Crimes Legislation Amendment (Powers and Offences) Act 2012

No. 24, 2012

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Compilation date: 5 April 2012

Includes amendments: Act No. 136, 2012

Prepared by the Office of Parliamentary Counsel, Canberra

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About this compilation

This is a compilation of the *Crimes Legislation Amendment (Powers and Offences) Act 2012* that shows the text of the law as amended and in force on 5 April 2012 (the ***compilation date***).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Presentational changes

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

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to amend various Acts relating to the enforcement of the criminal law, and for other purposes

[*Assented to 4 April 2012*]

1 Short title

This Act may be cited as the *Crimes Legislation Amendment (Powers and Offences) Act 2012*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	4 April 2012
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	5 April 2012
3. Schedule 1, Part 2	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	4 October 2012
4. Schedule 2, Part 1	The day after this Act receives the Royal Assent.	5 April 2012

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Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
5. Schedule 2, Part 2	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	25 June 2012 (*see* F2012L01243)
6. Schedule 3	The day after this Act receives the Royal Assent.	5 April 2012
7. Schedule 4	The day after this Act receives the Royal Assent.	5 April 2012
8. Schedule 5, items 1 to 14	The day this Act receives the Royal Assent.	4 April 2012
9. Schedule 5, item 15	Immediately after the commencement of the provision(s) covered by table item 8. However, if item 2 of Schedule 1 to the *Customs Amendment (Military End-Use) Act 2012* does not commence at or before the commencement of the provisions covered by table item 8, the provision(s) do not commence at all.	Does not commence
10. Schedule 6, items 1, 2 and 3	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of items 1 to 154 of Schedule 2 to the *Crimes Legislation Amendment Act (No. 2) 2011*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	5 April 2012
11. Schedule 6, items 4 to 8	The day after this Act receives the Royal Assent.	5 April 2012
12. Schedule 6, item 9	The later of: (a) the start of the day after this Act receives the Royal Assent; and	5 April 2012

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Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
	(b) immediately after the commencement of items 1 to 154 of Schedule 2 to the *Crimes Legislation Amendment Act (No. 2) 2011*. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
13. Schedule 6, items 10 and 11	The day after this Act receives the Royal Assent.	5 April 2012
14. Schedule 7	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	4 October 2012
15. Schedule 8	The day after this Act receives the Royal Assent.	5 April 2012
16. Schedule 9	The day this Act receives the Royal Assent.	4 April 2012

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

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.

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Schedule 1—Forensic procedures

Part 1—Amendments commencing on day after Royal Assent

Crimes Act 1914

1 Subsection 23WA(1)

Insert:

accredited laboratory means:

(a) a forensic laboratory accredited by the National Association of Testing Authorities, Australia; or

(b) a forensic laboratory that is of a kind prescribed by the regulations for the purposes of this paragraph.

2 Subsection 23WA(1) (definition of *Commissioner*)

Omit "staff member", substitute "AFP appointee (within the meaning of the *Australian Federal Police Act 1979*)".

3 Subsection 23WA(1) (definition of *informed consent*)

Omit "section 23WF", substitute "sections 23WF, 23WG, 23XWG and 23XWR".

4 Subsection 23WA(1) (paragraph (b) of the definition of *intimate forensic procedure*)

After "blood", insert "(other than by a finger prick)".

5 Subsection 23WA(1) (paragraph (c) of the definition of *intimate forensic procedure*)

Repeal the paragraph.

6 Subsection 23WA(1) (after paragraph (a) of the definition of *non-intimate forensic procedure*)

Insert:

(aa) the taking of a sample of blood by a finger prick;

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(ab) the taking of a sample of saliva, or a sample by buccal swab;

7 Subsection 23WA(1) (definition of *senior constable*)

Repeal the definition.

8 Subsection 23WA(1)

Insert:

senior police officer means a constable of the rank of sergeant or higher.

9 Section 23WC (table item 2)

Omit "senior constable", substitute "senior police officer".

10 Paragraph 23WG(3)(c)

Omit "senior constable", substitute "senior police officer".

