection (2), order the person's release from custody either absolutely or subject to conditions to apply for such period as the court specifies in the order, not exceeding 3 years.
- (6) The conditions may include:
 - (a) a condition that the person remain in the care of a responsible person nominated in the order; and
 - (b) a condition that the person attend upon a person nominated, or at a place specified, in the order for assessment of the person's mental illness, mental condition or intellectual disability and, where appropriate, for treatment; and
 - (c) any other condition that the court thinks fit.
- (7) Where a person has been released from custody subject to conditions, the person or the Director of Public Prosecutions may, at any time, apply to the court to vary those conditions.
- (8) Where a court determines, under subsection 20BA(4), that a person who was found unfit to be tried will not become fit to be tried, within 12 months after the finding, the finding that there is, on the balance of probabilities, a prima facie case for the commission of the offence charged acts as a stay against any proceedings, or any further proceedings, against the person, in respect of the offence.

20BD Review by Attorney-General

- (1) Where a court makes an order under subsection 20BC(2), the Attorney-General must, at least once in each period of 6 months after the day the person is detained under the order, consider whether or not the person should be released from detention.
- (2) In considering whether the person should be released from detention the Attorney-General:
 - (a) must obtain and consider:
 - (i) a report from a duly qualified psychiatrist or psychologist; and

- (ii) a report from another duly qualified medical practitioner; and
- (b) may obtain and consider such other reports as the Attorney-General considers necessary; and
- (c) must take into account any representations made to the Attorney-General by the person or on the person's behalf.

20BE Attorney-General may order release

- (1) The Attorney-General may, after considering under subsection 20BD(1) whether or not the person should be released from detention, order that the person be released from detention.
- (2) The Attorney-General must not order a person's release from detention unless the Attorney-General is satisfied that the person is not a threat or danger either to himself or herself or to the community.
- (3) An order:
 - (a) must be in writing; and
 - (b) remains in force for such period as is specified in the order (being a period equal to the balance of the period fixed by the court for detention under subsection 20BC(2)) or for a period of 5 years, whichever is the lesser; and
 - (c) is subject to such conditions (if any) as are specified in the order.
- (4) Without limiting the generality of paragraph (3)(c), the conditions that may be specified in the order may include all or any of the following:
 - (a) a condition that the person reside at an address specified in the order;
 - (b) a condition that the person present himself or herself for such medical or psychiatric treatment as is specified in the order at such times as are specified in the order;
 - (c) a condition that the person undertake such medical or mental health therapy as is specified in the order;

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- (d) a condition that the person undertake such social, vocational or educational counselling as is specified in the order;
- (e) a condition that the person participate in such programs relating to financial management, behaviour modification or inter-personal relationships as are specified in the order.

20BF Release order may be revoked

- (1) The Attorney-General may, by instrument in writing, revoke an order made under subsection 20BE(1) (in this section called a **release order**) at any time while that release order remains in force:
 - (a) if the person concerned has, during that period, failed, without reasonable excuse, to comply with a condition of the order; or
 - (b) if there are reasonable grounds for suspecting that the person has, during that period, failed, without reasonable excuse, so to comply;and, where the Attorney-General does so, the instrument of revocation must specify the condition of the order that the person has breached or is suspected of having breached.
- (2) Before revoking a release order, the Attorney-General must make all such enquiries and call for all such reports as are reasonably necessary for the purpose of determining whether the circumstances referred to in paragraph (1)(a) or (b) apply.
- (3) Where a release order in relation to a person is revoked:
 - (a) a constable may arrest the person without warrant; or
 - (b) the Attorney-General or the Director of Public Prosecutions may apply to a prescribed authority for a warrant for the arrest of the person.
- (4) A person who is arrested under subsection (3) must, as soon as practicable after that arrest, be brought before a prescribed authority in the State or Territory in which the person is arrested.

- (5) Subject to subsection (6), where a prescribed authority in a State or Territory before whom a person is brought under subsection (4) is satisfied that:
- (a) the person is the person named in the instrument revoking the release order; and
 - (b) the release order has been revoked and the revocation is still in force;
- the prescribed authority must issue a warrant:
- (c) authorising any constable to take the person to a specified prison or hospital in the State or Territory; and
 - (d) directing that the person be detained in prison or in hospital in that State or Territory for such part of the period fixed by the court to be the period of detention under subsection 20BC(2) as had not elapsed at the time of the making of the release order.
- (6) If the prescribed authority in the State or Territory before whom the person is brought under subsection (4) cannot complete the hearing under subsection (5) immediately, the prescribed authority may issue a warrant for the remand of the person in a prison or hospital in the State or Territory pending completion of the hearing.
- (7) The Attorney-General may, at any time, by order in writing, vary the prison or hospital at which a person is detained under this section.
- (8) Where for urgent medical or security reasons it becomes necessary to do so, an officer of the State or Territory in which a person is detained may vary the prison or hospital at which the person is detained but, where the officer does so, the officer must forthwith notify the Attorney-General, in writing, of the variation and of the reasons for that variation.

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20BG Attorney-General to review detention of persons taken back into detention

- (1) Where, under subsection 20BF(5), a prescribed authority directs that a person be detained in prison or in a hospital, the Attorney-General must, as soon as practicable after the person is so detained, consider (in this section called the *initial consideration*) whether or not the person should be released from detention and must, while the person is in detention, reconsider the matter at least once in each period of 6 months after the initial consideration.
- (2) Subsection 20BD(2) and, subject to the modification set out in subsection (3), section 20BE, apply in relation to an initial consideration and to any reconsideration under subsection (1).
- (3) For the purposes of applying section 20BE, subsection 20BE(1) has effect as if the reference in that subsection to subsection 20BD(1) were a reference to subsection (1) of this section.

20BH State or Territory mental health authorities to be notified of certain releases

Where a person detained by authority of an order under subsection 20BC(2) or a warrant under subsection 20BF(5) for a specified period in a State or Territory is due to be released because the period of that person's detention has ended, the Attorney-General must notify the mental health authorities of the State or Territory of the proposed release of the person.

20BI Appeals against some Victorian jury findings of unfitness to be tried

- (1) This section applies if:
 - (a) in proceedings for a federal offence in the Trial Division of the Supreme Court of Victoria or in the County Court of Victoria, a question arises whether the accused is fit to stand trial; and

- (b) a jury finds that the accused is unfit.

Right to appeal

- (2) The accused may appeal to the Court of Appeal of Victoria against the finding:
- (a) on a ground involving only one or more questions of law alone; or
 - (b) on a ground involving one or more questions of fact alone, or one or more questions of mixed law and fact, if the judge before whom the accused came for trial certifies the ground is fit for appeal; or
 - (c) on any ground if the Court of Appeal gives leave.

Decision on appeal

- (3) The Court of Appeal must allow the appeal if the court thinks that:
- (a) the finding should be set aside because it is unreasonable or cannot be supported having regard to the evidence; or
 - (b) the order of the Supreme Court or County Court giving effect to the finding should be set aside because of a wrong decision on a question of law; or
 - (c) there was a miscarriage of justice.
- (4) Otherwise, the Court of Appeal must dismiss the appeal.
- (5) Despite subsection (3), the Court of Appeal may dismiss the appeal if the Court of Appeal thinks that no substantial miscarriage of justice has occurred.

Consequences if appeal allowed

- (6) If the Court of Appeal allows the appeal:
- (a) the accused may be tried for the federal offence; and
 - (b) the Court of Appeal may make orders for the custody or bail of the accused.

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Rules of court

- (7) Rules of court for the Court of Appeal of Victoria may make provision relating to appeals under subsection (2) and proceedings relating to orders under paragraph (6)(b).

Relationship with the rest of this Division

- (8) This Division has effect subject to this section.

Division 7—Acquittal because of mental illness

20BJ Acquittal where person mentally ill

- (1) Where a person has been charged with a federal offence on indictment and the person is acquitted because of mental illness at the time of the offence, the court must order that the person be detained in safe custody in prison or in a hospital for a period specified in the order, not exceeding the maximum period of imprisonment that could have been imposed if the person had been convicted of the offence charged.
- (2) The Attorney-General may, at any time, by order in writing, vary the prison or hospital at which a person is detained under subsection (1).
- (3) Where, for urgent medical or security reasons it becomes necessary to do so, an officer of the State or Territory in which a person is detained under this section may vary the prison or hospital at which the person is detained but, where the officer does so, the officer must forthwith notify the Attorney-General, in writing, of the variation and of the reasons for the variation.
- (4) Despite subsection (1), the court may, if in the court's opinion it is more appropriate to do so than to make an order under subsection (1), order the person's release from custody either absolutely or subject to conditions to apply for such period as the court specifies in the order, not exceeding 3 years.
- (5) The conditions may include:
 - (a) a condition that the person remain in the care of a responsible person nominated in the order; and
 - (b) a condition that the person attend upon a person nominated, or at a place specified, in the order for assessment of the person's mental illness, mental condition or intellectual disability and, where appropriate, for treatment.

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- (6) Where a person has been released from custody subject to conditions, the person or the Director of Public Prosecutions may, at any time, apply to the court to vary those conditions.

20BK Review by Attorney-General

- (1) Where, under subsection 20BJ(1), a court orders that a person be detained in safe custody in prison or in a hospital, the Attorney-General must, as soon as practicable after the person is so detained, consider (in this section called the *initial consideration*) whether or not the person should be released from detention and must, while the person is in detention, reconsider the matter at least once in each period of 6 months after the initial consideration.
- (2) In considering whether a person should be released from custody the Attorney-General:
- (a) must obtain and consider:
 - (i) a report from a duly qualified psychiatrist or psychologist; and
 - (ii) a report from another duly qualified medical practitioner; and
 - (b) may obtain and consider such other reports as the Attorney-General considers necessary; and
 - (c) must take into account any representations made to the Attorney-General by the person or on the person's behalf.

20BL Attorney-General may order release

- (1) The Attorney-General may, after considering under subsection 20BK(1) whether or not the person should be released from custody, order that the person be released from custody.
- (2) The Attorney-General must not order a person's release from detention unless the Attorney-General is satisfied that the person is not a threat or danger either to himself or herself or to the community.

