



# **Measures to Combat Serious and Organised Crime Act 2001**

**No. 136, 2001**

**An Act to amend the *Crimes Act 1914*, and for other purposes**



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# Measures to Combat Serious and Organised Crime Act 2001

No. 136, 2001

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## An Act to amend the *Crimes Act 1914*, and for other purposes

[Assented to 1 October 2001]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Measures to Combat Serious and Organised Crime Act 2001*.

### 2 Commencement

- (1) This section and sections 1 and 3 commence on the day on which this Act receives the Royal Assent.

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- (2) Subject to subsection (3), Schedules 1 and 2 commence on a day or days to be fixed by Proclamation.
  - (3) If Schedule 1 or 2 does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, that Schedule commences on the first day after the end of that period.
  - (4) Item 10 of Schedule 4 commences on a day to be fixed by Proclamation.
  - (5) The remainder of this Act commences on the 28th day after the day on which it receives the Royal Assent.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Controlled operations**

### ***Crimes Act 1914***

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

Insert:

*AFP authorising officer* has the meaning given in subsection 15J(3).

#### **2 Subsection 3(1)**

Insert:

*appropriate authorising officer*, in relation to a certificate given under section 15M, means:

- (a) if the certificate is given by an AFP authorising officer—any AFP authorising officer; or
- (b) if the certificate is given by an NCA authorising officer—any NCA authorising officer.

#### **3 Subsection 3(1) (definition of *authorising officer*)**

Repeal the definition, substitute:

*authorising officer*, in relation to a controlled operation, has the meaning given in section 15J.

#### **4 Subsection 3(1)**

Insert:

*Commonwealth offence*, except in Part IC, means an offence against a law of the Commonwealth.

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

Insert:

*illicit goods* means goods the possession of which is a contravention of a law of the Commonwealth, a State or a Territory.

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

Insert:

*major controlled operation* has the meaning given in subsection 15J(2A).

**7 Subsection 3(1) (definition of *narcotic goods offence*)**

Repeal the definition.

**8 Subsection 3(1)**

Insert:

*NCA authorising officer* has the meaning given in subsection 15J(4).

**8A Subsection 3(1)**

Insert:

*nominated Tribunal member* has the meaning given in section 15OC.

**9 Subsection 3(1)**

Insert:

*quarter* means a period of 3 months ending on 31 January, 30 April, 31 July or 31 October.

**11 Part 1AB (heading)**

Repeal the heading, substitute:

**Part IAB—Controlled operations for obtaining evidence about Commonwealth offences**

**12 Paragraph 15G(1)(a)**

Repeal the paragraph, substitute:

- (a) to exempt from criminal liability, and to indemnify from civil liability:
  - (i) law enforcement officers who, in the course of a controlled operation authorised as provided under this Part; and



- (ii) certain other persons who, when authorised by a law enforcement officer and in the course of a controlled operation authorised as provided under this Part; take an active part, or are otherwise involved, in the commission of a Commonwealth offence or an offence against a law of a State or Territory; and

**14 Subparagraph 15G(1)(c)(i)**

Omit “Act”, substitute “Part”.

**15 Paragraph 15G(2)(a)**

After “to”, insert “admit or”.

**16 After section 15G**

Insert:

**15GA Concurrent operation of State and Territory laws**

It is the Parliament’s intention that a law of a State or Territory should be able to operate concurrently with this Part unless the law is directly inconsistent with this Part.

**17 Sections 15H, 15I and 15J**

Repeal the sections, substitute:

**15H What is a controlled operation?**

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; and
- (c) may involve a law enforcement officer or other person in acts, or omissions to act, that would, apart from subsection 15I(1) or (3), constitute a Commonwealth offence or an offence against a law of a State or Territory.

**15HA Meaning of *engage in conduct* etc.**

In this Part:

- (a) a reference to engaging in conduct includes a reference to omitting to act; and
- (b) a reference to a person's conduct includes a reference to the person's omissions.

**15HB What is a *serious Commonwealth offence*?**

For the purposes of this Part, *serious Commonwealth offence* means an offence against a law of the Commonwealth:

- (a) that involves theft, fraud, tax evasion, currency violations, illegal drug dealings, illegal gambling, obtaining financial benefit by vice engaged in by others, extortion, money laundering, perverting the course of justice, bribery or corruption of, or by, an officer of the Commonwealth, an officer of a State or an officer of a Territory, bankruptcy and company violations, harbouring of criminals, forgery including forging of passports, armament dealings, illegal importation or exportation of fauna into or out of Australia, espionage, sabotage or threats to national security, misuse of a computer or electronic communications, people smuggling, slavery, piracy, the organisation, financing or perpetration of sexual servitude or child sex tourism, dealings in child pornography or material depicting child abuse, importation of prohibited imports or exportation of prohibited exports, or that involves matters of the same general nature as one or more of the foregoing or that is of any other prescribed kind; and
- (b) that is punishable on conviction by imprisonment for a period of 3 years or more.

**15I Law enforcement officers etc. not liable for offences committed for purposes of authorised controlled operation**

- (1) A law enforcement officer who engages in conduct that, apart from this subsection, would constitute a Commonwealth offence or an offence against a law of a State or Territory is not criminally responsible for that offence if:
  - (a) he or she engages in that conduct in the course of duty for the purposes of a controlled operation; and
  - (b) the conduct meets the requirements of subsection 15IB(1).

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- (2) A person who is not a law enforcement officer and who engages in conduct that, apart from this subsection, would constitute a Commonwealth offence or an offence against a law of a State or Territory is not criminally responsible for that offence if:
- (a) he or she engages in that conduct for the purposes of a controlled operation; and
  - (b) a law enforcement officer has authorised the person to engage in that conduct; and
  - (c) the conduct meets the requirements of subsection 15IB(2).
- (2A) Subsection (2) does not apply to a person who:
- (a) is an informant of a law enforcement officer; or
  - (b) is believed to have been involved, other than for law enforcement purposes, in the criminal activity in respect of which the controlled operation was authorised.
- (3) The fact that, because of subsection (1) or (2), a person whose conduct is covered by a certificate given under section 15M is not criminally responsible for an offence does not affect the liability, for that offence or any other offence, of any person whose conduct is not covered by the certificate.
- (4) Subsection (3) applies despite any provision of Chapter 2 of the *Criminal Code* to the contrary.
- (5) If:
- (a) the importation of goods of a particular kind into Australia is an offence against a law of the Commonwealth; and
  - (b) a person imports goods of that kind into Australia; and
  - (c) because of this section, that person is not liable for an offence against that law in respect of the importation; and
  - (d) that law provides for another consequence, other than that person's criminal liability, to arise from the importation (for example, forfeiture of the goods);
- this section does not prevent that consequence from arising under that law.
- (6) For the purposes of this section, a member of a police force or other law enforcement agency of a foreign country is taken to be acting in the course of duty to the extent that he or she takes part in the controlled operation in accordance with the instructions given by an Australian law enforcement officer.
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**15IA Indemnification of law enforcement officers etc.**

- (1) The Commonwealth must indemnify a law enforcement officer against any liability (including reasonable costs) the officer incurs because of conduct the officer engages in if:
  - (a) he or she engages in that conduct in the course of duty for the purposes of a controlled operation; and
  - (b) the conduct meets the requirements of subsection 15IB(1); and
  - (c) the requirements (if any) specified in the regulations have been met.
- (2) The Commonwealth must indemnify a person who is not a law enforcement officer against any liability (including reasonable costs) the person incurs because of conduct the person engages in if:
  - (a) he or she engages in that conduct for the purposes of a controlled operation; and
  - (b) a law enforcement officer has authorised the person to engage in that conduct; and
  - (c) the conduct meets the requirements of subsection 15IB(2); and
  - (d) the requirements (if any) specified in the regulations have been met.
- (2A) Subsection (2) does not apply to a person who:
  - (a) is an informant of a law enforcement officer; or
  - (b) is believed to have been involved, other than for law enforcement purposes, in the criminal activity in respect of which the controlled operation was authorised.
- (3) For the purposes of this section, a member of a police force or other law enforcement agency of a foreign country is taken to be acting in the course of duty to the extent that he or she takes part in the controlled operation in accordance with the instructions given by an Australian law enforcement officer.

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**15IB Requirements that must be met for the purposes of sections 15I and 15IA**

- (1) A law enforcement officer's conduct relating to a controlled operation meets the requirements of this subsection if:
  - (a) at the time when he or she engages in that conduct there is in force a certificate given under section 15M that authorises the operation; and
  - (b) the conduct is within the nature of the activities covered by the certificate; and
  - (c) the conduct does not breach any conditions to which the certificate is subject; and
  - (d) the conduct does not involve intentionally inducing a person to commit a Commonwealth offence, or an offence against a law of a State or Territory, if that person would not otherwise have intended to commit:
    - (i) that offence; or
    - (ii) an offence of that kind; and
  - (e) the conduct does not involve the commission of a sexual offence against any person or an offence involving the death of or serious injury to any person.
- (2) Any other person's conduct relating to a controlled operation meets the requirements of this subsection if:
  - (a) at the time when he or she engages in that conduct there is in force a certificate given under section 15M that authorises the operation; and
  - (b) the certificate identifies the person as being permitted to be involved in the operation; and
  - (c) the conduct is within the nature of the activities covered by the certificate; and
  - (d) the conduct does not breach any conditions to which the certificate is subject; and
  - (e) the conduct does not involve intentionally inducing a person to commit a Commonwealth offence, or an offence against a law of a State or Territory, if that person would not otherwise have intended to commit:
    - (i) that offence; or
    - (ii) an offence of that kind; and

- (f) the conduct does not involve the commission of a sexual offence against any person or an offence involving the death of or serious injury to any person.