11 Paragraph 23WJ(3)(a)

Omit "constable", substitute "senior police officer".

12 Division 4 of Part ID (heading)

Repeal the heading, substitute:

Division 4—Non-intimate forensic procedures on suspect by order of senior police officer

13 Section 23WM (heading)

Repeal the heading, substitute:

23WM Non-intimate forensic procedure may be carried out by order of senior police officer

14 Subsection 23WM(1)

Omit "senior constable", substitute "senior police officer".

15 Section 23WN (heading)

Repeal the heading, substitute:

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23WN Circumstances in which senior police officer may order non-intimate forensic procedures

16 Section 23WN

Omit "senior constable" (wherever occurring), substitute "senior police officer".

17 Section 23WO (heading)

Repeal the heading, substitute:

23WO Matters to be considered by senior police officer before ordering forensic procedure

18 Section 23WO

Omit "senior constable" (wherever occurring), substitute "senior police officer".

19 Section 23WP (heading)

Repeal the heading, substitute:

23WP Record of senior police officer's order

20 Subsections 23WP(1) and (2)

Omit "senior constable", substitute "senior police officer".

21 Paragraphs 23WR(a) and (b)

After "procedure", insert "(whether or not consent has been sought)".

22 Paragraph 23XL(b)

Repeal the paragraph, substitute:

(b) the sample is taken using the least painful technique known and available to the person.

23 Section 23XM (table item 2)

After "blood", insert "(other than by a finger prick)".

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24 Section 23XM (table item 3)

Repeal the item.

25 Section 23XM (after table item 9)

Insert:

9A	the taking of a sample of blood by a finger prick	medical practitioner nurse constable appropriately qualified person	no
9B	the taking of a sample of saliva, or a sample by buccal swab	medical practitioner dentist dental technician nurse constable appropriately qualified person	no

26 Subsection 23XN(1)

Omit ", a sample of saliva, a buccal swab".

27 Section 23XU

Repeal the section, substitute:

23XU Samples—sufficient material to share

(1) This section applies if:

(a) a sample is taken from a suspect under this Part; and

(b) the suspect requests the investigating constable that the sample be shared; and

(c) there is sufficient material to be analysed both in the investigation of the offence and on behalf of the suspect.

(2) The investigating constable must invite the suspect to nominate an accredited laboratory to which a part of the material sufficient for analysis will be provided on behalf of the suspect.

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(3) If the suspect nominates an accredited laboratory, the investigating constable must ensure that:

(a) a part of the material sufficient for analysis is provided to that laboratory, on behalf of the suspect, within the period of 28 days beginning on the day of the nomination; and

(b) reasonable care is taken to ensure that the suspect's part of the material is protected and preserved until it is provided to that laboratory.

Note: Division 9 contains provisions about making material available to the suspect.

(4) The suspect must bear the costs in relation to any analysis of that part of the material provided to that laboratory.

28 Subsection 23XUA(2)

Omit "request that a person of his or her", substitute "request the investigating constable that a person (the ***attendee***) of the suspect's".

29 After subsection 23XUA(2)

Insert:

(2A) The investigating constable must then inform the suspect that the attendee may be directed by the person (the ***analyst***) responsible for analysing the material to leave the premises at which the analysis is being conducted if the attendee does not comply with instructions given by the analyst in relation to the analysis of the material.

30 Subsection 23XUA(3)

Omit "The person chosen", substitute "Subject to this section, the attendee".

31 Subsection 23XUA(3)

Omit "person responsible for analysing the material", substitute "analyst".

32 At the end of section 23XUA

Add:

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(4) The analyst may give instructions to the attendee relating to the analysis of the material.

(5) The analyst may give a direction to the attendee to leave the premises at which the analysis is being conducted if the attendee fails to comply with such an instruction.

(6) If the analyst gives such a direction, the analyst must inform the attendee that a failure to comply with the direction is an offence against subsection (7). A failure to comply with this subsection does not affect the validity of the direction.

(7) The attendee commits an offence if:
(a) the attendee is given a direction under subsection (5); and
(b) the attendee fails to comply with the direction.

Penalty: 30 penalty units.