- (3) An order:
- (a) must be in writing; and
 - (b) remains in force for such a period as is specified in the order (being a period equal to the balance of the period fixed by the court for detention in safe custody under subsection 20BJ(1)) or for a period of 5 years, whichever is the lesser; and
 - (c) is subject to such conditions (if any) as are specified in the order.
- (4) Without limiting the generality of paragraph (3)(c), the conditions that may be specified in the order may include all or any of the following:
- (a) a condition that the person reside at an address specified in the order;
 - (b) a condition that the person present himself or herself for such medical or psychiatric treatment as is specified in the order at such times and places as are specified in the order;
 - (c) a condition that the person undertake such medical or mental health therapy as is specified in the order;
 - (d) a condition that the person undertake such social, vocational or educational counselling as is specified in the order;
 - (e) a condition that the person participate in such programs relating to financial management, behaviour modification or inter-personal relationships as are specified in the order.

20BM Release order may be revoked

- (1) The Attorney-General may, by instrument in writing, revoke an order made under subsection 20BL(1) (in this section called a **release order**) at any time while that release order remains in force:
- (a) if the person concerned has, during that period, failed, without reasonable excuse, to comply with a condition of the order; or
 - (b) if there are reasonable grounds for suspecting that the person has, during that period, failed, without reasonable excuse, so to comply;

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and, where the Attorney-General does so, the instrument of revocation must specify the condition of the order that the person has breached or is suspected of having breached.

- (2) Before revoking a release order, the Attorney-General must make all such enquiries and call for all such reports as are reasonably necessary for the purpose of determining whether the circumstances referred to in paragraph (1)(a) or (b) apply.
- (3) Where a release order in relation to a person is revoked:
 - (a) a constable may arrest the person without warrant; or
 - (b) the Attorney-General or the Director of Public Prosecutions may apply to a prescribed authority for a warrant for the arrest of the person.
- (4) A person who is arrested under subsection (3) must, as soon as practicable after that arrest, be brought before a prescribed authority in the State or Territory in which the person is arrested.
- (5) Subject to subsection (6), where a prescribed authority in a State or Territory before whom a person is brought under subsection (4) is satisfied that:
 - (a) the person is the person named in the instrument revoking the release order; and
 - (b) the release order has been revoked and the revocation is still in force;the prescribed authority may issue a warrant:
 - (c) authorising any constable to take the person to a specified prison or hospital in the State or Territory; and
 - (d) directing that the person be detained in prison or in hospital in the State or Territory for such part of the period fixed by the court to be the period of detention in safe custody under subsection 20BJ(1) as had not elapsed at the time of the making of the release order.
- (6) If the prescribed authority in the State or Territory before whom the person is brought under subsection (4) cannot complete the hearing under subsection (5) immediately, the prescribed authority

may issue a warrant for the remand of the person in a prison or hospital in the State or Territory pending completion of the hearing.

- (7) The Attorney-General may, at any time, by order in writing, vary the prison or hospital at which a person is detained under this section.
- (8) Where, for urgent medical or security reasons it becomes necessary to do so, an officer of the State or Territory in which the person is detained may vary the prison or hospital at which the person is detained but, where the officer does so, the officer must forthwith notify the Attorney-General, in writing, of the variation and of the reasons for that variation.

20BN Attorney-General to review detention of persons taken back into detention

- (1) Where, under subsection 20BM(5), a prescribed authority directs that a person be detained in prison or in a hospital, the Attorney-General must, as soon as practicable after the person is so detained, consider (in this section called the *initial consideration*) whether or not the person should be released from detention and must, while the person is in detention, reconsider the matter at least once in each period of 6 months after the initial consideration.
- (2) Subsection 20BK(2) and, subject to the modification in subsection (3), section 20BL, apply in relation to an initial consideration and a reconsideration under subsection (1).
- (3) For the purposes of applying section 20BL, subsection 20BL(1) has effect as if the reference in that subsection to subsection 20BK(1) were a reference to subsection (1) of this section.

Section 20BP

20BP State or Territory authorities to be notified of certain releases

Where a person detained by authority of an order under subsection 20BJ(1) or a warrant under subsection 20BM(5) for a specified period in a State or Territory is due to be released because the period of the person's detention has ended, the Attorney-General must notify the mental health authorities of that State or Territory of the proposed release of the person.

Division 8—Summary disposition of persons suffering from mental illness or intellectual disability

20BQ Person suffering from mental illness or intellectual disability

(1) Where, in proceedings in a State or Territory before a court of summary jurisdiction in respect of a federal offence, it appears to the court:

- (a) that the person charged is suffering from a mental illness within the meaning of the civil law of the State or Territory or is suffering from an intellectual disability; and
- (b) that, on an outline of the facts alleged in the proceedings, or such other evidence as the court considers relevant, it would be more appropriate to deal with the person under this Division than otherwise in accordance with law;

the court may, by order:

- (c) dismiss the charge and discharge the person:
 - (i) into the care of a responsible person, unconditionally, or subject to conditions, for a specified period that does not exceed 3 years; or
 - (ii) on condition that the person attend on another person, or at a place, specified by the court for an assessment of the first-mentioned person's mental condition, or for treatment, or both, but so that the total period for which the person is required to attend on that other person or at that place does not exceed 3 years; or
 - (iii) unconditionally; or
- (d) do one or more of the following:
 - (i) adjourn the proceedings;
 - (ii) remand the person on bail;
 - (iii) make any other order that the court considers appropriate.

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- (2) Where a court makes an order under paragraph (1)(c) in respect of a person and a federal offence with which the person has been charged, the order acts as a stay against any proceedings, or any further proceedings, against the person in respect of the offence.
- (3) Where a court makes an order under subsection (1) in respect of a person and a federal offence with which the person has been charged, the court must not make an order under section 19B, 20, 20AB (other than an order covered by subparagraph 20AB(1AA)(a)(viiia)) or 21B in respect of the person in respect of the offence.

20BR Means by which court may be informed

For the purposes of this Division, a court of summary jurisdiction may inform itself as the court thinks fit, but not so as to require the person charged to incriminate himself or herself.

Division 9—Sentencing alternatives for persons suffering from mental illness or intellectual disability

20BS Hospital orders

- (1) Where a person is convicted in a State or Territory, on indictment, of a federal offence and the court before which the person is convicted is satisfied that:
 - (a) the person is suffering from a mental illness within the meaning of the civil law of that State or Territory; and
 - (b) the illness contributed to the commission of the offence by the person; and
 - (c) appropriate treatment for the person is available in a hospital in that State or Territory; and
 - (d) the proposed treatment cannot be provided to the person other than as an inmate of a hospital in the State or Territory;the court may, without passing sentence on the person, make an order (in this section called a *hospital order*) that the person be detained in a hospital specified in the order for a period specified in the order for the purposes of receiving treatment specified in the order.
- (2) A court must not make a hospital order unless, but for the mental illness of the person, the court would have sentenced the person to a term of imprisonment.
- (3) A court must not specify a period of detention in a hospital that is longer than the period of imprisonment to which the person would have been sentenced had the hospital order not been made.
- (4) Where the court orders a person to be detained in a hospital for a specified period, the court may fix a lesser period of detention during which the person is not to be eligible to be released from the hospital.
- (5) Before reaching an opinion on the matters specified in subsection (1) in relation to a person, the court must obtain and

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consider the reports of 2 duly qualified psychiatrists with experience in the diagnosis and treatment of mental illness.

- (6) A court may make a hospital order in respect of a person even if the person is serving a federal sentence at the time when, under the order, the person is to begin to be detained in hospital and, where a hospital order is made in such circumstances:
- (a) the hospital order is sufficient authority for the person to be detained outside the prison during the period of involuntary hospitalisation under the order; and
 - (b) the person is to be treated, for the purposes of that sentence, as serving that sentence during the period of involuntary hospitalisation under the order; and
 - (c) if the person is still liable to serve a part of that sentence when the hospital order ends or is discharged, the person is to be returned for that purpose to the prison where he or she was serving that sentence before the making of the order.
- (7) Subsection (4) does not enable a court, in the case of a person who is serving a federal sentence at the time when the hospital order begins, to fix a lesser period of detention ending:
- (a) if a non-parole period has been fixed in respect of the sentence—before the end of that non-parole period; and
 - (b) otherwise—before the end of that sentence.

20BT Lesser periods of imprisonment fixed under hospital orders

- (1) Where a lesser period of detention is fixed under subsection 20BS(4) in relation to a person detained in hospital under a hospital order, the Attorney-General must, at the end of the lesser period, obtain and consider the reports of 2 duly qualified psychiatrists with experience in the diagnosis and treatment of mental illness so as to determine whether or not to release the person from the detention.
- (2) Unless:

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- (a) either of the reports of the psychiatrists recommends that the person not be released because of a continuing need for hospital treatment; or
 - (b) the person continues, at the end of the lesser period of detention, to be required to serve a federal sentence of imprisonment that the person was serving at the time when the hospital order began;
- the Attorney-General must order the person to be released on such conditions (including conditions relating to release into the care of another person specified in the order) for the balance of the period of the hospital order as the Attorney-General considers appropriate having regard to the reports and to such other matters as he or she considers relevant.
- (3) Sections 20BM and 20BN apply in relation to a person released from involuntary hospitalisation by order under subsection (2) as if:
 - (a) the order under that subsection were a release order made under subsection 20BL(1); and
 - (b) the references in each of those sections to detention in a prison or a hospital were references only to detention in a hospital; and
 - (c) the reference in subsection 20BM(5) to the period of detention in safe custody under subsection 20BJ(1) were a reference to the period of detention in a hospital specified in the order under subsection 20BS(1).

20BU Discharge of hospital orders

- (1) Where a person is subject to a hospital order, the person or the Director of Public Prosecutions may, at any time while the order is in force, apply to the court that imposed the order to discharge the order and to impose such other sentence as the court thinks appropriate, being a sentence that could have been imposed when the order was made.
 - (2) The court must not discharge a hospital order unless the court is satisfied:
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- (a) that the person has sufficiently recovered from mental illness no longer to require involuntary hospitalisation; or
 - (b) that the mental illness will not respond or respond further to hospital treatment.
- (3) Where the court discharges a hospital order and imposes another sentence instead of the order:
- (a) the new sentence must commence on the date of commencement of the order; and
 - (b) the length of the new sentence must not exceed the length of the order; and
 - (c) if the sentence is a sentence of imprisonment—the person concerned is to be treated as having served that part of the sentence during which he or she was subject to involuntary hospitalisation.
- (4) Before reaching an opinion on the matters specified in subsection (2) in relation to a person, the court:
- (a) must obtain and consider the reports of 2 duly qualified psychiatrists with experience in the diagnosis and treatment of mental illness; and
 - (b) if the person has been released, under section 20BR, into the care of another person for the balance of the hospital order—must obtain and consider the report of that other person; and
 - (c) may obtain and consider such other information as it thinks relevant.
- (5) An application under subsection (1) to the court that made a hospital order may be dealt with by that court whether or not it is constituted in the way in which it was constituted when the order was made.