**15IC Effect of sections 15I and 15IA on other laws relating to criminal investigation**

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

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

**15ID Compensation for loss or injury**

Where a person suffers loss or injury as a result of a controlled operation, the Commonwealth is liable to pay to the person who has suffered the loss or injury such compensation as is agreed on between the Commonwealth and that person or, in default of agreement, is determined by action against the Commonwealth in a court of competent jurisdiction.

**15J Application for certificate authorising a controlled operation—by whom and to whom made**

- (1) An Australian law enforcement officer may apply to an authorising officer for a certificate authorising a controlled operation.
- (2) Any of the following is an *authorising officer* for the controlled operation:
  - (a) if the operation is a major controlled operation that relates to investigating a serious Commonwealth offence, or a possible serious Commonwealth offence, the investigation of which is

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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 relates to investigating a serious Commonwealth offence, or a possible serious Commonwealth offence, the investigation of which is within the functions of the Australian Federal Police—any AFP authorising officer;
  - (c) if the operation relates to investigating a serious Commonwealth offence, or a possible serious Commonwealth offence, the investigation of which is within the functions of the National Crime Authority—any NCA authorising officer.
- (2A) 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.
- (3) 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.
- (4) The members of the National Crime Authority are ***NCA authorising officers***.

## **18 Transitional provision—pending applications**

- (1) Any application for a certificate authorising a controlled operation:
    - (a) that was made before the commencement of this Schedule; and
    - (b) about which a decision was not made before that commencement;
 ceases to have effect on that commencement.
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- (2) However, this item does not prevent a new application being made after that commencement.

## **19 Section 15M**

Omit “satisfied”, substitute “reasonably satisfied”.

## **20 Paragraphs 15M(a), (b), (c) and (d)**

Repeal the paragraphs, substitute:

- (a) it is likely that a serious Commonwealth offence has been, is being or will be committed; and
- (b) the nature and extent of the offence, and any suspected criminal activity that is related to it, justifies a controlled operation; and
- (c) conducting the operation would not involve intentionally inducing a person to commit a Commonwealth offence, or an offence against a law of a State or Territory, if that person would not otherwise have intended to commit:
  - (i) that offence; or
  - (ii) an offence of that kind; and
- (d) any unlawful activity involved in conducting the operation will be limited to the maximum extent consistent with conducting an effective controlled operation; and
- (e) the operation will be conducted in a way that ensures that, to the maximum extent possible, any illicit goods involved in the operation will be under the control of an Australian law enforcement officer at the end of the operation; and
- (f) any unlawful activity involved in conducting the 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 loss of, or serious damage to, property (other than illicit goods); and
- (g) the operation will be conducted in a way that is consistent with the reporting and accountability requirements of this Part; and
- (h) if a person who is not a law enforcement officer is to be involved in the operation—the role to be assigned to the



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person could not adequately be performed by a law enforcement officer.

**21 Subparagraph 15N(2)(c)(ii)**

Omit “the narcotic goods”, substitute “any illicit goods”.

**22 Subparagraphs 15N(2)(c)(iii), (iv) and (v)**

Omit “the narcotic goods”, substitute “any such illicit goods”.

**23 After paragraph 15N(2)(c)**

Insert:

- (ca) state the nature of the activities covered by the certificate;  
and
- (cb) identify each person who:
  - (i) is not a law enforcement officer; and
  - (ii) is permitted to be involved in the operation; and
- (cc) for each person identified, state the nature of the activities covered by the certificate in relation to that person; and
- (cd) state any conditions to which the certificate is subject; and

**24 After subsection 15N(2)**

Insert:

- (2A) A person referred to in paragraph (2)(cb) may be identified, for the purposes of that paragraph, by a false name or a code if:
  - (a) the Commissioner; or
  - (b) the Chairperson of the National Crime Authority;holds a document that enables the person to be identified from that false name or code.

**25 Subsection 15N(4)**

Omit “30 days”, substitute “6 months”.

**26 At the end of subsection 15N(4)**

Add:

Note: A certificate must be reviewed in order for it to remain in force longer than 3 months: see section 15OB.

**27 After section 15N**

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Insert:

### **15NA Variation of certificate**

- (1) An Australian law enforcement officer may apply to an appropriate authorising officer for variation of a certificate given under section 15M.
- (2) The application must:
  - (a) be in writing signed by the applicant; and
  - (b) contain, or be accompanied by, such information, in writing, as the appropriate authorising officer requires to decide whether or not to grant the application.
- (3) If the application complies with this section, the appropriate authorising officer may vary the certificate if he or she is reasonably satisfied that:
  - (a) the certificate as varied could have been given under section 15M; and
  - (b) the variation is necessary for:
    - (i) the success of the controlled operation; or
    - (ii) the protection of the health or safety of any person; or
    - (iii) the protection of property from loss or damage; or
    - (iv) ensuring that all those involved in the operation have appropriate exemption under section 15I and appropriate indemnity under section 15IA.
- (4) The appropriate authorising officer must give the applicant a written notice:
  - (a) stating whether the certificate is varied; and
  - (b) if the certificate is varied—setting out each variation.
- (5) A variation of the certificate takes effect when the notice is given.

## **28 After section 15O**

Insert:

### **15OA Termination of certificate**

- (1) Any AFP authorising officer may terminate a certificate given under section 15M by that or any other AFP authorising officer.

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- (2) Any NCA authorising officer may terminate a certificate given under section 15M by that or any other NCA authorising officer.
  - (4) The AFP authorising officer or NCA authorising officer (as the case requires) must send written notice of the termination to the Australian law enforcement officer in charge of the controlled operation to which the certificate relates.
  - (5) The notice:
    - (a) must state that the certificate is terminated; and
    - (b) must be signed by the AFP authorising officer or NCA authorising officer (as the case requires); and
    - (c) must specify the time when the notice is to have effect.

### **15OB Expiry of certificate after 6 months or 3 months**

- (1) A certificate given under section 15M expires at the end of the period of 6 months after the day on which it was given, unless subsection (2) applies.
  - (2) A certificate given under section 15M expires at the end of the period of 3 months after the day on which it was given unless, during the period, a nominated Tribunal member has:
    - (a) reviewed the certificate; and
    - (b) decided that the certificate should be in force for 6 months.
- Note: A certificate can also cease to be in force after a time specified in the certificate: see paragraph 15P(3)(a).
- (3) The certificate must be reviewed by a nominated Tribunal member during the last 2 weeks of the period of 3 months after the day on which the certificate was given under section 15M. The nominated Tribunal member must decide whether the certificate should be in force for 6 months.
  - (4) The nominated Tribunal member must not decide that the certificate should be in force for 6 months unless he or she is reasonably satisfied as to all the matters referred to in paragraphs 15M(a) to (h).
  - (5) The nominated Tribunal member must give written notice of his or her decision on the review to the Australian law enforcement officer in charge of the controlled operation to which the certificate relates.

## **28A Before section 15P**

Insert:

### **150C Who are nominated Tribunal members?**

- (1) A *nominated Tribunal member* is a member of the Administrative Appeals Tribunal in respect of whom a written nomination by the Minister is in force that permits the member to conduct reviews and to make decisions under section 15OB.
- (2) The Minister must not nominate a person unless the person:
  - (a) is a Deputy President or full-time senior member; or
  - (b) is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or Territory and has been enrolled for at least 5 years.
- (3) A nominated Tribunal member has, in conducting a review or making a decision under section 15OB, the same protection and immunity that a Justice of the High Court has in relation to a proceeding of that court.

## **29 Paragraph 15P(3)(b)**

Omit “when the surrender notice has effect”, substitute “specified in the surrender notice”.

## **30 Paragraph 15P(3)(c)**

Repeal the paragraph, substitute:

- (c) if the certificate is terminated under section 15OA—until the time specified in the termination notice; or
- (d) in any other case—until the certificate expires under section 15OB.

## **31 After section 15P**

Insert:

### **15PA Effect of being unaware etc. of variation, surrender, termination or expiry of certificate**

- (1) If a certificate given under section 15M has been varied in a way that limits the scope of the certificate, sections 15I and 15IA continue to apply to a person whose conduct is covered by the

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certificate, as if the certificate had not been varied in that way, for so long as he or she:

- (a) is unaware of the variation; and
  - (b) is not reckless with respect to the existence of the variation.
- (2) If a certificate given under section 15M ceases to be in force because:
- (a) it has been surrendered or terminated; or
  - (b) it has expired at the end of the period of 3 months after the day on which it was given;
- sections 15I and 15IA continue to apply to a person whose conduct is covered by the certificate, as if there had been no surrender, termination or expiry, for so long as he or she:
- (c) is unaware of the surrender, termination or expiry; and
  - (d) is not reckless with respect to the existence of the surrender, termination or expiry.
- (3) For the purposes of this section, a person is reckless with respect to the existence of the variation, surrender, termination or expiry of a certificate given under section 15M if:
- (a) he or she is aware of a substantial risk that the variation, surrender, termination or expiry existed; and
  - (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

### **32 Subsection 15Q(1)**

Repeal the subsection, substitute:

- (1) This section applies if:
- (a) a certificate authorising a controlled operation is given under section 15M by an AFP authorising officer or an NCA authorising officer; and
  - (b) the applicant for the certificate believes that illicit goods involved in the conduct of the operation may be dealt with by the Australian Customs Service.