(8) An offence against subsection (7) is an offence of strict liability.

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

33 Section 23XW

Repeal the section, substitute:

23XW Results of analysis

If:
(a) material from a sample taken from a suspect is analysed in the investigation of the offence; and
(b) before or after the analysis, the suspect has requested the investigating constable that a copy of the results of any analysis be provided to the suspect;

then the investigating constable must ensure that, within 14 days of the analysis or of the request (whichever is the later):
(c) a copy of the results of the analysis is provided to the suspect; and
(d) if the DNA profile derived from that material has been matched, as part of the investigation of the offence, under section 23YDAF with a DNA profile placed on the crime

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scene index in relation to the offence—the suspect is informed in writing of that match.

34 Subsection 23XWB(1)

Repeal the subsection, substitute:

Intimate forensic procedure to which Division applies

(1) This Division applies to an intimate forensic procedure that is the taking of a sample of blood (other than by a finger prick).

35 At the end of subsection 23XWB(2)

Add:

; (c) the taking of a sample of blood by a finger prick;

(d) the taking of a sample of saliva, or a sample by buccal swab.

36 At the end of subsection 23XWC(1)

Add:

; or (c) by order of a judge or magistrate under section 23XWO.

37 Subsection 23XWC(3)

After "by order of a", insert "judge or".

38 Paragraph 23XWD(b)

After "by order of a", insert "judge or".

39 Subsection 23XWE(1)

Repeal the subsection, substitute:

(1) Division 6 applies in relation to the carrying out under this Division of a forensic procedure on an offender. For this purpose:

(a) references in Division 6 to the suspect are taken to be references to the offender; and

(b) references in Subdivision F of Division 6 to the investigating constable are taken to be references to the Commissioner.

Note: By applying Division 6, sections 23XJ (about use of force in carrying out forensic procedures) and 23XK (about forensic procedures not

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being carried out in a cruel, inhuman or degrading manner) apply to the carrying out of a forensic procedure under this Division.

40 Paragraph 23XWL(c)

Repeal the paragraph.

41 After section 23XWN

Insert:

23XWNA Circumstances in which judge or magistrate may order forensic procedure

A judge or magistrate may, under section 23XWO, order the carrying out of a forensic procedure on an offender if:

(a) the offender is not in custody and has not consented to the forensic procedure (whether or not consent has been sought); or

(b) the offender is in custody and has not consented to the forensic procedure (whether or not consent has been sought); or

(c) under section 23WE, the offender cannot consent to the forensic procedure.

42 Subsection 23XWO(1)

Omit "directing a serious offender to consent to an intimate forensic procedure to which this Division applies being carried out on the serious offender", substitute "for the carrying out of an intimate forensic procedure, or a non-intimate forensic procedure, to which this Division applies on a serious offender (other than a child or an incapable person)".

43 Paragraph 23XWO(7)(c)

Repeal the paragraph.

44 After section 23XWO

Insert:

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23XWOA Securing the presence of offender at hearing—offender in custody

(1) If:

(a) an application is made under section 23XWO to a judge or magistrate for an order under that section for the carrying out of a forensic procedure on an offender; and

(b) the offender is in custody or is otherwise detained under a law of the Commonwealth, a State or a Territory (***original custody***);

the judge or magistrate may, on the application of a constable, issue a warrant directing the person holding the offender to deliver the offender into the custody (***temporary custody***) of the constable for the hearing of the application.

(2) If the judge or magistrate refuses to make the order under section 23XWO, the constable given temporary custody of the offender must return the offender to the place of original custody without delay.

(3) If the judge or magistrate makes the order under section 23XWO, the judge or magistrate may:

(a) order the constable given temporary custody of the offender:

(i) to convey the offender to the nearest premises where facilities for carrying out the procedure in accordance with this Part are available to that constable; and

(ii) to return the offender to the place of original custody without delay after the procedure is carried out; or

(b) order the constable given temporary custody of the offender to return the offender to the place of original custody without delay.