20BV Psychiatric probation orders

- (1) Where a person is convicted in a State or Territory of a federal offence and the court is satisfied that:

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- (a) the person is suffering from a mental illness within the meaning of the civil law of that State or Territory; and
 - (b) the illness contributed to the commission of the offence by the person; and
 - (c) appropriate psychiatric treatment for the person is available in a hospital or other place in the State or Territory; and
 - (d) the person consents to the order being made;
- the court may, without passing sentence on the person, make an order (in this section called a *psychiatric probation order*) that the person reside at, or attend at, a specified hospital or other place for the purpose of receiving that psychiatric treatment.
- (2) The court must not make an order unless the person, or the person's legal guardian, consents to the proposed treatment.
 - (3) An order is subject to the following additional conditions:
 - (a) that the person will, during such period, not exceeding 2 years, as the court specifies in the order, be subject to the supervision of a probation officer appointed in accordance with the order and obey all reasonable directions of a probation officer so appointed;
 - (b) that the person will be of good behaviour for such period, not exceeding 5 years, as the court specifies in the order.
 - (4) The court may, on the application of the person, of the probation officer appointed to supervise the person or of the person in charge of the hospital or other place where the treatment is being undertaken, vary the treatment that the person is to undertake.

20BW Breach of psychiatric probation orders

- (1) Where an order has been made under section 20BV and information is laid before a magistrate, whether before or after the end of the period referred to in paragraph 20BV(3)(a) or (b), alleging that the person has, without reasonable excuse, failed to comply with a condition of the order, the magistrate may:

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- (a) issue a summons directing the person to appear, on a date, and at a time and place, fixed in the summons, before the court by which the order was made; or
 - (b) if the information is laid on oath and the magistrate is of the opinion that proceedings against the person by summons might not be effective—issue a warrant for the arrest of the person.
- (2) Where:
- (a) a person who is served with a summons issued under subsection (1) fails to attend before the court as required by the summons; or
 - (b) a person who has been admitted to bail under subsection (4) fails to attend before the court as required by the conditions of that bail;
- the court may issue a warrant for the arrest of the person.
- (3) A warrant for the arrest of a person issued under subsection (1) or (2) also authorises the bringing of the person before the court as soon as practicable after the person's arrest and the detention of the person in custody until the person is released by order of the court or under subsection (4).
- (4) Where a person is arrested under a warrant issued under subsection (1) or (2) and the court before which the person is to be brought is not sitting at the time of the arrest, the person must be brought before a magistrate who may:
- (a) remand the person to bail on such recognizance (with or without sureties) as the magistrate thinks fit and on the condition that the person appears before the court on such date, and at such time and place, as the magistrate specifies; or
 - (b) direct that the person be kept in custody in accordance with the warrant.

20BX Enforcement of psychiatric probation orders

- (1) Where a person who is subject to an order under section 20BV appears before the court by which the order was made and the court is satisfied that the person has, without reasonable excuse, failed to comply with a condition of the order, the court may:
 - (a) without prejudice to the continuance of the order, impose a pecuniary penalty not exceeding 10 penalty units on the person; or
 - (b) discharge the order and make an order under section 20; or
 - (c) revoke the order and, subject to subsection (2), deal with the person for the offence in respect of which the order was made, in any way in which the person could have been dealt with for that offence if the order had not been made and the person was before the court for sentence in respect of the offence; or
 - (d) take no action.
- (2) Where a person who is subject to an order under section 20BV is dealt with under subsection (1) for the offence in respect of which the order was made, the court must, in so dealing with the person, in addition to any other matters, take into account:
 - (a) the fact that the order was made; and
 - (b) anything done under the order; and
 - (c) any other order made in respect of the offence.
- (3) Where a person who has been released in accordance with an order under section 20BV is dealt with under subsection (1) for the offence in respect of which the order was made, the person has such rights of appeal in respect of the way in which the person was dealt with for that offence as the person would have if:
 - (a) the court had, immediately before so dealing with the person, convicted the person of the offence; and
 - (b) the manner in which the person is dealt with had been a sentence passed upon that conviction.

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- (4) A pecuniary penalty imposed on a person under paragraph (1)(a) is to be treated, for the purposes of the laws of the Commonwealth, and of the States and Territories, with respect to the enforcement and recovery of fines ordered to be paid by offenders, as a fine imposed on the person because of the person's conviction for an offence against a law of the Commonwealth.

20BY Program probation orders

- (1) Where a person is convicted in a State or Territory of a federal offence and the court before which the person is convicted is satisfied that:
- (a) the person is suffering from an intellectual disability; and
 - (b) the disability contributed to the commission of the offence by the person; and
 - (c) an appropriate education program or treatment is available for the person in that State or Territory;
- the court may, without passing sentence on the person, order that the person be released, on condition that the person undertake the program or treatment specified in the order for a period specified in the order.
- (2) Subsections 20BV(2), (3) and (4) and sections 20BW and 20BX apply to a person in respect of whom an order has been made under subsection (1) of this section in the same way as they apply to a person in respect of whom an order has been made under subsection 20BV(1) and, for that purpose, references in those provisions to treatment have effect as if they were references to an education program or treatment of the kind referred to in subsection (1) of this section.

Division 9A—Sharing information relevant to federal offenders

20BZ Definitions

In this Division:

authorised officer means:

- (a) the Attorney-General; or
- (b) the Secretary of the Department.

Note: The Attorney-General's powers and functions under this Division may be delegated under section 17 of the *Law Officers Act 1964*. The Secretary's powers and functions under this Division may be delegated under section 20BZC of this Act.

relevant person means any of the following:

- (a) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*);
- (b) a member of the police force or police service of a State or Territory;
- (c) a person who exercises powers under, or performs functions or duties in connection with, any of the following:
 - (i) the *Australian Crime Commission Act 2002*;
 - (ii) the *Crime Commission Act 2012* (NSW);
 - (iii) the *Independent Commission Against Corruption Act 1988* (NSW);
 - (iv) the *Law Enforcement Conduct Commission Act 2016* (NSW);
 - (v) the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic.);
 - (vi) the *Crime and Corruption Act 2001* (Qld);
 - (vii) the *Corruption and Crime Commission Act 2003* (WA);

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- (viii) the *Independent Commission Against Corruption Act 2012* (SA);
- (ix) the *Integrity Commission Act 2009* (Tas.);
- (d) the Director of Public Prosecutions or a person performing a similar function under a law of a State or Territory;
- (e) a member of the staff of the Office of the Director of Public Prosecutions (within the meaning of the *Director of Public Prosecutions Act 1983*) or of a similar body established under a law of a State or Territory;
- (f) an officer or employee of a State or Territory, or of an authority of a State or Territory, whose duties relate to corrective services (including prison medical services), justice or parole;
- (g) a person who provides services for, or on behalf of, a State or Territory, or an authority of a State or Territory, in relation to corrective services (including prison medical services), justice or parole;
- (h) an officer of Customs;
- (i) an officer or employee of a Department responsible for administering:
 - (i) the *Australian Passports Act 2005*; or
 - (ii) the *Defence Force Discipline Act 1982*; or
 - (iii) the *Migration Act 1958*;
- (j) a member of the Defence Force;
- (k) a staff member (within the meaning of the *Australian Securities and Investments Commission Act 2001*);
- (l) a taxation officer (within the meaning of Schedule 1 to the *Taxation Administration Act 1953*);
- (m) an officer or employee of the State Debt Recovery Office of New South Wales, or of a similar body established under a law of a State or Territory;
- (n) the Registrar or another appropriate officer of a court;
- (o) a person who performs functions or duties in connection with a superannuation scheme (within the meaning of the *Crimes*

(*Superannuation Benefits Act 1989*) of a person who is or was an employee (within the meaning of that Act);

- (p) a practitioner (within the meaning of Part VAA of the *Health Insurance Act 1973*) who has provided services (within the meaning of that Part) to a federal offender.

20BZA Authorised officers may request or require information relevant to federal offenders

Requesting information to be given

- (1) An authorised officer may request a relevant person, or a person prescribed by regulation for the purposes of this subsection, to give the officer information that the officer reasonably believes to be relevant to:
- (a) the administration or execution of:
 - (i) this Part; or
 - (ii) section 15A (enforcement of fines); or
 - (iii) Division 5 (escape from criminal detention) of Part III; or
 - (iv) the *Crimes (Superannuation Benefits) Act 1989*; or
 - (v) the *Transfer of Prisoners Act 1983*; or
 - (b) the exercise of a power under, or the performance of a function or duty in connection with, a law of a State or Territory applied by paragraph 68(1)(d) of the *Judiciary Act 1903* (procedure for hearing and determining appeals arising out of trials, convictions and connected proceedings); or
 - (c) the exercise of the Royal prerogative of mercy by the Crown in right of the Commonwealth.
- (2) The request need not be in writing.

Requiring information to be given

- (3) An authorised officer may, by written notice, require a relevant person, or a person prescribed by regulation for the purposes of this

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subsection, to give the officer information of a kind mentioned in subsection (1).

- (4) A person given a notice under subsection (3) must, as soon as practicable after the notice is given, comply with it to the extent that he or she has, or can reasonably acquire, the information.
- (5) Subsection (4) applies despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten).
- (6) Despite subsection (4), the Registrar or another officer of a court is not required to comply with a notice given under subsection (3) to the extent that the information relates to proceedings that have not been finally determined by the court.