### **33 Subparagraphs 15Q(2)(c)(i) and (ii)**

Omit “narcotic goods”, substitute “illicit goods”.

### **34 Section 15R**

Repeal the section, substitute:

### **15R Quarterly reports to the Minister**

- (1) The Commissioner must, within 2 weeks after the end of each quarter, give to the Minister a report informing the Minister of the following that occurred during the quarter:
  - (a) each decision by an AFP authorising officer to grant or refuse an application for a controlled operation;
  - (b) each variation of a certificate under section 15NA by such a person;
  - (c) each review of a certificate under subsection 15OB(3) that had initially been given by such a person under section 15M;
  - (d) each occasion on which a certificate, given by such a person, is surrendered under section 15O or terminated under section 15OA;
  - (e) each certificate, given by such a person, that is still in force at the end of the quarter.
- (2) The Chairperson of the National Crime Authority must, within 2 weeks after the end of each quarter, give to the Minister a report informing the Minister of the following that occurred during the quarter:
  - (a) each decision by an NCA authorising officer to grant or refuse an application for a controlled operation;
  - (b) each variation of a certificate under section 15NA by such a person;
  - (c) each review of a certificate under subsection 15OB(3) that had initially been given by such a person under section 15M;
  - (d) each occasion on which a certificate, given by such a person, is surrendered under section 15O or terminated under section 15OA;
  - (e) each certificate, given by such a person, that is still in force at the end of the quarter.

### **35 Subsections 15S(1) and (2)**

Repeal the subsections, substitute:

- (1) A report under section 15R must:
    - (a) include the reasons for each of the following decisions that is covered by the report:
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- 
- (i) each decision referred to in paragraph 15R(1)(a) or (2)(a);
    - (ii) each variation referred to in paragraph 15R(1)(b) or (2)(b);
    - (iii) the decision on each review referred to in paragraph 15R(1)(c) or (2)(c); and
  - (b) include sufficient details of:
    - (i) each surrender or termination of a certificate referred to in paragraph 15R(1)(d) or (2)(d); and
    - (ii) each certificate referred to in paragraph 15R(1)(e) or (2)(e);to identify the certificate.
- (1A) The reasons included in the report for a decision giving a certificate authorising a controlled operation must include an indication of the extent to which the authorising officer, in making the decision, took into account the seriousness of:
- (a) the serious Commonwealth offence in relation to which the certificate was given; and
  - (b) any suspected criminal activity that is related to that offence.
- (2) If a controlled operation was carried out, and the certificate relating to the operation ceased to be in force, during the quarter to which the report relates, the report must also:
- (a) identify each person targeted by the operation; and
  - (b) identify each person whose conduct was covered by the certificate, and state whether the person was a law enforcement officer at the time of the operation; and
  - (c) state the nature of the activities engaged in for the purposes of the operation; and
  - (d) if the operation involved illicit goods, state, to the extent known:
    - (i) the nature and quantity of the illicit goods; and
    - (ii) the route through which the illicit goods passed in the course of the operation; and
  - (e) if the operation involved illicit goods that are narcotic goods:
    - (i) identify the agency to which any law enforcement officer who, in the course of the operation, had possession of the narcotic goods belonged; and
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- (ii) identify, to the extent known, any person (other than a law enforcement officer) who, in the course of the operation, had possession of the narcotic goods; and
- (iii) state whether or not the narcotic goods have been destroyed; and
- (iv) if the narcotic goods have not been destroyed—contain the information specified in subsection (3) relating to the possession of the narcotic goods, or state that it is not known who has possession of them.

Note: The heading to section 15S is replaced by the heading “**Contents of quarterly reports**”.

**36 Subsection 15S(3)**

Omit “the narcotic goods”, substitute “the controlled operation involved narcotic goods that”.

**37 Subsection 15S(4)**

Repeal the subsection.

**38 Subsection 15S(5)**

Omit “who has, or had in the course of the operation, possession of narcotic goods”.

**39 Subsection 15S(5)**

Omit “paragraph (2)(d) or (3)(b)”, substitute “paragraph (2)(b), subparagraph (2)(e)(ii) or paragraph (3)(b)”.

**40 Paragraph 15S(5)(c)**

Omit “code name”, substitute “code”.

**41 Transitional provision—quarterly reports to the Minister**

If this Schedule does not commence at the beginning of a quarter, sections 15R and 15S of the *Crimes Act 1914* as in force after that commencement do not require the reports relating to the quarter in which that commencement occurred to inform the Minister of:

- (a) any decision made before that commencement; and
- (b) any certificate given under section 15M of that Act before that commencement; and



- (c) any variation, review or expiry of a certificate that occurred before that commencement.

However, sections 15R and 15S of that Act as in force immediately before that commencement continue to apply, after that commencement, in relation to any such decision or certificate.

#### **42 Paragraph 15T(2)(b)**

Omit “section 15S”, substitute “section 15R”.

#### **43 Subsection 15T(3)**

Omit “anything about a named person”, substitute “any information about a person (including the person’s name)”.

#### **45 Subsection 15U(1)**

Repeal the subsection, substitute:

- (1) In a prosecution for a serious Commonwealth offence in respect of which a controlled operation was conducted, a document purporting to be a certificate, given under section 15M, authorising the operation:
- (a) may be tendered in evidence; and
  - (b) is conclusive evidence that the authorising officer who gave the certificate was satisfied as to the facts stated in the document, to the extent that they are facts of a kind that are required under section 15N to be included in a certificate.

#### **47 Subsection 15U(2)**

Omit “shall”, substitute “may”.

#### **48 Transitional provision—existing certificates**

- (1) Part IAB of the *Crimes Act 1914* as amended by this Act does not apply to a certificate, given under section 15M of that Act, that was in force immediately before the commencement of this Schedule.
- (2) However, Part IAB of that Act, as in force immediately before that commencement, continues to apply to such a certificate.

#### **49 After Division 2 of Part IAB**

Insert:

## **Division 2A—Monitoring of controlled operations by the Ombudsman**

### **15UA Ombudsman to be notified of certain matters**

- (1) Within 2 weeks after the end of each quarter:
  - (a) the Commissioner; and
  - (b) the Chair of the National Crime Authority;must give to the Ombudsman a copy of the report given to the Minister under section 15R for that quarter.
- (2) The Ombudsman may require the Commissioner or the Chair of the National Crime Authority to furnish such information about an application, a certificate, a variation of a certificate or a surrender or termination of a certificate as is necessary for the Ombudsman's proper consideration of it.

### **15UB Inspection of records by Ombudsman**

- (1) The Ombudsman:
  - (a) must inspect the records of the Australian Federal Police and the National Crime Authority in relation to controlled operations at least once every 12 months; and
  - (b) may inspect the records of the Australian Federal Police or the National Crime Authority at any time, for the purpose of ascertaining whether the requirements of this Part are being complied with.
- (2) Nothing in this section requires the Ombudsman to inspect records in relation to a controlled operation that has not been completed.

### **15UC Annual reports by Ombudsman**

- (1) The Ombudsman must, as soon as practicable after 30 June each year, prepare a report of the Ombudsman's work and activities under this Division during the preceding 12 months and give copies of the report to the President of the Senate and the Speaker of the House of Representatives for presentation to the Senate and the House of Representatives, respectively.
- (2) The report must include, for each law enforcement agency concerned, comments as to the comprehensiveness and adequacy

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of the reports which were provided to the Parliament by that law enforcement agency.

- (3) Nothing in this section requires participants of the controlled operation to be included in a report for the year if the operation had not been completed 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.

### **15UD Ancillary matters concerning reports**

- (1) A report prepared under this Division must not include any information which, if made public, could reasonably be expected:
- (a) to endanger a person's safety; or
  - (b) prejudice an investigation or prosecution; or
  - (c) compromise the agency's operational activities or methodologies.
- (2) The Ombudsman must give a copy of any report prepared under this Division to the chief executive officer of the law enforcement agency to which it relates and to the Minister responsible for that agency.

## ***Customs Act 1901***

### **50 After subsection 233(3)**

Insert:

- (3A) A Customs officer who, in the course of duty, possesses or conveys, or facilitates the conveyance of, prohibited imports, prohibited exports or smuggled goods is not criminally responsible for an offence against a law of the Commonwealth or of a State or Territory relating to the possession, conveyance or facilitation of the conveyance of such goods.
- (3B) A person who:
- (a) possesses or conveys, or facilitates the conveyance of, prohibited imports, prohibited exports or smuggled goods; and
  - (b) in doing so is acting in accordance with written instructions referring to this section issued by a Customs officer acting in the course of duty;

is not criminally responsible for an offence against a law of the Commonwealth or of a State or Territory relating to the possession, conveyance or facilitation of the conveyance of such goods.

**51 At the end of section 233**

Add:

- (6) The Minister must lay before each House of the Parliament, not later than the first sitting day of that House after 1 October each year, a report about any conduct by Customs officers that, apart from subsection (3A), would constitute an offence against a law of the Commonwealth or of a State or Territory relating to the possession or conveyance, or facilitation of the conveyance, of prohibited imports, prohibited exports or smuggled goods.