23XWOB Securing the presence of offender at hearing—offender not in custody

(1) If:

(a) an application is made under section 23XWO to a judge or magistrate for an order for the carrying out of a forensic procedure on an offender; and

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(b) the offender is neither in custody nor detained under a law of the Commonwealth, a State or a Territory;

the judge or magistrate may, on the application of a constable:

(c) issue a summons for the appearance of the offender at the hearing of the application; or

(d) issue a warrant for the arrest of the offender for the purpose of bringing the offender before the judge or magistrate for the hearing of the application.

(2) An application for a summons under subsection (1) must be:

(a) made by information on oath or affirmation; and

(b) accompanied by an affidavit dealing with matters referred to in paragraphs (3)(a) and (b).

(3) The judge or magistrate may issue a summons only if satisfied:

(a) that the issue of the summons is necessary to ensure the appearance of the offender at the hearing of the application made under section 23XWO; or

(b) that the issue of the summons is otherwise justified.

(4) An application for a warrant under subsection (1) must be:

(a) made by information on oath or affirmation; and

(b) accompanied by an affidavit dealing with matters referred to in paragraphs (5)(a), (b) and (c).

(5) The judge or magistrate may issue a warrant only if satisfied:

(a) that the arrest is necessary to ensure the appearance of the offender at the hearing of the application made under section 23XWO, and that the issue of a summons would not ensure that appearance; or

(b) that the offender might destroy evidence that might be obtained by carrying out the forensic procedure; or

(c) that the issue of the warrant is otherwise justified.

45 Paragraph 23XWP(1)(b)

Omit "offender to permit a forensic procedure to be carried out under this Division", substitute "carrying out of a forensic procedure under this Division on the offender".

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46 Subsection 23XWP(3)

Omit "an offender who is not in a prison or another place of detention to permit a forensic procedure to be carried out", substitute "the carrying out of a forensic procedure under this Division on an offender who is not in a prison or another place of detention".

47 Subsection 23XWP(4)

Omit "An offender ordered to permit the carrying out of a forensic procedure", substitute "If a judge or magistrate orders the carrying out of a forensic procedure under this Division on an offender, the offender".

48 Subsection 23XWQ(2)

After "A person", insert "(the ***authorised person***)".

49 After subparagraph 23XWQ(2)(b)(i)

Insert:

(ia) in a case where the informed consent of the parent or guardian of the volunteer is given in accordance with section 23XWR—after the constable concerned has informed the child or incapable person that, even though consent has been given, if he or she objects to or resists the carrying out of the forensic procedure it will not be carried out; and

50 Subparagraph 23XWQ(2)(b)(ii)

Omit "after the person", substitute "after the authorised person".

51 Paragraph 23XWR(2)(b)

Repeal the paragraph, substitute:

(b) that the information will be stored on the volunteers (limited purposes) index of that system unless the volunteer (or, in the case of a volunteer who is a child or an incapable person, the parent or guardian of the volunteer) chooses for the information to be stored on the volunteers (unlimited purposes) index of that system; and

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52 Section 23YDAC

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

53 Section 23YDAC (definition of *Commonwealth DNA database system*)

Omit "containing", substitute "that is managed by the Commonwealth and that contains".

54 Section 23YDAC (paragraph (a) of the definition of *Commonwealth DNA database system*)

After "Commonwealth agency", insert "and, in relation to a crime scene index, in so far as it also relates to material taken or obtained by a foreign law enforcement agency (within the meaning of the *Australian Crime Commission Act 2002*)".

55 Section 23YDAC (after paragraph (a) of the definition of *crime scene index*)

Insert:

(aa) at any place outside Australia where an offence under the law of a foreign country was, or is reasonably suspected of having been, committed; or

56 Section 23YDAC (at the end of the definition of *State/Territory DNA database system*)

Add:

Note: See also subsection (2).

57 Section 23YDAC (definition of *volunteers (limited purposes) index*)

Omit "paragraph 23XWR(2)(b)", substitute "paragraph 23XWR(2)(ba)".

58 At the end of section 23YDAC

Add:

(2) For a participating jurisdiction, the database referred to in the definition of ***State/Territory DNA database system*** in

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subsection (1) may be that part of NCIDD that relates to that participating jurisdiction.