20BZB Authorised officers may disclose federal offender information

- (1) An authorised officer may disclose federal offender information to a relevant person if the officer reasonably believes that the disclosure is necessary to enable the relevant person to exercise the person's powers, or to perform the person's functions or duties.
- (2) An authorised officer may disclose federal offender information to a person prescribed by regulation for the purposes of this subsection in a circumstance prescribed by regulation in relation to the person.
- (3) Subsections (1) and (2) apply despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten).
- (4) In this section:

federal offender information means:

- (a) information acquired by an authorised officer, or an APS employee in the Department, in the exercise of a power under, or the performance of a function or duty in connection with:

- (i) this Part; or
- (ii) section 15A (enforcement of fines); or
- (iii) Division 5 (escape from criminal detention) of Part III;
or
- (iv) the *Crimes (Superannuation Benefits) Act 1989*; or
- (v) the *Transfer of Prisoners Act 1983*; or
- (vi) a law of a State or Territory applied by
paragraph 68(1)(d) of the *Judiciary Act 1903* (procedure
for hearing and determining appeals arising out of trials,
convictions and connected proceedings); or
- (b) information acquired by an authorised officer in the
performance of a function or duty in connection with the
exercise of the Royal prerogative of mercy by the Crown in
right of the Commonwealth.

20BZC Delegation

The Secretary of the Department may, in writing, delegate any of his or her powers or functions under this Division to an APS employee in the Department who performs duties in connection with:

- (a) the administration or execution of:
 - (i) this Part; or
 - (ii) section 15A (enforcement of fines); or
 - (iii) Division 5 (escape from criminal detention) of Part III;
or
 - (iv) the *Crimes (Superannuation Benefits) Act 1989*; or
 - (v) the *Transfer of Prisoners Act 1983*; or
- (b) a law of a State or Territory applied by paragraph 68(1)(d) of the *Judiciary Act 1903* (procedure for hearing and determining appeals arising out of trials, convictions and connected proceedings); or
- (c) the exercise of the Royal prerogative of mercy by the Crown in right of the Commonwealth.

Division 10—Miscellaneous

20C Offences by children and young persons

A child or young person who, in a State or Territory, is charged with or convicted of an offence against a law of the Commonwealth may be tried, punished or otherwise dealt with as if the offence were an offence against a law of the State or Territory.

21B Reparation for offences

(1) Where:

- (a) a person is convicted of a federal offence; or
- (b) an order is made under section 19B in relation to a federal offence committed by a person;

the court may, in addition to the penalty, if any, imposed upon the person, order the offender:

- (c) to make reparation to the Commonwealth or to a public authority under the Commonwealth, by way of money payment or otherwise, in respect of any loss suffered, or any expense incurred, by the Commonwealth or the authority, as the case may be, by reason of the offence; or
 - (d) to make reparation to any person, by way of money payment or otherwise, in respect of any loss suffered, or any expense incurred, by the person by reason of the offence.
- (2) A person is not to be imprisoned for a failure to pay an amount required to be paid under an order made under subsection (1).
- (3) Where:
- (a) the court orders a federal offender to make reparation to the Commonwealth, to a public authority of the Commonwealth or to any other person by way of payment of an amount of money; and

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- (b) the clerk, or other appropriate officer, of the court signs a certificate specifying:
 - (i) the amount of money to be paid by way of reparation; and
 - (ii) the identity of the person to whom the amount of money is to be paid; and
 - (iii) the identity of the person by whom the amount is to be paid; and
- (c) the certificate is filed in a court (which may be the first-mentioned court) having civil jurisdiction to the extent of the amount to be paid;

the certificate is enforceable in all respects as a final judgment of the court in which it is filed in favour of the Commonwealth, of that public authority or of that person.

21D Prerogative of mercy and other Commonwealth laws unaffected

- (1) Nothing in this Part shall be construed as affecting the powers vested in the Governor-General in the exercise of the Royal prerogative of mercy.
- (2) This Part does not affect the operation of any other law of the Commonwealth, or of any law in force in a Territory, relating to the release of offenders.

21F Prescribed authorities and parole officers

- (1) Subject to subsection (2), the Governor-General may arrange with the Governor of a State, the Australian Capital Territory Executive or the Administrator of the Northern Territory:
 - (a) for the performance by persons who hold office as Magistrates in that State or Territory of the functions of a prescribed authority under this Part; and
 - (b) for the performance by officers of that State or Territory of the functions of a parole officer under this Part.
- (2) Subsection (1) does not authorise an arrangement of the kind referred to in paragraph (1)(a) to be entered into between the

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Governor-General and the Australian Capital Territory Executive before 1 July 1990.

- (3) The Attorney-General may appoint persons appointed or engaged under the *Public Service Act 1999* to be parole officers for the purposes of this Part.
- (4) Notice of an arrangement under subsection (1) must be published in the *Gazette*.
- (5) In this section:

State does not include the Australian Capital Territory or the Northern Territory.

22 Conditions etc. that a court may impose on certain offenders

- (1) Where a court makes a relevant order or passes a relevant sentence in respect of a person charged with, or convicted of:
 - (a) an offence against a law of the Commonwealth or of a Territory, being an offence that is a serious drug offence; or
 - (b) a prescribed offence against a law of the Commonwealth or of a Territory;it may, at the same time or at a later time, order the person to do all or any of the following things:
 - (c) to remain in Australia;
 - (d) to refrain from applying for, or obtaining, an Australian travel document;
 - (e) to surrender possession of any Australian travel document held by the person.
- (2) Subject to subsection (3), an order made under subsection (1) has effect during such reasonable period as is specified by the court in the order.
- (3) The court may, by order, revoke an order made under subsection (1) or vary such an order as the court sees fit.

- (4) If the court makes an order under subsection (1) or (3), the Registrar or other appropriate officer of the court, as the case requires, must, as soon as practicable, give to the Secretary of the Department administered by the Minister administering the *Australian Passports Act 2005* a copy of the order.
- (5) If the court makes an order under paragraph (1)(e):
- (a) the Australian travel document must be given to the Registrar or other appropriate officer of the court; and
 - (b) the Registrar or officer must cause the Australian travel document to be kept in such custody as he or she thinks fit until:
 - (i) the Australian travel document is required to be released under subsection (6); or
 - (ii) the Australian travel document is cancelled or expires; whichever happens first.
- (6) If an Australian travel document surrendered under an order under paragraph (1)(e) is in force when that order ceases to have effect, the person having the custody of the Australian travel document at that time must, on the application of the person to whom it was issued, cause it to be returned to that person.
- (7) In this section:
- relevant order** means an order:
- (a) remanding a person, whether on bail or in custody; or
 - (b) suspending the sentence passed on a person upon his or her entering into a recognizance; or
 - (c) releasing the person on conditions under subsection 20(1).
- relevant sentence** means:
- (a) a sentence of imprisonment other than a suspended sentence; or
 - (b) a sentence under section 20AB.
- serious drug offence** means an offence:
- (a) involving, or relating to, controlled substances; and

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- (b) punishable by a maximum penalty of imprisonment for 2 years or more.

22A State orders relating to Australian travel documents

- (1) If, under a law of a State, a court makes an order requiring a person charged with, or convicted of:

- (a) a serious drug offence against a law of that State; or
(b) such other serious offence against a law of that State as is specified in the first-mentioned law;

to surrender possession of any Australian travel document held by the person, the person must surrender the Australian travel document to the Registrar, or other appropriate officer, of the court to be dealt with in accordance with that law.

- (2) In this section:

serious drug offence has the same meaning as in section 22.

Part IC—Investigation of Commonwealth offences

Division 1—Introduction

23 Outline of this Part

- (1) This Part:
 - (a) provides for the detention of people arrested for Commonwealth offences (see Division 2); and
 - (b) imposes obligations on investigating officials in relation to:
 - (i) people arrested for Commonwealth offences; and
 - (ii) certain other people who are being investigated for Commonwealth offences;(see Division 3).
- (2) To avoid doubt, this Part does not confer any power to arrest a person.
- (3) To avoid doubt, only a person arrested for a Commonwealth offence may be detained under this Part.

23A Application of Part

- (1) Any law of the Commonwealth in force immediately before the commencement of this Part, and any rule of the common law, has no effect so far as it is inconsistent with this Part.
- (2) This Part does not exclude or limit the operation of a law of a State or Territory so far as it can operate concurrently with this Part.
- (3) In subsection (2):

law of a State or Territory includes such a law that is given a particular application by a law of the Commonwealth.
- (4) Where a law of a State or Territory would, apart from this subsection, require the electronic recording of confessional

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evidence in relation to a Commonwealth offence (whether or not expressed as a condition of the admissibility of that evidence), that requirement ceases to apply on the commencement of this Part.

- (5) The provisions of this Part, so far as they protect the individual, are in addition to, and not in derogation of, any rights and freedoms of the individual under a law of the Commonwealth or of a State or Territory.
- (6) If an offence against a law of the Australian Capital Territory is punishable by imprisonment for a period exceeding 12 months and the investigating official concerned is a member or special member of the Australian Federal Police, this Part applies to that offence as if:
 - (a) references to Commonwealth offences included references to that offence; and
 - (b) references to a law of the Commonwealth included references to a law of that Territory.

23AA How this Part applies to the Antarctic Territories

- (1) This Part applies in relation to a person as if he or she were arrested on arrival in a State or Territory if:
 - (a) the person was arrested within the Australian Antarctic Territory or the Territory of Heard Island and McDonald Islands; and
 - (b) the person was brought, while under arrest, to the State or Territory; and
 - (c) this Part applies in the State or Territory.
- (2) This Part applies in relation to a person as if he or she first became a protected suspect on arrival in a State or Territory if:
 - (a) the person was a protected suspect within the Australian Antarctic Territory or the Territory of Heard Island and McDonald Islands; and
 - (b) the person travelled, while a protected suspect, to the State or Territory; and
 - (c) this Part applies in the State or Territory.

- (3) This Part does not otherwise apply within the Australian Antarctic Territory or the Territory of Heard Island and McDonald Islands.

23B Definitions

- (1) In this Part:

Aboriginal legal assistance organisation means an organisation that is funded by the Commonwealth, a State or a Territory to provide legal assistance to Aboriginal persons and Torres Strait Islanders.

arrested: a person is arrested if:

- (a) the person is arrested for a Commonwealth offence; and
- (b) the person's arrest has not ceased under subsection (3) or (4); and
- (c) the person has not been released.

authorising officer, in relation to an investigating official, means:

- (a) if the investigating official is a member or special member of the Australian Federal Police—a person for the time being holding office or acting as:
 - (i) the Commissioner; or
 - (ii) a Deputy Commissioner; or
 - (iii) a member or special member of the Australian Federal Police who is of the rank of superintendent or higher; or
- (b) if the investigating official is a member of the police force of a State or Territory—a person for the time being holding office or acting as:
 - (i) the Commissioner or the person holding equivalent rank; or
 - (ii) an Assistant Commissioner or a person holding equivalent rank; or
 - (iii) a superintendent or a person holding equivalent rank; of the police force of that State or Territory.