***National Crime Authority Act 1984***

**52 At the end of Part III**

Add:

**55AA Ombudsman to brief committee about controlled operations**

- (1) At least once in each year the Ombudsman must provide a briefing to the Committee about the Authority's involvement in controlled operations under Part IAB of the *Crimes Act 1914* during the preceding 12 months.
- (2) For the purposes of receiving a briefing from the Ombudsman under subsection (1), the Committee must meet in private.

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## Schedule 2—Assumed identities

### *Crimes Act 1914*

#### **1 After Part 1AB**

Insert:

### **Part IAC—Assumed identities**

#### **Division 1—Definitions etc.**

##### **15XA Definitions etc.**

(1) In this Part:

***approved officer*** means an officer or foreign officer referred to in an authorisation under paragraph 15XI(2)(c).

***approved person*** means a person referred to in an authorisation under subparagraph 15XI(2)(d)(i).

***authorisation*** means an authorisation that is in force under section 15XG or 15XH.

***authorisation conditions*** means conditions to which an authorisation is subject under paragraph 15XI(2)(j).

***authorising person*** means:

- (a) the head of a participating agency; or
- (b) a person in a participating agency, included in a prescribed class of persons, who is authorised in writing by the head of the agency.

***Commonwealth agency*** means:

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

***Commonwealth participating agency*** means one of the following agencies:

- (a) the Australian Federal Police;
- (b) the Australian Customs Service;

- (c) the National Crime Authority;
- (d) the Australian Security Intelligence Organisation;
- (e) the Australian Secret Intelligence Service;
- (h) the Australian Taxation Office;
- (i) any other Commonwealth agency specified in the regulations.

**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.

**issuing agency** means:

- (a) a Commonwealth agency; or
- (b) a non-government body;

that is referred to in an authorisation under paragraph 15XI(2)(f).

**issuing evidence of an assumed identity** includes making an entry in a record of information in respect of the assumed identity.

**non-government body** means a body that is not managed or controlled by or on behalf of the Commonwealth or the Government of a State or Territory.

**participating agency** means either a Commonwealth participating agency or a State or Territory participating agency.

**State or Territory participating agency** means:

- (a) the police force of a State or Territory; or
- (b) one of the following bodies:
  - (i) the Independent Commission Against Corruption established under the *Independent Commission Against Corruption Act 1988* of New South Wales;
  - (ii) the Queensland Criminal Justice Commission established by the *Criminal Justice Act 1989* of Queensland;
  - (iii) the Western Australian Anti-Corruption Commission established by the *Anti-Corruption Act 1988* of Western Australia;

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- (iv) a similar body established under a law of a State or Territory; or
  - (c) one of the following bodies:
    - (i) the New South Wales Crime Commission established under the *New South Wales Crime Commission Act 1985* of New South Wales;
    - (ii) the Queensland Crime Commission established by the *Crime Commission Act 1997* of Queensland;
    - (iii) a similar body established under a law of a State or Territory; or
  - (ca) the Police Integrity Commission established by the *Police Integrity Commission Act 1996* of New South Wales; or
  - (d) any other body or agency of a State or Territory specified in the regulations.

***supervising officer*** means the officer referred to in an authorisation under subparagraph 15XI(2)(d)(ii).

- (2) A reference in this Part to an approved officer or an approved person using an assumed identity includes a reference to:
  - (a) the officer or person representing the identity covered by his or her authorisation to be his or her real identity when it is not (whether that representation is express or implied, and whether it is by words, conduct or omission); or
  - (b) such an officer or person acting in a way that is consistent with such an identity, rather than the person's real identity.
- (3) A reference in this Part to an approved officer or approved person acquiring evidence of an assumed identity includes a reference to the officer or person obtaining, or taking any steps towards obtaining, a document or other thing that purports to evidence the identity covered by his or her authorisation, when it is not the real identity of the person.
- (4) A reference in this Part to a person engaging in conduct includes a reference to the person omitting to do an act.

## **Division 2—Effect of an assumed identity**

### **15XB Assumed identities may be acquired and used**

- (1) An approved officer may acquire evidence of, and use, an assumed identity if the acquisition or use:
  - (a) is in the course of duty; and
  - (b) is in accordance with the authorisation conditions (if any).
- (2) An approved person may acquire evidence of, and use, an assumed identity if the acquisition or use is in accordance with:
  - (a) directions given by the supervising officer mentioned in the person's authorisation; and
  - (b) the authorisation conditions (if any).

**Note:** The acquisition of evidence, and use, of an assumed identity is authorised by the authorising person of a participating agency under Division 3.

### **15XC Protection from criminal liability**

- (1) An approved officer, who engages in conduct that, apart from this subsection, would constitute an offence against a law of the Commonwealth, a State or Territory, is not criminally responsible for that offence if:
  - (a) the officer engages in the conduct in the course of acquiring evidence of, or using, an assumed identity; and
  - (b) the officer engages in the conduct in the course of duty; and
  - (c) the conduct is in accordance with the authorisation conditions (if any); and
  - (d) the conduct would not constitute that offence if the assumed identity were the officer's real identity.

**Example:** This subsection could apply if an approved officer, when using an assumed identity, makes the false representation that he or she is unemployed (but that representation would be true if the assumed identity were real).

- (2) An approved person who engages in conduct that, apart from this subsection, would constitute an offence against a law of the Commonwealth, a State or Territory, is not criminally responsible for that offence if:



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- (a) the person engages in the conduct in the course of acquiring evidence of, or using, an assumed identity; and
  - (b) the conduct is in accordance with:
    - (i) directions given by the supervising officer; and
    - (ii) the authorisation conditions (if any); and
  - (c) the conduct would not constitute that offence if the assumed identity were the person's real identity.

Note: Division 5 has offences relating to the misuse etc. of assumed identities.

### **15XD Indemnification of approved officers and persons**

- (1) A Commonwealth participating agency whose authorising person issues an authorisation must indemnify an approved officer against any liability (including reasonable costs) that the officer incurs because of conduct the officer engages in if:
  - (a) the officer is covered by the authorisation; and
  - (b) the officer engages in the conduct in acquiring evidence of, or using, an assumed identity in the course of duty; and
  - (c) the conduct is in accordance with the authorisation conditions (if any); and
  - (d) the requirements (if any) specified in the regulations have been met.
- (2) A Commonwealth participating agency whose authorising person issues an authorisation must indemnify an approved person against any liability (including reasonable costs) that the person incurs because of conduct the person engages in if:
  - (a) the person is covered by an authorisation; and
  - (b) the person engages in conduct in acquiring evidence of, or using, an assumed identity; and
  - (c) the conduct is in accordance with:
    - (i) any directions given by the supervising officer; and
    - (ii) the authorisation conditions (if any); and
  - (d) the requirements (if any) specified in the regulations have been met.

**15XE Effect of being unaware of variation or revocation of authorisation**

- (1) If an approved officer's or approved person's authorisation has been varied in a way that limits its scope, this Division continues to apply to the officer or person, as if the authorisation had not been varied in that way, for so long as he or she:
  - (a) is unaware of the variation; and
  - (b) is not reckless with respect to the existence of the variation.
- (2) If an approved officer's or approved person's authorisation is revoked, this Division continues to apply to the officer or person, as if the authorisation had not been revoked, for so long as he or she:
  - (a) is unaware of the revocation; and
  - (b) is not reckless with respect to the existence of the revocation.
- (3) For the purposes of this section, a person is reckless with respect to the variation or revocation of an authorisation if:
  - (a) he or she is aware of a substantial risk that the variation or revocation occurred; and
  - (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

**15XF Documents authorising use of skill or qualification**

Sections 15XC and 15XD do not apply to an approved officer or approved person engaging in conduct if:

- (a) a particular skill or qualification is needed to engage in that conduct; and
- (b) the person does not have that skill or qualification;

whether or not the officer or person has acquired, as evidence of an assumed identity, a document that establishes that he or she has that skill or 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.

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**Division 3—Authorising the acquisition or use of assumed identities****15XG Commonwealth authorisations of the acquisition or use of assumed identities**

- (1) An authorising person of a Commonwealth participating agency may, if satisfied that it is appropriate to do so, authorise a person to do either or both of the following:
  - (a) acquire evidence of an assumed identity from:
    - (i) any Commonwealth agency; or
    - (ii) any non-government body;
  - (b) use the assumed identity.
- (2) However, the authorising person 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.
- (3) An authorising person of a Commonwealth participating agency may, if satisfied that it is reasonably necessary to do so, authorise a foreign officer to do either or both of the following:
  - (a) acquire evidence of an assumed identity from:
    - (i) any Commonwealth agency; or
    - (ii) any non-government body;
  - (b) use an assumed identity.

**15XH State or Territory authorisations of the acquisition or use of assumed identities**

- (1) An authorising person of a State or Territory participating agency may, if satisfied that it is appropriate to do so, authorise a person (other than a foreign officer) to do either or both of the following:
  - (a) acquire evidence of an assumed identity from any Commonwealth agency;
  - (b) use the assumed identity.

Note: Only a Commonwealth participating agency can authorise a foreign officer to acquire evidence of, or use, an assumed identity: see subsection 15XG(3).

- (2) However, the authorising person 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.