59 After paragraph 23YDAE(2)(d)

Insert:

(da) the purpose of assisting a foreign country to decide whether to make a request under the *Mutual Assistance in Criminal Matters Act 1987*;

60 Paragraph 23YDA(1)(b)

After "suspect", insert ", offender or volunteer".

61 Paragraph 23YDA(2)(a)

After "(Division 3)", insert ", asking an offender to consent to a forensic procedure (Division 6A) or asking a volunteer to consent to a forensic procedure (Division 6B)".

62 Paragraph 23YDA(2)(b)

After "(Division 4)", insert "or on an offender who is in custody (Division 6A)".

63 Paragraph 23YDA(2)(c)

After "(Division 5)", insert ", applying to a judge or magistrate for an order for the carrying out of a forensic procedure on an offender (Division 6A) or applying to a magistrate for an order under section 23XWU for the carrying out of a forensic procedure on a child or incapable person".

64 Paragraphs 23YDA(2)(d), (e) and (f)

After "suspect", insert ", offender or volunteer".

65 Subsection 23YG(2)

Repeal the subsection, substitute:

(2) Subject to subsection (3), material of any kind that is required by this Part to be made available to a suspect, offender or volunteer must be made available in accordance with subsection (1):

(a) within 14 days after the material comes into existence; or

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(b) if the material is requested by the suspect, offender or volunteer or the suspect's, offender's or volunteer's interview friend or legal representative, within 14 days of the request.

(3) Subsection (2) does not apply to:

(a) copies of records required to be made available under subsection 23XE(5); and

(b) material required to be provided under section 23XU; and

(c) copies of results of analysis and other information required to be provided under section 23XW.

66 After paragraph 23YO(2)(d)

Insert:

(da) the purposes of assisting a foreign country to decide whether to make a request under the *Mutual Assistance in Criminal Matters Act 1987*;

67 After section 23YP

Insert:

23YPA Analysis of forensic material

The analysis for the Commonwealth of forensic material obtained as a result of the carrying out of a forensic procedure under this Part must be carried out in an accredited laboratory.

68 Subsection 23YQ(1)

Omit "staff member", substitute "AFP appointee".

69 Subsection 23YQ(2)

Omit "***staff member***", substitute "***AFP appointee***".

70 Subsection 23YUC(1)

Omit "the forensic procedure", substitute "an intimate forensic procedure".

71 Subsection 23YUC(1)

After "an order", insert "under this Part".

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72 After subsection 23YUC(1)

Insert:

(1A) A person is authorised to carry out a non-intimate forensic procedure authorised by an order under this Part that is registered in accordance with an arrangement referred to in subsection 23YUB(1) anywhere in the Commonwealth. The person is authorised to carry out the procedure in accordance with Division 6 or a corresponding law of a participating jurisdiction, and not otherwise.

73 At the end of Division 11 of Part ID

Add:

23YUDA Arrangements with prisons or other places of detention

The Commissioner may, on behalf of the Commonwealth, enter into an arrangement with the head (however described) of a prison or other place of detention in a State or Territory in relation to the carrying out of forensic procedures under this Part on offenders who are serving sentences of imprisonment in that prison or other place of detention.

74 Saving—orders by senior constable

The amendment made by item 16 does not affect the validity of an order that is in force under section 23WN of the *Crimes Act 1914* immediately before the commencement of that item.

75 Application provision

(1) The amendments made by items 22 to 26, 34, 35, 39, 48, 49, 50, 67, 70 and 72 apply in relation to the carrying out of forensic procedures starting on or after the commencement of those items.

(2) The amendments made by items 27 to 33 apply in relation to samples taken under Part ID of the *Crimes Act 1914* on or after the commencement of those items.

(3) The amendments made by items 21, 40, 41, 43 and 45 to 47 apply in relation to orders made on or after the commencement of those items.

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(4) The amendments made by items 42 and 44 apply in relation to applications made under section 23XWO of the *Crimes Act 1914* on or after the commencement of those items.

(5) The amendment made by item 51 applies in relation to the giving of informed consent on or after the commencement of that item.