Commonwealth offence means:

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- (a) an offence against a law of the Commonwealth, other than an offence that is a service offence for the purposes of the *Defence Force Discipline Act 1982*; or
- (b) a State offence that has a federal aspect.

designated official means:

- (a) a member or special member of the Australian Federal Police; or
- (b) a member of the police force of a State or Territory; or
- (c) a person who holds an office the functions of which include the investigation of Commonwealth offences and who is empowered by a law of the Commonwealth because of the holding of that office to make arrests in respect of such offences.

inform, in relation to an investigating official informing a person who is under arrest or a protected suspect, means notify the person:

- (a) in a language in which the person is able to communicate with reasonable fluency; and
- (b) in a manner that the official has reasonable grounds to believe is a manner that the person can understand having regard to any apparent disability the person has.

investigating official means:

- (a) a member or special member of the Australian Federal Police (other than a member or special member of the Australian Federal Police who is engaged in covert investigations under the orders of a superior); or
- (b) a member of the police force of a State or Territory (other than a member of the police force of a State or Territory who is engaged in covert investigations under the orders of a superior); or
- (c) a person who holds an office the functions of which include the investigation of Commonwealth offences and who is empowered by a law of the Commonwealth because of the holding of that office to make arrests in respect of such

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offences (other than a person who is engaged in covert investigations under the orders of a superior).

investigation period means the investigation period prescribed by section 23C or 23DB, as the case requires.

protected suspect has the meaning given by subsection (2).

question has the meaning given by subsection (6).

serious Commonwealth offence means a Commonwealth offence that is punishable by imprisonment for a period exceeding 12 months.

tape recording means audio recording, video recording or recording by other electronic means.

under arrest: a person is under arrest if:

- (a) the person is arrested for a Commonwealth offence; and
- (b) the person's arrest has not ceased under subsection (3) or (4); and
- (c) the person has not been released.

(2) A person is a **protected suspect** if:

- (a) the person is in the company of an investigating official for the purpose of being questioned about a Commonwealth offence; and
- (b) the person has not been arrested for the offence; and
- (c) one or more of the following applies in relation to the person:
 - (i) the official believes that there is sufficient evidence to establish that the person has committed the offence;
 - (ii) the official would not allow the person to leave if the person wished to do so;
 - (iii) the official has given the person reasonable grounds for believing that the person would not be allowed to leave if he or she wished to do so; and
- (d) none of the following applies in relation to the person:

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- (i) the official is performing functions in relation to persons or goods entering Australia, and the official does not believe that the person has committed a Commonwealth offence;
 - (ii) the official is performing functions in relation to persons or goods leaving Australia, and the official does not believe that the person has committed a Commonwealth offence;
 - (iii) the official is exercising a power under a law of the Commonwealth to detain and search the person;
 - (iv) the official is exercising a power under a law of the Commonwealth to require the person to provide information or to answer questions; and
 - (e) the person has not ceased to be a suspect under subsection (4).
- (3) A person ceases, for the purposes of this Part, to be arrested for a Commonwealth offence if the person is remanded in respect of that offence by a bail authority otherwise than under any of the following provisions of the *Service and Execution of Process Act 1992*:
- (a) paragraph 83(3)(b), (4)(b), (8)(a) or (8)(b);
 - (b) subsection 83(12);
 - (c) paragraph 83(14)(a);
 - (d) subparagraph 84(4)(a)(ii) or (6)(a)(i).
- (4) A person ceases, for the purposes of this Part, to be arrested or a protected suspect if:
- (a) a designated official believes on reasonable grounds that the person is voluntarily taking part in covert investigations; and
 - (b) those covert investigations are being conducted by the official for the purpose of investigating whether another person has been involved in the commission of an offence or suspected offence (whether a Commonwealth offence or not).
- (5) Subsection (4) does not prevent the person from being re-arrested or again becoming a protected suspect.

- (6) In this Part, a reference to questioning a person:
- (a) is a reference to questioning the person, or carrying out an investigation (in which the person participates), to investigate the involvement (if any) of the person in any Commonwealth offence (including an offence for which the person is not under arrest); and
 - (b) does not include a reference to carrying out a forensic procedure on the person under Part ID.

Division 2—Powers of detention

Note: The powers in this Division only apply in relation to people under arrest. They do not apply in relation to protected suspects.

Subdivision A—Non-terrorism offences

23C Period of investigation if arrested for a non-terrorism offence

- (1) If a person is arrested for a Commonwealth offence (other than a terrorism offence), the following provisions apply.

Note: A person would not be arrested for a Commonwealth offence if, for example, the person has been released under subsection 3W(2)—see the definition of *arrested* in subsection 23B(1).

- (2) The person may, while arrested for the Commonwealth offence, be detained for the purpose of investigating either or both of the following:
- (a) whether the person committed the offence;
 - (b) whether the person committed another Commonwealth offence that an investigating official reasonably suspects that the person has committed.

- (2A) Subsection (2) ceases to apply at the end of the investigation period, but that cessation does not affect any other power to detain the person.

- (3) If the person is not released within the investigation period, the person must be brought before a bail authority within the investigation period or, if it is not practicable to do so within the investigation period, as soon as practicable after the end of the investigation period.

- (4) For the purposes of this section, but subject to subsections (6) and (7), the investigation period begins when the person is arrested, and ends at a time thereafter that is reasonable, having regard to all the circumstances, but does not extend beyond:

- (a) if the person is or appears to be under 18, an Aboriginal person or a Torres Strait Islander—2 hours; or

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- (b) in any other case—4 hours;
after the arrest, unless the period is extended under section 23DA.
- (5) In ascertaining any period of time for the purposes of this section, regard shall be had to the number and complexity of matters being investigated.
- (6) If the person has been arrested more than once within any period of 48 hours, the investigation period for each arrest other than the first is reduced by so much of any of the following periods as occurred within that 48 hours:
- (a) any earlier investigation period or periods under this section;
 - (b) any earlier investigation period or periods under section 23DB.
- (6A) However, in relation to each first arrest, disregard subsection (6) for any later arrest if:
- (a) the later arrest is for a Commonwealth offence:
 - (i) that was committed after the end of the person's period of detention under this Part for the first arrest; or
 - (ii) that arose in different circumstances to those in which any Commonwealth offence to which the first arrest relates arose, and for which new evidence has been found since the first arrest; and
 - (b) the person's questioning associated with the later arrest does not relate to:
 - (i) a Commonwealth offence to which the first arrest relates; or
 - (ii) the circumstances in which such an offence was committed.
- (7) In ascertaining any period of time for the purposes of subsection (4) or (6), disregard any reasonable time during which the questioning of the person is suspended, or delayed, for one or more of the following reasons:
- (a) to allow the person to be conveyed from the place at which the person is arrested to the nearest premises at which the

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investigating official has access to facilities for complying with this Part;

- (b) to allow the person, or someone else on the person's behalf, to communicate with a legal practitioner, friend, relative, parent, guardian, interpreter or other person as provided by this Part;
 - (c) to allow such a legal practitioner, friend, relative, parent, guardian, interpreter or other person to arrive at the place where the questioning is to take place;
 - (d) to allow the person to receive medical attention;
 - (e) because of the person's intoxication;
 - (f) to allow for an identification parade to be arranged and conducted;
 - (g) to allow the making of an application under section 3ZQB or the carrying out of a prescribed procedure within the meaning of Division 4A of Part IAA;
 - (h) to allow the making and disposing of an application under section 23D, 23WU or 23XB;
 - (i) to allow a constable to inform the person of matters specified in section 23WJ;
 - (j) to allow the person to rest or recuperate;
 - (k) to allow a forensic procedure to be carried out on the person by order of a magistrate under Division 5 of Part ID;
 - (l) because section 23XGD applies and the time is to be disregarded in working out a period of time for the purposes of that section.
- (7A) To avoid doubt, subsection (7) does not prevent the person being questioned during a time covered by a paragraph of subsection (7), but if the person is questioned during such a time, the time is not to be disregarded.

Evidentiary provision

- (8) In any proceedings, the burden lies on the prosecution to prove that:

- (a) the person was brought before a bail authority as soon as practicable; or
- (b) any particular time was covered by a provision of subsection (7).

23D Application may be made for extension of investigation period

- (1) If a person is arrested for a serious Commonwealth offence (other than a terrorism offence), an investigating official may, at or before the end of the investigation period, apply to a magistrate for an extension of the investigation period.
- (2) The application must be made before the magistrate, by telephone or in writing.
- (3) Subject to subsection (4), the application must include statements of all of the following:
 - (a) whether it appears to the investigating official that the person is under 18;
 - (b) whether it appears to the investigating official that the person is an Aboriginal person or a Torres Strait Islander;
 - (c) the outcome of any previous application under this section in relation to the person and the investigation period;
 - (d) the period (if any) by which the investigation period has been reduced under subsection 23C(6);
 - (e) the total amount of time (if any) that has been disregarded under subsection 23C(7) in ascertaining the investigation period under subsection 23C(4);
 - (f) the maximum amount of time by which the investigation period could be extended;
 - (g) the reasons why the investigating official believes the investigation period should be extended;
 - (h) the period by which the investigating official believes the investigation period should be extended.
- (4) Subsection (3) does not require any information to be included in the application if disclosure of that information is likely:

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- (a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or
 - (b) to be protected by public interest immunity; or
 - (c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or
 - (d) to put at risk the safety of the community, law enforcement officers or intelligence officers.
- (5) Before the application is considered by the magistrate, the investigating official:
- (a) must:
 - (i) if the application is to be made in writing—provide a copy of the application to the person, or to his or her legal representative; or
 - (ii) otherwise—inform the person, or his or her legal representative, of all matters or information in the application (other than information of a kind mentioned in subsection (4)); and
 - (b) must inform the person that he or she, or his or her legal representative, may make representations to the magistrate about the application.
- (6) If the application contains any information of a kind mentioned in subsection (4), the investigating official may remove it from any copy of the application that is provided to the person or to his or her legal representative.
- (7) The person, or his or her legal representative, may make representations to the magistrate about the application.