### **15XI Contents of an authorisation for an assumed identity**

- (1) An authorisation to acquire evidence of, and use, an assumed identity must be in writing and signed by the authorising person.
- (2) The authorisation must specify:
- (a) the authorising person's name; and
  - (b) the date on which the authorisation is given; and
  - (c) if the person who is authorised to acquire or use the assumed identity is an officer in the authorising person's participating agency or a foreign officer—that officer's name; and
  - (d) if the person who is authorised to acquire or use the assumed identity is not such an officer:
    - (i) the name of the person who is authorised to acquire or use the assumed identity; and
    - (ii) the name of the officer in the authorising person's participating agency who will supervise that acquisition or use; and
  - (e) details of the assumed identity which the authorisation covers; and
  - (f) all Commonwealth agencies or non-government bodies who are to be requested to issue evidence of the assumed identity; and
  - (g) details of each such request; and
  - (h) the reasons for the need to use the assumed identity; and
  - (i) whether the assumed identity can be used in a foreign country and the reasons for the need for this use; and
  - (j) any conditions to which the authorisation is subject, including in relation to use in a foreign country.
- (3) An authorisation can cover more than one assumed identity.

### **15XJ When an authorisation is in force**

An authorisation is in force until it is revoked.

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**15XK Variation and revocation of authorisations**

- (1) An authorising person who issues an authorisation, or any other authorising person in the same participating agency, may vary or revoke the authorisation at any time.
- (2) The approved officer or approved person covered by the authorisation must be given a written notice of the variation or revocation.
- (3) The notice must state:
  - (a) the date from which the variation or revocation takes effect; and
  - (b) the nature of the variation (if any); and
  - (c) the reasons for the variation or revocation.

**Division 4—Issuing and cancelling evidence of assumed identities****15XL Authorising person may request agencies and bodies to issue evidence of assumed identities etc.**

An authorising person who issues an authorisation may request an issuing agency that is specified in the authorisation under paragraph 15XI(2)(f) to issue evidence of an assumed identity covered by the authorisation to the approved officer or approved person.

**15XM Requesting Commonwealth agencies to issue evidence of assumed identities etc.**

- (1) An issuing agency of the Commonwealth that receives a request under section 15XL from an authorising person in a Commonwealth participating agency must comply with the request.
- (2) An issuing agency of the Commonwealth that receives such a request from an authorising person in a State or Territory participating agency may comply with the request, but does not have to do so.

**15XN Requesting non-government bodies to issue evidence of assumed identities etc.**

An issuing agency that is a non-government body that receives a request under section 15XL may comply with the request, but does not have to do so.

Note: Only Commonwealth participating agencies can request non-government bodies to issue evidence of an assumed identity.

**15XO Cancelling evidence of assumed identities etc.**

An issuing agency that has issued evidence of an assumed identity because of a request under section 15XL, must cancel the evidence (including by deleting or altering an entry in a record of information) on the written request of:

- (a) the authorising person who made the request; or
- (b) any other authorising person in the same participating agency.

**15XP Protection from criminal liability**

An employee in an issuing agency, who engages in conduct that, apart from this section, would constitute an offence against a law of the Commonwealth, a State or Territory, is not criminally responsible for the offence if the employee engages in the conduct in responding to the request in the course of duty.

**15XQ Indemnification of issuing agencies etc.**

A Commonwealth participating agency whose authorising person makes a request under section 15XL must indemnify:

- (a) an employee of an issuing agency; and
- (b) an issuing agency;

against any liability (including reasonable costs) incurred by that employee or agency because of conduct engaged in by the employee if:

- (c) the employee engages in the conduct in responding to the request in the course of duty; and
- (d) the requirements (if any) specified in the regulations have been met.

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**Division 5—Offences relating to assumed identities****15XR Misuse of assumed identities**

- (1) A person commits an offence if:
- (a) the person is an approved officer; and
  - (b) the person acquires evidence of, or uses, an assumed identity covered by the person's authorisation; and
  - (c) the acquisition or use is not in the course of duty.

Penalty: 12 months imprisonment.

- (2) A person commits an offence if:
- (a) the person is an approved person; and
  - (b) the person acquires evidence of, or uses, an assumed identity covered by the person's authorisation; and
  - (c) the acquisition or use is not in accordance with the directions of the supervising officer.

Penalty: 12 months imprisonment.

- (3) A person commits an offence if:
- (a) the person is an approved officer or an approved person; and
  - (b) the person acquires evidence of, or uses, an assumed identity covered by the person's authorisation; and
  - (c) in doing so, the person engages in conduct that breaches an authorisation condition.

Penalty: 12 months imprisonment.

**15XS Disclosing information relating to assumed identities**

- (1) A person commits an offence if:
- (a) the person discloses information; and
  - (b) the disclosure reveals, or is likely to reveal, that an assumed identity acquired or used by another person is not that other person's real identity; and
  - (c) the disclosure:
    - (i) endangers, or is likely to endanger, the health or safety of any person; or

- (ii) prejudices, or is likely to prejudice, the effective conduct of an operation carried out by any participating agency; and
- (d) the assumed identity is or was covered by an authorisation.

Penalty: 10 years imprisonment.

- (2) A person commits an offence if:
  - (a) the person discloses information; and
  - (b) the disclosure reveals, or is likely to reveal, that an assumed identity acquired or used by another person is not that other person's real identity; and
  - (c) the assumed identity is or was covered by an authorisation.

Penalty: 2 years imprisonment.

## **Division 6—Miscellaneous**

### **15XT Disclosing real identities during court proceedings etc.**

- (1) If the real identity of an approved officer or approved person who is or was covered by an authorisation, might be disclosed in proceedings before a court, tribunal or a Royal Commission or other commission of inquiry, then the court, tribunal or commission must:
  - (a) ensure that the parts of the proceedings that relate to the real identity of the officer or person are held in private; and
  - (b) make such orders relating to the suppression of the publication of evidence given by the court, tribunal or commission as will, in its opinion, ensure that the real identity of the officer or person is not disclosed.
- (2) However, this section does not apply to the extent that the court, tribunal or commission considers that the interests of justice require otherwise.

### **15XU Keeping and auditing records of assumed identities**

- (1) The head of a Commonwealth participating agency must:
  - (a) cause appropriate records to be kept:
    - (i) while an authorisation is in force; and



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- (ii) for at least 12 months after an authorisation has been revoked; and
  - (b) cause those records to be audited:
    - (i) at least once every 6 months while the authorisation is in force; and
    - (ii) at least once in the 6 month period after the revocation of the authorisation.
  - (1A) An audit of these records must not be conducted by:
    - (a) an authorising person who has issued, varied or revoked an authorisation to which one or more of the records relate; or
    - (b) an approved officer or approved person who is covered by an authorisation to which one or more of the records relate.
  - (2) In this section:
 

***appropriate records*** means records relating to the operation of this Part as it affects the participating agency, including any authorisations and any variations or revocations of those authorisations under section 15XK.

## **15XUA Matters to be reported**

*Commonwealth participating agencies must report annually*

- (1) Each of the following Commonwealth participating agencies:
  - (a) the Australian Security Intelligence Organisation;
  - (b) the Australian Secret Intelligence Service;
 must, as soon as practicable after 30 June in each year, prepare and give to the Inspector-General of Intelligence and Security a report for the year ending on that 30 June.
- (2) Each other Commonwealth participating agency must, within 3 months after 30 June in each year, prepare and give to the Minister responsible for the agency a report for the year ending on that 30 June.
- (3) The Minister receiving a report under subsection (2) must table a copy of the report before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

*What reports must include*

- (4) An agency's report must include the following information:
  - (a) the number of authorisations issued by an authorising person from the agency during the year covered by the report;
  - (b) a general description of the activities undertaken by approved officers and approved persons when using their assumed identities during the year covered by the report;
  - (c) a statement whether or not any fraud or other unlawful activity was identified by an audit under paragraph 15XU(1)(b) during the year covered by the report.
- (5) Before the report is tabled in the Parliament, the Minister must, on the advice of the relevant agency head, remove information from the report if the Minister is of the view that its inclusion may:
  - (a) endanger a person's safety; or
  - (b) prejudice an investigation or prosecution; or
  - (c) compromise the agency's operational activities or methodologies.

**15XV Concurrent operation of State and Territory laws**

It is the Parliament's intention that a law of a State or Territory should be able to operate concurrently with this Part unless the law is directly inconsistent with this Part.

**15XW Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Part to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.

## **Schedule 3—Protection of children in proceedings for sexual offences**

### ***Crimes Act 1914***

#### **1 Before Part 1B**

Insert:

### **Part IAD—Protection of children in proceedings for sexual offences**

#### **Division 1—Introduction**

##### **15Y Proceedings to which this Part applies**

- (1) This Part applies to any proceedings for:
  - (a) an offence against Part IIIA of this Act (Child sex tourism); or
  - (b) an offence against section 71.8 of the *Criminal Code* (Sexual assault of United Nations and associated personnel); or
  - (c) an offence against Division 270 of the *Criminal Code* (Slavery, sexual servitude and deceptive recruiting); or
  - (d) a sexual offence specified in the regulations; or
  - (e) an offence that includes the commission of, or the intention to commit, an offence of a kind referred to in paragraph (a), (b), (c) or (d); or
  - (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 paragraph (a), (b), (c), (d) or (e).
- (2) This Part also applies to any proceedings, including committal proceedings or proceedings of a similar kind, connected with proceedings of a kind referred to in subsection (1).