(6) The amendments made by items 53 to 55 do not affect the continuity of the Commonwealth DNA database system referred to in section 23YDAC of the *Crimes Act 1914* or of the crime scene index referred to in that section.

(7) The amendments made by items 59 and 66 do not affect by implication the interpretation of sections 23YDAE and 23YO of the *Crimes Act 1914* at a time before the commencement of those items.

(8) The amendments made by items 60 to 64 apply in relation to actions taken on or after the commencement of those items.

(9) The amendment made by item 65 applies in relation to material that, on or after the commencement of that item, is required by Part ID of the *Crimes Act 1914* to be made available to a person.

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Part 2—Amendments commencing on day to be fixed by Proclamation

Crimes Act 1914

76 Paragraphs 23WF(2)(b) and (c)

Repeal the paragraphs, substitute:

(b) informs the suspect, in accordance with the regulations and section 23WJ, of the matters mentioned in that section; and

77 Paragraph 23WG(2)(b)

Repeal the paragraph, substitute:

(b) informs the suspect, in accordance with the regulations and section 23WJ, of the matters mentioned in that section; and

78 Paragraph 23XWG(1)(b)

Repeal the paragraph, substitute:

(b) informs the offender, in accordance with the regulations and section 23XWJ, of the matters mentioned in that section; and

79 Subsection 23XWR(1)

After "a constable informs the volunteer, parent or guardian", insert ", in accordance with the regulations,".

80 Application provision

The amendments made by this Part apply in relation to the giving of informed consent on or after the commencement of this Part.

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Schedule 2—Amendments relating to disclosure of ACC information

Part 1—Amendments commencing on day after Royal Assent

Australian Crime Commission Act 2002

1 Section 59 (heading)

Repeal the heading, substitute:

59 Providing reports and information to members of Parliament

2 Before subsection 59(1)

Insert:

Information for Minister

3 Subsection 59(1)

After "The Chair of the Board", insert "and the CEO".

4 Subsection 59(1)

After "requests the Chair", insert "or the CEO".

5 Subsection 59(1)

After "functions, the Chair", insert "or the CEO (as the case requires)".

6 Before subsection 59(1A)

Insert:

Information for Inter-Governmental Committee

7 Subsection 59(1A)

After "the Chair of the Board" (first occurring), insert "or the CEO".

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8 Subsection 59(1A)

After "the Chair of the Board" (second occurring), insert "or the CEO (as the case requires)".

9 Subsection 59(2)

After "the Chair of the Board", insert "or the CEO (as the case requires)".

10 Subsection 59(2)

Omit "the Chair" (second occurring), substitute "he or she".

11 Subsection 59(3)

After "the Chair of the Board" (first occurring), insert "or the CEO".

12 Paragraph 59(3)(b)

After "the Chair of the Board", insert "or the CEO".

13 Subsection 59(5)

After "The Chair of the Board" (first occurring), insert "or the CEO (as the case requires)".

14 Subsection 60(4)

After "The Board", insert "or the CEO".

15 Subsection 60(5)

Omit "The Board shall", substitute "The Board and the CEO must".

16 Application of this Part

The amendments made by this Part apply to any information in the possession of the ACC, whether the information comes into the possession of the ACC before or after this item commences.

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Part 2—Amendments commencing on Proclamation

Australian Crime Commission Act 2002

17 Subsection 4(1)

Insert:

> ***ACC information*** means information that is in the ACC's possession.

18 Subsection 4(1)

Insert:

> ***permissible purpose*** means one or more of the following purposes:
> (a) performing functions referred to in section 7A or 7C;
> (b) preventing, detecting, investigating, prosecuting or punishing:
> (i) criminal offences or activities that might constitute criminal offences (including under a law of a foreign country); or
> (ii) contraventions of a law of the Commonwealth, a State or a Territory imposing a penalty or sanction (including taking civil remedies in relation to contraventions of such laws); or
> (iii) seriously improper conduct (including professional misconduct or misconduct by a public official);
> (c) preventing, detecting or investigating threats to national security;
> (d) preventing serious threats to an individual's life, health or safety, or to public health or public safety;
> (e) enforcing laws (including laws of foreign countries) relating to proceeds of crime;
> (f) enforcing laws (including laws of foreign countries) relating to unexplained wealth;
> (g) protecting public revenue;
> (h) developing government policy;

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(i) researching criminology;
(j) any other purpose prescribed by the regulations.