23DA Magistrate may extend investigation period

- (1) This section applies if:
- (a) a person is arrested for a serious Commonwealth offence (other than a terrorism offence); and
 - (b) an application has been made under subsection 23D(1) to a magistrate in respect of the person.
-

Extension of investigation period

- (2) Subject to subsection (3), the magistrate may extend the investigation period, by signed written instrument, if satisfied that:
 - (a) the offence is a serious Commonwealth offence (other than a terrorism offence); and
 - (b) further detention of the person is necessary to preserve or obtain evidence or to complete the investigation into the offence or into another serious Commonwealth offence; and
 - (c) the investigation into the offence is being conducted properly and without delay; and
 - (d) the person, or his or her legal representative, has been given the opportunity to make representations about the application.
- (3) Subject to subsection (4), the instrument must set out:
 - (a) the day and time when the extension was granted; and
 - (b) the reasons for granting the extension; and
 - (c) the terms of the extension.
- (4) Subsection (3) does not require any information to be included in the instrument if disclosure of that information is likely:
 - (a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or
 - (b) to be protected by public interest immunity; or
 - (c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or
 - (d) to put at risk the safety of the community, law enforcement officers or intelligence officers.
- (5) The magistrate must:
 - (a) give the investigating official a copy of the instrument as soon as practicable after signing it; and
 - (b) if the instrument was made as a result of an application made by telephone, telex, fax or other electronic means—inform

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the investigating official of the matters included in the instrument.

Note: See section 23E.

- (6) The investigating official must:
 - (a) as soon as practicable after receiving a copy of the instrument under paragraph (5)(a), give the person, or his or her legal representative, a copy of it; and
 - (b) if the instrument was made as a result of an application made by telephone, telex, fax or other electronic means—inform the person, or his or her legal representative, of the matters included in the instrument as soon as practicable after being informed of them under paragraph (5)(b).
- (7) The investigation period may be extended for a period not exceeding 8 hours, and must not be extended more than once.

Subdivision B—Terrorism offences

23DB Period of investigation if arrested for a terrorism offence

- (1) If a person is arrested for a terrorism offence, the following provisions apply.

Note: A person would not be arrested for a terrorism offence if, for example, the person has been released under subsection 3WA(2)—see the definition of *arrested* in subsection 23B(1).
- (2) The person may, while arrested for the terrorism offence, be detained for the purpose of investigating either or both of the following:
 - (a) whether the person committed the offence;
 - (b) whether the person committed another Commonwealth offence that an investigating official reasonably suspects that the person has committed.
- (3) Subsection (2) ceases to apply at the end of the investigation period, but that cessation does not affect any other power to detain the person.

- (4) If the person is not released within the investigation period, the person must be brought before a bail authority within the investigation period or, if it is not practicable to do so within the investigation period, as soon as practicable after the end of the investigation period.
- (5) For the purposes of this section, but subject to subsections (7) and (9), the investigation period begins when the person is arrested, and ends at a later time that is reasonable, having regard to all the circumstances, but does not extend beyond:
- (a) if the person is or appears to be under 18, an Aboriginal person or a Torres Strait Islander—2 hours; or
 - (b) in any other case—4 hours;
- after the arrest, unless the period is extended under section 23DF.
- (6) In ascertaining any period of time for the purposes of this section, regard shall be had to the number and complexity of matters being investigated.
- (7) If the person has been arrested more than once within any period of 48 hours, the investigation period for each arrest other than the first is reduced by so much of any of the following periods as occurred within that 48 hours:
- (a) any earlier investigation period or periods under this section;
 - (b) any earlier investigation period or periods under section 23C.
- (8) However, in relation to each first arrest, disregard subsection (7) for any later arrest if:
- (a) the later arrest is for a Commonwealth offence:
 - (i) that was committed after the end of the person's period of detention under this Part for the first arrest; or
 - (ii) that arose in different circumstances to those in which any Commonwealth offence to which the first arrest relates arose, and for which new evidence has been found since the first arrest; and
 - (b) the person's questioning associated with the later arrest does not relate to:

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- (i) a Commonwealth offence to which the first arrest relates; or
 - (ii) the circumstances in which such an offence was committed.
- (9) In ascertaining any period of time for the purposes of subsection (5) or (7), disregard any reasonable time during which the questioning of the person is suspended, or delayed, for one or more of the following reasons:
- (a) to allow the person to be conveyed from the place at which the person is arrested to the nearest premises at which the investigating official has access to facilities for complying with this Part;
 - (b) to allow the person, or someone else on the person's behalf, to communicate with a legal practitioner, friend, relative, parent, guardian, interpreter or other person as provided by this Part;
 - (c) to allow such a legal practitioner, friend, relative, parent, guardian, interpreter or other person to arrive at the place where the questioning is to take place;
 - (d) to allow the person to receive medical attention;
 - (e) because of the person's intoxication;
 - (f) to allow for an identification parade to be arranged and conducted;
 - (g) to allow the making of an application under section 3ZQB or the carrying out of a prescribed procedure within the meaning of Division 4A of Part IAA;
 - (h) to allow the making and disposing of an application under section 23DC, 23DE, 23WU or 23XB;
 - (i) to allow a constable to inform the person of matters specified in section 23WJ;
 - (j) to allow the person to rest or recuperate;
 - (k) to allow a forensic procedure to be carried out on the person by order of a magistrate under Division 5 of Part ID;

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- (l) because section 23XGD applies and the time is to be disregarded in working out a period of time for the purposes of that section;
 - (m) subject to subsection (11), because the time is within a period specified under section 23DD, so long as the suspension or delay in the questioning of the person is reasonable.
- (10) To avoid doubt:
- (a) subsection (9) does not prevent the person being questioned during a time covered by a paragraph of subsection (9), but if the person is questioned during such a time, the time is not to be disregarded; and
 - (b) a period specified under section 23DD is not extended by any time covered by a paragraph of subsection (9).

Limit on time that may be disregarded under paragraph (9)(m)

- (11) No more than 7 days may be disregarded under paragraph (9)(m) in relation to an arrest. However:
- (a) if the person has been arrested more than once within any period of 48 hours, the 7 day period for each arrest other than the first arrest is reduced by any period or periods specified under section 23DD in relation to any earlier arrest; and
 - (b) subsection (8) applies as if the reference in that subsection to subsection (7) were a reference to this subsection.

Evidentiary provision

- (12) In any proceedings, the burden lies on the prosecution to prove that:
- (a) the person was brought before a bail authority as soon as practicable; or
 - (b) any particular time was covered by a provision of subsection (9).

Section 23DC

23DC Time during which suspension or delay of questioning may be disregarded—application

- (1) This section applies if:
- (a) a person is arrested for a terrorism offence; and
 - (b) an investigation is being conducted into whether the person committed that terrorism offence or another terrorism offence.

Application for specification of period

- (2) At or before the end of the investigation period, an investigating official (within the meaning of paragraph (a) or (b) of the definition of that expression) may apply, in writing, to a magistrate for a period to be specified for the purpose of paragraph 23DB(9)(m).
- (3) The application must not be made unless the application is authorised, in writing, by an authorising officer.
- (4) Subject to subsection (5), the application must include statements of all of the following:
- (a) whether it appears to the investigating official that the person is under 18;
 - (b) whether it appears to the investigating official that the person is an Aboriginal person or a Torres Strait Islander;
 - (c) the outcome of any previous application under this section in relation to:
 - (i) the person and the arrest; and
 - (ii) if the person was arrested at any time during the period of 48 hours before the arrest—the person and the earlier arrest or arrests;
 - (d) the total amount of time that has been disregarded under subsection 23DB(9) in ascertaining the investigation period in relation to:
 - (i) the person and the arrest; and

- (ii) if the person was arrested at any time during the period of 48 hours before the arrest—the person and the earlier arrest or arrests;
 - (e) the reasons why the investigating official believes the period should be specified, which may, for example, be or include one or more of the following:
 - (i) the need to collate and analyse information relevant to the investigation from sources other than the questioning of the person (including, for example, information obtained from a place outside Australia);
 - (ii) the need to allow authorities in or outside Australia (other than authorities in an organisation of which the investigating official is part) time to collect information relevant to the investigation on the request of the investigating official;
 - (iii) the fact that the investigating official has requested the collection of information relevant to the investigation from a place outside Australia that is in a time zone different from the investigating official's time zone;
 - (iv) the fact that translation is necessary to allow the investigating official to seek information from a place outside Australia and/or be provided with such information in a language that the official can readily understand;
 - (f) the period that the investigating official believes should be specified.
- (5) Subsection (4) does not require any information to be included in the application if disclosure of that information is likely:
- (a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or
 - (b) to be protected by public interest immunity; or
 - (c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or
 - (d) to put at risk the safety of the community, law enforcement officers or intelligence officers.

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- (6) Before the application is considered by the magistrate, the investigating official must:
 - (a) provide a copy of the application to the person or to his or her legal representative; and
 - (b) inform the person that he or she, or his or her legal representative, may make representations to the magistrate about the application.
- (7) If the application contains any information of a kind mentioned in subsection (5), the investigating official may remove it from the copy of the application that is provided to the person or to his or her legal representative.
- (8) The person, or his or her legal representative, may make representations to the magistrate about the application.

23DD Time during which suspension or delay of questioning may be disregarded—time specified by magistrate

- (1) This section applies if:
 - (a) a person is arrested for a terrorism offence; and
 - (b) an application has been made under subsection 23DC(2) to a magistrate in respect of the person.

Specification of period

- (2) The magistrate may, by signed instrument, specify a period starting at the time the instrument is signed, if satisfied that:
 - (a) it is appropriate to do so, having regard to:
 - (i) the application; and
 - (ii) the representations (if any) made by the person, or his or her legal representative, about the application; and
 - (iii) any other relevant matters; and
 - (b) the offence is a terrorism offence; and
 - (c) detention of the person is necessary to preserve or obtain evidence or to complete the investigation into the offence or into another terrorism offence; and

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- (d) the investigation into the offence is being conducted properly and without delay; and
- (e) the application has been authorised by an authorising officer; and
- (f) the person, or his or her legal representative, has been given the opportunity to make representations about the application.