## 15YA Definitions

In this Part, unless the contrary intention appears:

**child** means a person who is under 18.

**child complainant**, in relation to a proceeding, means 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. The child need not be involved in the proceeding or the initiation of the proceeding.

**child witness**, in relation to a proceeding, means a child (including a child complainant) who is a witness in the proceeding.

**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*.

**proceeding** means a proceeding to which this Part applies under section 15Y.

## Division 2—Admissibility of evidence

### 15YB Evidence of sexual reputation

- (1) Evidence of a child witness' or child complainant's reputation with respect to sexual activities is inadmissible in a proceeding, unless the court gives leave.
- (2) The court must not give leave unless satisfied that the evidence is substantially relevant to facts in issue in the proceeding.
- (3) The evidence is not to be treated as 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) If the evidence is admitted, it must not be treated as relevant to the child witness' or child complainant's credibility.
- (5) This section does not apply if the child is a defendant in the proceeding.

### **15YC Evidence of sexual experience**

- (1) Evidence of a child witness' or child complainant's experience with respect to sexual activities is inadmissible in a proceeding, unless:
  - (a) the court gives leave; or
  - (b) the evidence is of sexual activities with a defendant in the proceeding.
- (2) The court must not give leave unless satisfied that:
  - (a) the evidence is substantially relevant to facts in issue in the proceeding; or
  - (b) if the evidence relates to the credibility of a child witness and is to be adduced in cross-examination of the child—the evidence has substantial probative value.
- (3) 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, 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
  - (b) the period that has elapsed since the acts or events to which the evidence relates were done or occurred.
- (5) This section does not apply if the child is a defendant in the proceeding.

### **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 3—Cross-examination**

#### **15YE Disallowing inappropriate or aggressive cross-examination**

- (1) The court may disallow a question put to a child witness in cross-examination in a proceeding if the question is inappropriate or unnecessarily aggressive.
- (2) In considering whether a question is inappropriate or unnecessarily aggressive, the court is to have regard to the child witness’ personal characteristics, including his or her age, culture, mental capacity and gender.

#### **15YF Unrepresented defendants—cross-examination of child complainants**

- (1) A defendant in a proceeding who is not represented by counsel is not to cross-examine a child complainant.
- (2) A person appointed by the court is to ask the child any questions that the defendant requests the person to ask the child.

#### **15YG Unrepresented defendants—cross-examination of child witnesses**

- (1) A defendant in a proceeding who is not represented by counsel is not to cross-examine a child witness (other than a child complainant), unless the court gives leave.
- (2) The court must not give leave unless satisfied that the child’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:
  - (a) must be in writing; and
  - (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 child any questions that the defendant requests the person to ask the child.

**15YH Represented defendants—cross-examination of child witnesses and child complainants**

A defendant in a proceeding who is represented by counsel is not to cross-examine a child witness or a child complainant except through counsel.

**Division 4—Special facilities for child witnesses to give evidence**

**15YI Closed-circuit television**

- (1) A child witness' evidence in a proceeding must be given by means of closed-circuit television unless:
    - (a) the child is at least 16 and chooses not to give evidence by that means; or
    - (b) the court orders that the child 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 child witness does not give evidence by means of closed-circuit television.
- (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 child witness' 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 child witness' 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 child:
    - (i) to act as an interpreter; or
    - (ii) to assist the child with any difficulty in giving evidence associated with a disability; or
    - (iii) to provide the child with other support.
- (2) An order under paragraph (1)(b) or (c) does not limit the operation of section 15YM.
- (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**

If the child witness' 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 child, and any person present with the child, on one or more television monitors.

### **15YL Alternative arrangements for giving evidence**

- (1) If a child witness' evidence in a proceeding is not to be given by means of closed-circuit television, the court:



- (a) must make arrangements in order to restrict contact (including visual contact) that the child may have with any defendant while giving evidence; and
  - (b) may make arrangements in order to restrict contact (including visual contact) that the child 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 child's line of vision.
- (3) This section does not apply if the child is at least 16 and chooses not to give evidence under the arrangements.

## **Division 5—Use of video recordings**

### **15YM Use of video recordings**

- (1) A video recording of an interview of a child witness in a proceeding may be admitted as evidence in chief if:
  - (a) a constable, or a person of a kind specified in the regulations, conducted the interview; and
  - (b) the court gives leave.
- (2) The court must not give leave if satisfied that it is not in the interest of justice for the child's evidence in chief to be given by a video recording.
- (3) An application for leave under this section:
  - (a) must be in writing; and
  - (b) must not be determined before the court has considered such submissions and other evidence as it thinks necessary for determining the application.
- (4) The child witness must be available for cross-examination and re-examination if he or she gives evidence in chief by a video recording.

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

**15YN Admissibility of evidence given using video recordings**

- (1) The admissibility of the evidence given by video recording is not affected by the fact that it is evidence of previous representations that the child witness made in the interview that was being recorded.
- (2) Evidence given by video recording under section 15YM is not admissible if the court is satisfied that:
  - (a) any defendant in the proceeding (other than the child witness if the child is a defendant); or
  - (b) the defendant's lawyer (if any);was not given a reasonable opportunity to listen to and view 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 6—Miscellaneous**

**15YO Adults accompanying child witnesses**

- (1) A child witness may choose an adult to accompany the child while the child is giving evidence in a proceeding (including while giving evidence by closed-circuit television).
- (2) The adult so chosen may accompany the child as mentioned in subsection (1), unless the court determines that it is not appropriate for the adult to accompany the child.
- (3) The court may permit more than one adult to accompany the child if the court considers it in the interests of justice to do so.
- (4) An adult accompanying the child under this section must not:
  - (a) prompt the child or otherwise influence the child's answers; or
  - (b) disrupt the questioning of the child.
- (5) Any words spoken by an adult accompanying the child 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.

**15YP Exclusion of 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 a child witness is giving evidence in a proceeding.

**15YQ Warnings etc. not to be given about children's evidence**

If there is a jury in a proceeding in which a child witness 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 children as an unreliable class of witness; or
- (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 recording under Division 5; or
- (d) that the law requires greater or lesser weight to be given to evidence because an adult accompanies the child under section 15YO.

**15YR Publication identifying child witnesses or child complainants**

- (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:
    - (i) identifies another person (who is not a defendant in the proceeding) as a child witness or a child complainant in relation to the proceeding; or
    - (ii) is likely to lead to the other person being identified as such a child witness or child complainant.

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

- (2) This section does not apply if the publication is in:
  - (a) an official publication in the course of, and for the purpose of, the proceeding; or

- (b) a document prepared for use in particular legal proceedings (whether or not the legal proceedings are a proceeding within the meaning of this Part).

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

- (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 child witness or child complainant that the publication could cause; and
  - (b) any damage to the reputation of the child witness or child complainant 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.
- (5) Leave may be given after the proceedings have finished. For this purpose, the court need not be constituted by the same judicial officers who constituted the court in the proceedings.
- (6) An application for leave under this section:
  - (a) must be in writing; and
  - (b) must not be determined before the court 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 Division 5 of Part IIIA unaffected**

Nothing in this Part affects the operation of Division 5 of Part IIIA  
(Child sex tourism—video link evidence).

## **Schedule 4—Investigation of Commonwealth offences**

### ***Crimes Act 1914***

#### **1 Paragraph 3E(5)(e)**

Repeal the paragraph, substitute:

- (e) the time at which the warrant expires (see subsection (5A));
- and

#### **2 After subsection 3E(5)**

Insert:

- (5A) The time stated in the warrant under paragraph 3E(5)(e) as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.

#### **3 Subsection 3E(8)**

Omit “Paragraph (5)(e) does”, substitute “Paragraph (5)(e) and subsection (5A) do”.

#### **4 Subsection 3E(9)**

After “this section”, insert “(other than subsection (5A))”.

#### **5 Paragraph 3E(9)(b)**

Repeal the paragraph, substitute:

- (b) paragraph (5)(e) required the issuing officer to state in the warrant the period for which the warrant is to remain in force, which must not be more than 48 hours.

#### **6 Subsection 3R(2)**

Repeal the subsection, substitute:

- (2) The issuing officer:

- (a) may require communication by voice to the extent that it is practicable in the circumstances; and
- (b) may make a recording of the whole or any part of any such communication by voice.

## **7 Paragraph 3ZH(2A)(a)**

After “arrested”, insert “or any other offence”.

## **8 After subsection 3ZH(2A)**

Insert:

- (2B) The conducting of a strip search may include taking photographs of evidential material found on the person, whether or not taking photographs is a forensic procedure provided for by Part ID.

## **9 Before section 23A**

Insert:

# **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.

## **10 Subsection 23A(6)**

Repeal the subsection.

## **10A Section 23AA**

Repeal the section, substitute:

**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.

**11 Subsection 23B(1) (definition of *arrested* or *under arrest*)**

Repeal the definition.

**12 Subsection 23B(1)**

Insert:

***arrested***: a person is arrested if the person is arrested for a Commonwealth offence and the person's arrest has not ceased under subsection (3) or (4).

**13 Subsection 23B(1)**

Insert:

***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.

**14 Subsection 23B(1) (definition of *magistrate*)**

Repeal the definition.

**14A Subsection 23B(1)**

Insert:

*protected suspect* has the meaning given by subsection (2).

**15 Subsection 23B(1)**

Insert:

*under arrest*: a person is under arrest if the person has been arrested for a Commonwealth offence and the person's arrest has not ceased under subsection (3) or (4).