19 Subsection 12(1) (note)

Omit "Note", substitute "Note 1".

20 Subsection 12(1) (note)

Omit "section 59", substitute "sections 59AA and 59AB".

21 At the end of subsection 12(1)

Add:

Note 2: This subsection is subject to any relevant direction given under subsection 25A(9) (see subsection (2) of this section).

22 At the end of subsection 12(1A)

Add:

Note: This subsection is subject to any relevant direction given under subsection 25A(9) (see subsection (2) of this section).

23 After subsection 12(1A)

Insert:

(2) Subsections (1) and (1A) are subject to any relevant direction given under subsection 25A(9) (confidentiality in relation to examinations).

24 Subparagraph 47A(1)(b)(ii)

Omit "a law enforcement agency or a foreign law enforcement agency", substitute "a person or body (however described) to whom the CEO may disclose ACC information under section 59AA".

25 At the end of subsection 59(1)

Add:

Note: This section is subject to any relevant direction given under subsection 25A(9) (see section 59AC).

26 Subsections 59(7) to (11)

Repeal the subsections, substitute:

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Information for members of Parliament

(7) The Chair of the Board or the CEO may inform one or more of the following persons of the general conduct of the operations of the ACC if the Chair or the CEO (as the case requires) considers that it is in the public interest to do so:

(a) a member of either House of the Parliament;

(b) a member of the Parliament of a State.

Note: A reference to the Parliament of a State includes a reference to the Legislative Assemblies of the Australian Capital Territory and the Northern Territory (see paragraph 4(3)(a)).

27 After section 59

Insert:

59AA Disclosing information to government bodies

Commonwealth, State, Territory and foreign agencies etc.

(1) The CEO may disclose ACC information to:

(a) a body of the Commonwealth, a State or a Territory; or

(b) a person who holds an office or appointment under a law of the Commonwealth, a State or a Territory; or

(c) an agency that has responsibility for:

(i) law enforcement in a foreign country; or

(ii) intelligence gathering for a foreign country; or

(iii) the security of a foreign country; or

(d) an international body that:

(i) has functions relating to law enforcement or gathering intelligence; and

(ii) is prescribed by the regulations for the purposes of this paragraph; or

(e) an international judicial body that is prescribed by the regulations for the purposes of this paragraph;

if:

(f) the CEO considers it appropriate to do so; and

(g) the CEO considers that the information is relevant to a permissible purpose; and

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(h) disclosing the ACC information would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply.

Note 1: For the definition of ***body***, see subsection (3).

Note 2: This section is subject to any relevant direction given under subsection 25A(9) (see section 59AC).

ASIO

(2) The CEO may disclose ACC information to the Australian Security Intelligence Organisation if:

(a) the CEO considers it appropriate to do so; and

(b) the information is relevant to security (as defined in section 4 of the *Australian Security Intelligence Organisation Act 1979*); and

(c) disclosing the ACC information would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply.

Definitions

(3) In this section:

body includes:

(a) a body however described; and

(b) a Department of State; and

(c) a body (whether incorporated or not) established for a public purpose by or under a law of the Commonwealth, a State or a Territory; and

(d) a law enforcement agency.

59AB Disclosing information to private sector bodies

(1) The CEO may disclose ACC information to a body corporate that is prescribed, or is included in a class of bodies corporate that is prescribed, by the regulations for the purposes of this section if:

(a) the CEO considers it appropriate to do so; and

(b) the CEO considers that disclosing the information to the body is necessary for a permissible purpose; and

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(c) the body has undertaken, in writing, not to use or further disclose the information except:
  (i) as referred to in subsection (3); or
  (ii) as required by a law of the Commonwealth, a State or a Territory; and
(d) the body has undertaken, in writing, to comply with any conditions the CEO specifies under subsection (4) or (5); and
(e) disclosing the ACC information:
  (i) would not prejudice the safety of a person, or prejudice the fair trial of a person who has been charged with an offence; and
  (ii) would not be contrary to a law of the Commonwealth, a State or a Territory that would otherwise apply.