Instrument specifying period

- (3) Subject to subsection (4), the instrument must:
 - (a) specify the period as a number (which may be less than one) of hours; and
 - (b) set out the day and time when it was signed; and
 - (c) set out the reasons for specifying the period.
- (4) Subsection (3) does not require any information to be included in the instrument if disclosure of that information is likely:
 - (a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or
 - (b) to be protected by public interest immunity; or
 - (c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or
 - (d) to put at risk the safety of the community, law enforcement officers or intelligence officers.
- (5) The magistrate must:
 - (a) give the investigating official a copy of the instrument as soon as practicable after signing it; and
 - (b) if the instrument was made as a result of an application made by telex, fax or other electronic means—inform the investigating official of the matters included in the instrument.

Note: See section 23E.

- (6) The investigating official must:
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Section 23DE

- (a) as soon as practicable after receiving a copy of the instrument under paragraph (5)(a), give the person, or his or her legal representative, a copy of it; and
- (b) if the instrument was made as a result of an application made by telex, fax or other electronic means—inform the person, or his or her legal representative, of the matters included in the instrument as soon as practicable after being informed of them under paragraph (5)(b).

23DE Application may be made for extension of investigation period

- (1) If a person is arrested for a terrorism offence, an investigating official (within the meaning of paragraph (a) or (b) of the definition of that expression) may, at or before the end of the investigation period, apply, in writing, to a magistrate for an extension of the investigation period.
- (2) The application must not be made unless the application is authorised, in writing, by an authorising officer.
- (3) Subject to subsection (4), the application must include statements of all of the following:
 - (a) whether it appears to the investigating official that the person is under 18;
 - (b) whether it appears to the investigating official that the person is an Aboriginal person or a Torres Strait Islander;
 - (c) the outcome of any previous application under this section in relation to the person and the investigation period;
 - (d) the period (if any) by which the investigation period has been reduced under subsection 23DB(7);
 - (e) the total amount of time (if any) that has been disregarded under subsection 23DB(9) in ascertaining the investigation period;
 - (f) the maximum amount of time by which the investigation period could be extended;
 - (g) the reasons why the investigating official believes the investigation period should be extended;

- (h) the period by which the investigating official believes the investigation period should be extended.
- (4) Subsection (3) does not require any information to be included in the application if disclosure of that information is likely:
 - (a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or
 - (b) to be protected by public interest immunity; or
 - (c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or
 - (d) to put at risk the safety of the community, law enforcement officers or intelligence officers.
- (5) Before the application is considered by the magistrate, the investigating official must:
 - (a) provide a copy of the application to the person or to his or her legal representative; and
 - (b) inform the person that he or she, or his or her legal representative, may make representations to the magistrate about the application.
- (6) If the application contains any information of a kind mentioned in subsection (4), the investigating official may remove it from the copy of the application that is provided to the person or to his or her legal representative.
- (7) The person, or his or her legal representative, may make representations to the magistrate about the application.

23DF Magistrate may extend investigation period

- (1) This section applies if:
 - (a) a person is arrested for a terrorism offence; and
 - (b) an application has been made under subsection 23DE(1) to a magistrate in respect of the person.

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Extension of investigation period

- (2) Subject to subsection (3), the magistrate may extend the investigation period, by signed written instrument, if satisfied that:
- (a) the offence is a terrorism offence; and
 - (b) further detention of the person is necessary to:
 - (i) preserve or obtain evidence related to the offence or to another terrorism offence; or
 - (ii) complete the investigation into the offence or into another terrorism offence; and
 - (c) the investigation into the offence is being conducted properly and without delay; and
 - (d) the application has been authorised by an authorising officer; and
 - (e) the person, or his or her legal representative, has been given the opportunity to make representations about the application.
- (3) Subject to subsection (4), the instrument must set out:
- (a) the day and time when the extension was granted; and
 - (b) the reasons for granting the extension; and
 - (c) the terms of the extension.
- (4) Subsection (3) does not require any information to be included in the instrument if disclosure of that information is likely:
- (a) to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*); or
 - (b) to be protected by public interest immunity; or
 - (c) to put at risk ongoing operations by law enforcement agencies or intelligence agencies; or
 - (d) to put at risk the safety of the community, law enforcement officers or intelligence officers.
- (5) The magistrate must:
- (a) give the investigating official a copy of the instrument as soon as practicable after signing it; and
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- (b) if the instrument was made as a result of an application made by telex, fax or other electronic means—inform the investigating official of the matters included in the instrument.

Note: See section 23E.

- (6) The investigating official must:
 - (a) as soon as practicable after receiving a copy of the instrument under paragraph (5)(a), give the person, or his or her legal representative, a copy of it; and
 - (b) if the instrument was made as a result of an application made by telex, fax or other electronic means—inform the person, or his or her legal representative, of the matters included in the instrument as soon as practicable after being informed of them under paragraph (5)(b).
- (7) The investigation period may be extended any number of times, but the total of the periods of extension cannot be more than 20 hours.

Subdivision C—Miscellaneous

23E Evidentiary provisions if application made by electronic means

- (1) This section applies if a magistrate has, under paragraph 23DA(5)(b), 23DD(5)(b) or 23DF(5)(b), informed an investigating official of matters included in an instrument.
- (2) As soon as practicable after being informed of those matters, the investigating official must:
 - (a) complete a form of the instrument and write on it the name of the magistrate and the particulars given by him or her; and
 - (b) forward it to the magistrate.
- (3) If the form of the instrument completed by the investigating official does not, in all material respects, accord with the terms of the instrument signed by the magistrate, the instrument is taken to have had no effect.

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- (4) In any proceedings, if the instrument signed by the magistrate is not produced in evidence, the burden lies on the prosecution to prove that the instrument was made.

Division 3—Obligations of investigating officials

Note: These obligations apply in relation to protected suspects as well as to people under arrest.

23F Cautioning persons who are under arrest or protected suspects

- (1) Subject to subsection (3), if a person is under arrest or a protected suspect, an investigating official must, before starting to question the person, caution the person that he or she does not have to say or do anything, but that anything the person does say or do may be used in evidence.
- (2) The investigating official must inform the person of the caution in accordance with subsection (1), but need only do so in writing if that is the most appropriate means of informing the person.
- (3) Subsections (1) and (2) do not apply so far as another law of the Commonwealth requires the person to answer questions put by, or do things required by, the investigating official.

23G Right to communicate with friend, relative and legal practitioner

- (1) Subject to section 23L, if a person is under arrest or a protected suspect, an investigating official must, before starting to question the person, inform the person that he or she may:
 - (a) communicate, or attempt to communicate, with a friend or relative to inform that person of his or her whereabouts; and
 - (b) communicate, or attempt to communicate, with a legal practitioner of the person's choice and arrange, or attempt to arrange, for a legal practitioner of the person's choice to be present during the questioning;and the investigating official must defer the questioning for a reasonable time to allow the person to make, or attempt to make, the communication and, if the person has arranged for a legal practitioner to be present, to allow the legal practitioner to attend the questioning.

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- (2) Subject to section 23L, if a person is under arrest or a protected suspect and wishes to communicate with a friend, relative or legal practitioner, the investigating official must:
 - (a) as soon as practicable, give the person reasonable facilities to enable the person to do so; and
 - (b) in the case of a communication with a legal practitioner—allow the legal practitioner or a clerk of the legal practitioner to communicate with the person in circumstances in which, as far as practicable, the communication will not be overheard.
- (3) Subject to section 23L, if a person is under arrest or a protected suspect and arranges for a legal practitioner to be present during the questioning, the investigating official must:
 - (a) allow the person to consult with the legal practitioner in private and provide reasonable facilities for that consultation; and
 - (b) allow the legal practitioner to be present during the questioning and to give advice to the person, but only while the legal practitioner does not unreasonably interfere with the questioning.

23H Aboriginal persons and Torres Strait Islanders

- (1) Subject to section 23L, if the investigating official in charge of investigating a Commonwealth offence believes on reasonable grounds that a person who is under arrest, or who is a protected suspect, and whom it is intended to question about the offence is an Aboriginal person or a Torres Strait Islander, then, unless the official is aware that the person has arranged for a legal practitioner to be present during the questioning, the official must, before starting to question the person:
 - (a) inform the person that a representative of an Aboriginal legal assistance organisation in the State or Territory in which the person is located will be notified that the person is under arrest or is a protected suspect (as the case requires); and

- (b) notify such a representative that the person is under arrest or is a protected suspect (as the case requires).
- (1A) To avoid doubt, the obligations imposed by subsection (1) do not limit and are not limited by any other obligations imposed, or rights conferred, by this section.
- (1AB) If a representative of an Aboriginal legal assistance organisation is notified under subsection (1), the investigating official must not question the person until the earlier of the following times:
- (a) the representative has communicated with the person;
 - (b) 2 hours have elapsed since the representative was notified.
- (2) Subject to subsection (7) and section 23L, if an investigating official:
- (a) interviews a person as a suspect (whether under arrest or not) for a Commonwealth offence, and believes on reasonable grounds that the person is an Aboriginal person or a Torres Strait Islander; or
 - (b) believes on reasonable grounds that a person who is under arrest or a protected suspect is an Aboriginal person or a Torres Strait Islander;
- the official must not question the person unless:
- (c) an interview friend is present while the person is being questioned and, before the start of the questioning, the official has allowed the person to communicate with the interview friend in circumstances in which, as far as practicable, the communication will not be overheard; or
 - (d) the person has expressly and voluntarily waived his or her right to have such a person present.
- (2A) The person suspected, or under arrest, may choose his or her own interview friend unless:
- (a) he or she expressly and voluntarily waives this right; or
 - (b) he or she fails to exercise this right within a reasonable period; or
 - (c) the interview friend chosen does not arrive within 2 hours of the person's first opportunity to contact an interview friend.