**15A Subsection 23B(2)**

Repeal the subsection, substitute:

- (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:
    - (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).

## 20 Subsection 23B(3)

Repeal the subsection, substitute:

- (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 one of the following:
  - (a) a magistrate;
  - (b) a justice of the peace;
  - (c) a person authorised to grant bail under the law of the State or Territory in which the person was arrested;otherwise than under paragraph 83(3)(b), (4)(b), (8)(a), (8)(b), subsection 83(12), paragraph 83(14)(a), or subparagraph 84(4)(a)(ii) or (6)(a)(i) of the *Service and Execution of Process Act 1992*.

## 20A Subsections 23B(4) and (5)

Repeal the subsections, substitute:

- (4) A person ceases, for the purposes of this Part, to be arrested or a protected suspect if:
  - (a) an investigating 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

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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.

## **21 Before section 23C**

Insert:

### **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.

#### **21A Subsection 23C(1)**

Omit “lawfully”.

#### **22 Subsection 23C(2)**

Repeal the subsection, substitute:

- (2) The person may 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 the person to have committed;
- but must not be detained for that purpose, or for purposes that include that purpose, after the end of the investigation period prescribed by this section.

#### **23 Paragraph 23C(3)(b)**

Omit “magistrate”, substitute “judicial officer”.

#### **24 At the end of subsection 23C(3)**

Add:

Note: For *judicial officer*, see subsection (9).

#### **26 After subsection 23C(6)**

Insert:

- (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.

**27 Paragraph 23C(7)(g)**

Omit "to make and dispose", substitute "in connection with making and disposing".

**28 Paragraph 23C(8)(a)**

Omit "magistrate", substitute "judicial officer".

**29 At the end of section 23C**

Add:

- (9) In this section:

*judicial officer* means any of the following:

- (a) a magistrate;
- (b) a justice of the peace;
- (c) a person authorised to grant bail under the law of the State or Territory in which the person was arrested.

**31 At the end of subsection 23D(2)**

Add:

The magistrate, justice of the peace or bail justice to whom the application is made is the *judicial officer* for the purposes of this section and section 23E.

**32 Subsection 23D(4)**

After “period”, insert “, by signed written authority,”.

**33 After subsection 23D(4)**

Insert:

(4A) The authority 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.

(4B) The judicial officer must give the investigating official a copy of the authority as soon as practicable after signing the authority.

**34 Subsection 23E(1)**

Omit “radio or radio-telephone”, substitute “telex, fax or other electronic means”.

**35 Subsection 23E(2)**

Omit “tell”, substitute “inform”.

**37 Subsection 23E(3)**

Repeal the subsection, substitute:

- (3) If the judicial officer extends the investigation period, he or she must inform the investigating official of the matters set out in the authority under subsection 23D(4A).

**38 Subsection 23E(4)**

Omit “receiving the authority”, substitute “being informed of those matters”.

**39 Subsection 23E(7)**

Repeal the subsection.

**40 Before section 23F**

Insert:

### **Division 3—Obligations of investigating officials**

Note: These obligations apply in relation to protected suspects as well as to people under arrest.

#### **40A Subsection 23F(1)**

Omit “under arrest for a Commonwealth offence”, substitute “under arrest or a protected suspect”.

Note: The heading to section 23F is replaced by the heading “**Cautioning persons who are under arrest or protected suspects**”.

#### **41 Subsection 23F(2)**

Repeal the subsection, substitute:

- (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.

#### **41A Subsection 23G(1)**

Omit “under arrest for a Commonwealth offence”, substitute “under arrest or a protected suspect”.

#### **41B Subsection 23G(2)**

Omit “under arrest for a Commonwealth offence”, substitute “is under arrest or a protected suspect and”.

#### **42 Subsection 23G(2)**

Omit “holding the person under arrest”.

#### **42A Subsection 23G(3)**

Omit “under arrest for a Commonwealth offence”, substitute “is under arrest or a protected suspect and”.

#### **43 Subsection 23G(3)**

Omit “holding the person under arrest”.

#### **43A Subsection 23H(1)**

After “under arrest” (first occurring), insert “, or who is a protected suspect,”.

#### **43B Paragraph 23H(1)(a)**

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Omit “is under arrest for the offence”, substitute “is under arrest or a protected suspect (as the case requires)”.

**44 Paragraph 23H(2)(a)**

Repeal the paragraph, substitute:

- (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

**44A Paragraph 23H(2)(b)**

Omit “under arrest for a Commonwealth offence”, substitute “who is under arrest or a protected suspect”.

**45 After subsection 23H(2)**

Insert:

- (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.
- (2B) If an interview friend is not chosen under subsection (2A), the investigating official must choose one of the following to be the person’s interview friend:
  - (a) a representative of an Aboriginal legal aid organisation;
  - (b) a person whose name is included in the relevant list maintained under subsection 23J(1).

**46 Subsection 23H(4)**

After “subsection (2)”, insert “or (2A)”.

**46A Subsection 23H(5)**

Omit “under arrest for a Commonwealth offence”, substitute “who is under arrest or a protected suspect”.

**47 Subsection 23H(8)**

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Omit “or (2)”, substitute “, (2) or (2B)”.

**48 Paragraph 23K(1)(a)**

Repeal the paragraph, substitute:

- (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

**48A Paragraph 23K(1)(b)**

Omit “under arrest for a Commonwealth offence”, substitute “who is under arrest or a protected suspect”.

**49 Subsection 23L(1)**

Omit “, (3)”.

**50 Subsections 23L(2), (3) and (4)**

Repeal the subsections, substitute:

- (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;



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the investigating official must offer the services of another legal practitioner and, if the person accepts, make the necessary arrangements.

## **51 Transitional—prescribed offices**

- (1) This item applies to an office that, immediately before the commencement of this item, was an office prescribed under subsection 23L(4) of the *Crimes Act 1914*.
- (2) The office is taken to be, immediately after the commencement of this item, an office prescribed under subsection 23L(2) of the *Crimes Act 1914* as amended by this Act.

### **51A Section 23M**

Repeal the section, substitute:

#### **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.

### **51B Section 23N**

Omit “under arrest for a Commonwealth offence”, substitute “who is under arrest or a protected suspect”.

## **52 Section 23P**

Repeal the section, substitute:

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**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.

**52A Section 23Q**

After “under arrest”, insert “or a protected suspect”.

**53 Section 23R**

Repeal the section.

**53A Subsection 23U(1)**

Omit “under arrest for a Commonwealth offence”, substitute “under arrest or a protected suspect”.

**53B Subsection 23U(1)**

Omit “under arrest” (last occurring).

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**54 Subsection 23V(1)**

Omit “interviewed”, substitute “questioned”.

**55 Subparagraph 23V(1)(b)(i)**

Repeal the subparagraph, substitute:

- (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

**56 Subparagraph 23V(1)(b)(ii)**

Omit “in the interview”, substitute “during questioning”.

**57 Paragraph 23V(2)(b)**

Omit “notify”, substitute “inform”.

**58 After subsection 23V(6)**

Insert:

- (6A) To avoid doubt, subsection (6) does not limit subsection (5).

***Customs Act 1901*****59 Paragraph 198(3)(e)**

Repeal the paragraph, substitute:

- (e) the time at which the warrant expires (see subsection (3A));  
and

**60 After subsection 198(3)**

Insert:

- (3A) The time stated in the warrant under paragraph (3)(e) as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.

**61 Subsection 198(5)**

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Omit “Paragraph (3)(e) does”, substitute “Paragraph (3)(e) and subsection (3A) do”.

**62 Subsection 198(6)**

After “this section”, insert “(other than subsection (3A))”.

**63 Paragraph 198(6)(b)**

Repeal the paragraph, substitute:

- (b) paragraph (3)(e) required the judicial officer to state in the warrant the period for which the warrant is to remain in force, which must not be more than 48 hours.

**64 Paragraph 203(5)(d)**

Repeal the paragraph, substitute:

- (d) the time at which the warrant expires (see subsection (5A));  
and

**65 After subsection 203(5)**

Insert:

- (5A) The time stated in the warrant under paragraph (5)(d) as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified must not be later than midnight on Monday in the following week.

**66 Subsection 203(7)**

Omit “Paragraph (5)(d) does”, substitute “Paragraph (5)(d) and subsection (5A) do”.

**67 Subsection 203(8)**

After “this section”, insert “(other than subsection (5A))”.

**68 Paragraph 203(8)(b)**

Repeal the paragraph, substitute:

- (b) paragraph (5)(d) required the judicial officer to state in the warrant the period for which the warrant is to remain in force, which must not be more than 48 hours.

**69 Subsection 203M(2)**

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Repeal the subsection, substitute:

- (2) The judicial officer:
  - (a) may require communication by voice to the extent that it is practicable in the circumstances; and
  - (b) may make a recording of the whole or any part of any such communication by voice.

### ***Fisheries Management Act 1991***

#### **70 Paragraph 84A(2)(a)**

Omit “under arrest because of paragraph 23B(2)(b)”, substitute “a protected suspect”.

## Schedule 5—Listening device warrants

### *Australian Federal Police Act 1979*

#### **1 Subsection 12G(1)**

Omit “or particular premises”, substitute “, particular premises or a particular item”.

Note 1: The following heading to subsection 12G(1) is inserted “*Member may apply for a listening device warrant*”.