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- (2B) If an interview friend is not chosen under subsection (2A), the investigating official must choose a representative of an Aboriginal legal assistance organisation in the State or Territory in which the person is located to be the person's interview friend.
- (3) An interview friend may be excluded from the questioning if he or she unreasonably interferes with it.
- (4) In any proceedings, the burden lies on the prosecution to prove that an Aboriginal person or Torres Strait Islander has waived the right referred to in subsection (2) or (2A), and the burden is not discharged unless the court is satisfied that the person voluntarily waived that right, and did so with full knowledge and understanding of what he or she was doing.
- (5) In any proceedings, the burden lies on the prosecution to prove that, at the relevant time, a person who is under arrest or a protected suspect had, to the knowledge of the investigating official concerned, made an arrangement of the kind referred to in subsection (1).
- (6) The rights conferred by this section are in addition to those conferred by section 23G but, to the extent (if any) that compliance with this section results in compliance with section 23G, the requirements of section 23G are satisfied.
- (7) If the person is under 18, subsection (2) does not apply and section 23K applies.
- (8) An investigating official is not required to comply with subsection (1), (2) or (2B) in respect of a person if the official believes on reasonable grounds that, having regard to the person's level of education and understanding, the person is not at a disadvantage in respect of the questioning referred to in that subsection in comparison with members of the Australian community generally.

(9) In this section:

interview friend, in relation to a person to whom subsection (2) applies, means:

- (a) a relative or other person chosen by the person; or
- (b) a legal practitioner acting for the person; or
- (c) a representative of an Aboriginal legal assistance organisation in the State or Territory in which the person is located.

23K Persons under 18

(1) Subject to section 23L, if an investigating official:

- (a) interviews a person as a suspect (whether under arrest or not) for a Commonwealth offence, and believes on reasonable grounds that the person is under 18; or
- (b) believes on reasonable grounds that a person who is under arrest or a protected suspect is under 18;

the official must not question the person unless an interview friend is present while the person is being questioned and, before the start of the questioning, the official has allowed the person to communicate with the interview friend in circumstances in which, as far as practicable, the communication will not be overheard.

(2) An interview friend may be excluded from the questioning if he or she unreasonably interferes with it.

(3) In this section:

interview friend, in relation to a person to whom subsection (1) applies, means:

- (a) a parent or guardian of the person or a legal practitioner acting for the person; or
- (b) if none of the previously mentioned persons is available—a relative or friend of the person who is acceptable to the person; or
- (c) if the person is an Aboriginal person or a Torres Strait Islander and none of the previously mentioned persons is

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available—a person who is a representative of an Aboriginal legal assistance organisation in the State or Territory in which the person is located; or

(d) if no person covered by paragraph (a), (b) or (c) is available—an independent person.

(4) The rights conferred by this section are in addition to those conferred by section 23G but, so far as compliance with this section results in compliance with section 23G, the requirements of section 23G are satisfied.

23L Exceptions

- (1) Subject to subsections (2) and (4), if a requirement imposed on an investigating official by this Part is expressed as being subject to this section, the requirement does not apply if, and for so long as, the official believes on reasonable grounds that:
- (a) compliance with the requirement is likely to result in:
 - (i) an accomplice of the person taking steps to avoid apprehension; or
 - (ii) the concealment, fabrication or destruction of evidence or the intimidation of a witness; or
 - (b) if the requirement relates to the deferral of questioning—the questioning is so urgent, having regard to the safety of other people, that it should not be delayed by compliance with that requirement.
- (2) If the requirement relates to things done by or in relation to a legal practitioner, subsection (1) only applies:
- (a) in exceptional circumstances; and
 - (b) if:
 - (i) an officer of a police force of the rank of Superintendent or higher; or
 - (ii) the holder of an office prescribed for the purposes of this section, other than an office in a police force; has authorised the application of subsection (1) and has made a record of the investigating official's grounds for belief.

- (3) If the application of subsection (1) is so authorised:
- (a) the record of the investigating official's grounds for belief must be made as soon as practicable; and
 - (b) the investigating official must comply with the requirement as soon as possible after subsection (1) ceases to apply.
- (4) If the application of subsection (1) results in:
- (a) preventing or delaying the person from communicating with a legal practitioner of his or her choice; or
 - (b) preventing or delaying a legal practitioner of the person's choice from attending at any questioning;
- the investigating official must offer the services of another legal practitioner and, if the person accepts, make the necessary arrangements.

23M Providing information relating to persons who are under arrest or protected suspects

- (1) An investigating official must inform a person (the *first person*) who is under arrest or a protected suspect of any request for information as to his or her whereabouts by any of his or her relatives, friends or legal representatives.
- (2) The investigating official must then provide that information to the other person unless:
- (a) the first person does not agree to the provision of that information; or
 - (b) the investigating official believes on reasonable grounds that the other person is not the first person's relative, friend or legal representative.
- (3) This section has effect subject to section 23L.

23N Right to interpreter

Where an investigating official believes on reasonable grounds that a person who is under arrest or a protected suspect is unable, because of inadequate knowledge of the English language or a

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physical disability, to communicate orally with reasonable fluency in that language, the official must, before starting to question the person, arrange for the presence of an interpreter and defer the questioning or investigation until the interpreter is present.

23P Right of non-Australian nationals to communicate with consular office

- (1) Subject to section 23L, if a person who is under arrest or a protected suspect is not an Australian citizen, an investigating official must, as soon as practicable:
 - (a) inform the person that if he or she requests that the consular office of:
 - (i) the country of which he or she is a citizen; or
 - (ii) the country to which he or she claims a special connection;
be notified that he or she is under arrest or a protected suspect (as the case requires), that consular office will be notified accordingly; and
 - (b) if the person so requests—notify that consular office accordingly; and
 - (c) inform the person that he or she may communicate with, or attempt to communicate with, that consular office; and
 - (d) give the person reasonable facilities to do so; and
 - (e) forward any written communication from the person to that consular office; and
 - (f) allow the person a reasonable time to, or to attempt to, communicate with that consular office.
- (2) Without limiting subsection (1), an investigating official must not start to question the person unless paragraphs (1)(c), (d) and (f) have been complied with.

23Q Treatment of persons under arrest

A person who is under arrest or a protected suspect must be treated with humanity and with respect for human dignity, and must not be subjected to cruel, inhuman or degrading treatment.

23S Right to remain silent etc. not affected

Nothing in this Part affects:

- (a) the right of a person to refuse to answer questions or to participate in an investigation except where required to do so by or under an Act; or
- (b) any burden on the prosecution to prove the voluntariness of an admission or confession made by a person; or
- (ba) any burden on the prosecution to prove that an admission or confession was made in such circumstances as to make it unlikely that the truth of the admission or confession was adversely affected; or
- (c) the discretion of a court to exclude unfairly obtained evidence; or
- (d) the discretion of a court to exclude illegally or improperly obtained evidence.

23T Acts authorised under other laws

Nothing in this Part prevents an investigating official from asking or causing a person to do a particular thing that the official is authorised to ask or cause the person to do under:

- (a) another law of the Commonwealth; or
- (b) a provision of a law of the Australian Capital Territory.

23U Tape recording of information required to be given to person under arrest

- (1) If a person is under arrest or a protected suspect, an investigating official who is required by this Part to give the person certain

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information (including a caution) must tape record, if practicable, the giving of that information and the person's responses (if any).

- (2) In any proceedings, the burden lies on the prosecution to prove whether it was practicable to tape record the giving of that information and the person's responses (if any).

23V Tape recording of confessions and admissions

- (1) If a person who is being questioned as a suspect (whether under arrest or not) makes a confession or admission to an investigating official, the confession or admission is inadmissible as evidence against the person in proceedings for any Commonwealth offence unless:
- (a) if the confession or admission was made in circumstances where it was reasonably practicable to tape record the confession or admission—the questioning of the person and anything said by the person during that questioning was tape recorded; or
 - (b) in any other case:
 - (i) when questioning the person, or as soon as practicable afterwards, a record in writing was made, either in English or in another language used by the person during questioning, of the things said by or to the person during questioning; and
 - (ii) as soon as practicable after the record was made, it was read to the person in the language used by him or her during questioning and a copy of the record was made available to the person; and
 - (iii) the person was given the opportunity to interrupt the reading at any time for the purpose of drawing attention to any error or omission that he or she claimed had been made in or from the record and, at the end of the reading, the person was given the opportunity to state whether he or she claimed that there were any errors in or omissions from the record in addition to any to which he or she had drawn attention in the course of the reading; and

- (iv) a tape recording was made of the reading referred to in subparagraph (ii) and of everything said by or to the person as a result of compliance with subparagraph (iii), and the requirements of subsection (2) were observed in respect of that recording; and
 - (v) before the reading referred to in subparagraph (ii), an explanation, in accordance with the form in the Schedule, was given to the person of the procedure that would be followed for the purposes of compliance with that subparagraph and subparagraphs (iii) and (iv).
- (2) If the questioning, confession or admission, or the confirmation of a confession or admission, of a person is recorded as required under this section, the investigating official must, without charge:
- (a) if the recording is an audio recording only or a video recording only—make the recording or a copy of it available to the person or his or her legal representative within 7 days after the making of the recording; and
 - (b) if both an audio recording and a video recording were made—make the audio recording or a copy of it available to the person or his or her legal representative within 7 days after the making of the recording, and inform the person or his or her legal representative that an opportunity will be provided, on request, for viewing the video recording; and
 - (c) if a transcript of the tape recording is prepared—make a copy of the transcript available to the person or his or her legal representative within 7 days after the preparation of the transcript.
- (4) Despite any arrangement made under the *Commonwealth Places (Application of Laws) Act 1970*, this section applies to any offence under a law applied by that Act if the investigating official is a member or special member of the Australian Federal Police.
- (5) A court may admit evidence to which this section applies even if the requirements of this section have not been complied with, or there is insufficient evidence of compliance with those requirements, if, having regard to the nature of and the reasons for

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the non-compliance or insufficiency of evidence and any other relevant matters, the court is satisfied that, in the special circumstances of the case, admission of the evidence would not be contrary to the interests of justice.

- (6) A court may admit evidence to which this section applies even if a provision of subsection (2) has not been complied with if, having regard to the reasons for the non-compliance and any other relevant matters, the court is satisfied that it was not practicable to comply with that provision.
- (6A) To avoid doubt, subsection (6) does not limit subsection (5).
- (7) If a judge permits evidence to be given before a jury under subsection (5) or (6), the judge must inform the jury of the non-compliance with the requirements of this section, or of the absence of sufficient evidence of compliance with those requirements, and give the jury such warning about the evidence as he or she thinks appropriate in the circumstances.

23W Proof of belief

In any proceedings, the burden lies on the prosecution to prove that an investigating official had a belief on reasonable grounds as to a matter referred to in this Part.