Note 2: The following heading to subsection 12G(2) is inserted “*Issuing listening device warrants in relation to persons*”.

Note 3: The following heading to subsection 12G(4) is inserted “*Issuing listening device warrants in relation to premises*”.

#### **2 After subsection 12G(5)**

Insert:

*Issuing listening device warrants in relation to items*

(5A) If:

- (a) the application is for a warrant authorising officials to use a listening device in relation to a particular item (which may be located anywhere in Australia); and
- (b) the Judge or nominated AAT member is satisfied, by information on oath:
  - (i) that there are reasonable grounds for suspecting that the item has been, or is likely to be, used in relation to the commission, or likely commission, of a class 1 general offence or a class 2 general offence; and
  - (ii) that information that would be likely to be obtained by the use by officials of a listening device to listen to or record words spoken by or to persons in the vicinity of the item would be likely to assist members in, or in relation to, inquiries that are being made in relation to the use, or likely use, of the item in relation to the commission, or likely commission, of the offence; and
  - (iii) that, having regard to the matters mentioned in subsection (6), some or all of that information cannot

appropriately be obtained by methods of a kind referred to in paragraph (6)(a); and

- (iv) some or all of that information cannot appropriately be obtained using a listening device authorised by a warrant under subsection (2) or (4); and
- (v) if the offence is a class 2 general offence—that, having regard to the matters mentioned in subsection (7) and no other matters, such a warrant should be issued;

the Judge or nominated AAT member may issue a warrant authorising officials to use a listening device for the purpose of listening to or recording words spoken by or to any person while the person is in the vicinity of the item.

(5B) The warrant may authorise officials to enter any premises in which the item is, or is likely to be, for the purpose of:

- (a) installing a listening device or a part of a listening device in or on the item; or
- (b) maintaining, testing, using or recovering the device or a part of the device.

### **3 Subsection 12G(6)**

Omit “and (4)(b)(iii)”, substitute “, (4)(b)(iii) and (5A)(b)(iii)”.

Note: The following heading to subsection 12G(6) is inserted “*Relevant matters to have regard to*”.

### **4 Paragraph 12G(6)(b)**

Omit “or (4)(b)(ii)”, substitute “, (4)(b)(ii) or (5A)(b)(ii)”.

### **5 Subsection 12G(7)**

Omit “and (4)(b)(iv)”, substitute “, (4)(b)(iv) and (5A)(b)(v)”.

Note 1: The following heading to subsection 12G(8) is inserted “*Form of warrant*”.

Note 2: The following heading to subsection 12G(9) is inserted “*Warrant may be subject to conditions etc.*”.

Note 3: The following heading to subsection 12G(10) is inserted “*Warrant authorising entry onto premises*”.

Note 4: The following heading to subsection 12G(11) is inserted “*When a warrant is in force*”.

### **5A Paragraph 12G(7)(a)**

Omit “or premises”, substitute “, premises or item”.

**6 Paragraph 12G(7)(c)**

Omit “or (4)(b)(ii)”, substitute “, (4)(b)(ii) or (5A)(b)(ii)”.

**7 Section 12H**

Omit “or (4)”, substitute “, (4) or (5A)”.

***Customs Act 1901***

**8 After subsection 219B(8)**

Insert:

*Issuing listening device warrants in relation to items*

- (8A) A person referred to in subsection (4A) may apply to a Judge or nominated AAT member to issue a warrant to a Commonwealth law enforcement agency authorising the use of a listening device in relation to a particular item.
- (8B) The Judge or nominated AAT member may issue a warrant if satisfied, by information on oath, that:
- (a) there are reasonable grounds for suspecting that the item has been, or is likely to be, used in connection with the commission of a narcotics offence; and
  - (b) the use by officials of the agency of a listening device to listen to or record words spoken by or to persons in the vicinity of the item will, or is likely to, assist officials of the agency in, or in connection with, inquiries that are being made in relation to the use, or likely use, of the item in connection with the commission of a narcotics offence; and
  - (c) some or all of the information cannot appropriately be obtained by using a listening device authorised by a warrant under subsection (5) or (7).
- (8C) The Judge or nominated AAT member may issue a warrant authorising one or more of the following:
- (a) the use of a listening device by officials of the agency for the purpose of listening to or recording words spoken by or to any person while the person is in the vicinity of the item (which may be located anywhere in Australia);
  - (b) the entry onto premises by the officials for the purpose of:



- (i) installing the listening device or a part of the listening device in or on the item;
- (ii) maintaining, using or recovering the device or a part of the device.

(8D) A warrant may be subject to any conditions or restrictions that the Judge or nominated AAT member sees fit to specify in the warrant.

(8E) A warrant must be signed by the judge or nominated AAT member and in accordance with the prescribed form.

Note 1: The following heading to subsection 219B(1) is inserted “*Unlawful use of listening devices*”.

Note 2: The following heading to subsection 219B(4A) is inserted “*Member may apply for a listening device warrant*”.

Note 3: The following heading to subsection 219B(5) is inserted “*Issuing listening device warrants in relation to persons*”.

Note 4: The following heading to subsection 219B(7) is inserted “*Issuing listening device warrants in relation to premises*”.

Note 5: The following heading to subsection 219B(9) is inserted “*Warrants authorising entry onto premises*”.

Note 6: The following heading to subsection 219B(10) is inserted “*When a warrant is in force*”.

Note 7: The following heading to subsection 219B(12) is inserted “*Warrant does not authorise an interception*”.

## **9 Section 219C**

Omit “or (7)”, substitute “, (7) or (8B)”.

## Schedule 6—Amendment of the Financial Transaction Reports Act 1988

### 1 Subsection 3(1) (paragraph (k) of the definition of *cash dealer*)

After “financial institution”, insert “or a real estate agent acting in the ordinary course of real estate business”.

### 2 Subsection 3(1) (subparagraph (k)(i) of the definition of *cash dealer*)

Repeal the subparagraph, substitute:

- (i) collecting currency, and holding currency collected, on behalf of other persons; or
- (ia) exchanging one currency for another, or converting currency into prescribed commercial instruments, on behalf of other persons; or
- (ib) remitting or transferring currency or prescribed commercial instruments into or out of Australia on behalf of other persons or arranging for such remittance or transfer; or

### 3 Subsection 3(1)

Insert:

*prescribed commercial instrument* means:

- (a) a cheque, bill of exchange, promissory note or other like instrument creating an entitlement to currency; or
- (b) any instrument (including an electronic instrument) that is declared to be a prescribed commercial instrument for the purposes of this definition.

### 3A After paragraph 15(1)(b)

Insert:

- and (c) a report in respect of the transfer has not been given in accordance with this section;

### 3B Subsection 15(1)

Omit “unless a report in respect of the transfer has been given in accordance with this section”.

**3C After subsection 15(1)**

Insert:

(1A) Strict liability applies to paragraph (1)(c).

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

**3D After paragraph 15(5)(b)**

Insert:

- and (c) a report in respect of the transfer of the currency into Australia has not been made in accordance with subsection (1) before the transfer; and
- (d) a report in respect of the receipt of currency is not given in accordance with this section before the end of the period of 30 days commencing on the day of the receipt of the currency;

**3E Subsection 15(5)**

Omit all the words from and including “unless”.

**3F After subsection 15(5)**

Insert:

(5A) Strict liability applies to paragraphs (5)(c) and (d).

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

**4 At the end of Division 4 of Part II**

Insert:

**17J Information provided to AUSTRAC from a foreign country**

For the purposes of this Act, information concerning a specific financial transaction that is received by AUSTRAC as a result of a request to a foreign country or to an agency of a foreign country is taken to have been obtained under this Act.

Note: The heading to section 17H is altered by omitting “**other law**” and substituting “**another law of the Commonwealth or a law of a State or Territory**”.

**5 After subsection 27(1A)**

Insert:

- (1B) Despite paragraph (1)(b), the Director may only authorise the Queensland Crime Commission or the Anti-Corruption Commission of Western Australia under that paragraph if the Commission undertakes that it will comply with the information privacy principles set out in section 14 of the *Privacy Act 1988* in respect of FTR information obtained under the authorisation.

**6 At the end of subsection 27(16)**

Add:

- ; and (h) the Queensland Crime Commission; and  
(i) the Anti-Corruption Commission of Western Australia.

**7 At the end of subsection 27(17)**

Add:

- ; and (t) the Crime Commissioner, or an Assistant Crime Commissioner, of the Queensland Crime Commission; and  
(u) a member of the staff of that Commission; and  
(v) a member of the Anti-Corruption Commission of Western Australia; and  
(w) a member of the staff of that Commission.

**8 After subsection 27C(2)**

Insert:

- (2A) For the purpose of monitoring the compliance of a cash dealer who is an approved cash carrier with the record-keeping obligations referred to in section 8, the officer may inspect:
- (a) records containing reportable details (within the meaning of that section) of significant cash transactions to which the cash dealer is a party that are kept at, or accessible from, the premises; and
  - (b) any system used by the dealer at those premises for keeping such records.

## **Schedule 7—Pardons, quashed convictions and spent convictions**

### ***Crimes Act 1914***

#### **1 Section 85ZL (paragraph (e) of the definition of *law enforcement agency*)**

Repeal the paragraph, substitute:

(e) the CrimTrac Agency;

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*[Minister's second reading speech made in—  
Senate on 4 April 2001  
House of Representatives on 20 September 2001]*

(47/01)