Note: This section is subject to any relevant direction given under subsection 25A(9) (see section 59AC).

Limitations on disclosing information under subsection (1)

(2) The CEO may disclose ACC information to a body corporate under subsection (1) only if:
(a) for information that is personal information (within the meaning of the *Privacy Act 1988*)—the CEO considers that disclosing the information is necessary for the purposes of:
  (i) preventing criminal offences or activities that might constitute criminal offences (including under a law of a foreign country); or
  (ii) detecting criminal offences or activities that might constitute criminal offences (including under a law of a foreign country); or
  (iii) facilitating the collection of criminal information and intelligence in relation to criminal offences or activities that might constitute criminal offences (including under a law of a foreign country); and
(b) in any case—the information is not confidential commercial information relating to another body or person.

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Specifying purposes and conditions etc.

(3) The CEO must specify, in writing, any permissible purpose for which the ACC information may be used or further disclosed.

(4) If the CEO discloses ACC information that is personal information (within the meaning of the *Privacy Act 1988*) to a body corporate, the CEO must specify, in writing:

(a) one or more conditions that the body corporate must meet in relation to monitoring and controlling any further disclosure of that information by an employee or officer of the body corporate; and

(b) a condition that the information is not to be disclosed to a person who is not an employee or officer of the body corporate, other than in any circumstances specified; and

(c) one or more conditions that the body corporate must meet in order to ensure that the information is not used or disclosed in a way that might prejudice the reputation of a person.

(5) The CEO may specify, in writing, any other conditions that the CEO considers appropriate in relation to ACC information that is disclosed under, or in accordance with, this section (whether in relation to personal information or any other ACC information).

(6) An instrument made under subsection (3), (4) or (5) is not a legislative instrument.

Offence—disclosure etc. for unauthorised purposes

(7) A person commits an offence if:

(a) ACC information is disclosed to the person under, or in accordance with, this section; and

(b) the person (directly or indirectly):

(i) makes a record of the information; or

(ii) discloses the information to any other person; and

(c) the record or disclosure referred to in paragraph (b) is not:

(i) for a purpose specified under subsection (3) in relation to the information; or

(ii) required by any other law.

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Penalty: 50 penalty units, or imprisonment for 12 months, or both.

Note: For a defence to this offence, see subsection (9).

Offence—breach of conditions

(8) A person commits an offence if:

(a) ACC information is disclosed to the person under, or in accordance with, this section; and

(b) the CEO specifies a condition under subsection (4) or (5) in relation to the information; and

(c) the person does an act or omits to do an act in relation to the information; and

(d) the act or omission breaches the condition.

Penalty: 50 penalty units, or imprisonment for 12 months, or both.

Note: For a defence to this offence, see subsection (9).

Defence—information legitimately made public

(9) Subsections (7) and (8) do not apply to a person in relation to ACC information if:

(a) the information is in the public domain before the person:

(i) makes the record, or discloses the information (if subsection (7) applies); or

(ii) does the act or omits to do the act in relation to the information (if subsection (8) applies); and

(b) the original disclosure of the information into the public domain (before the person does the thing referred to in subparagraph (a)(i) or (ii) of this subsection) was not:

(i) in contravention of section 51 or subsection (7) or (8) of this section; or

(ii) in breach of an undertaking given under subsection (1) of this section.

Note: A defendant bears an evidential burden in relation to the matter in subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

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59AC Confidentiality in relation to examinations

Sections 59, 59AA and 59AB are subject to any relevant direction as in force under subsection 25A(9) (confidentiality in relation to examinations).

59AD Publication of reports in relation to offences

A report under this Act that:

(a) sets out a finding that an offence has been committed; or

(b) makes a recommendation to institute a prosecution in respect of an offence;

must not be made available to the public unless the finding or recommendation is expressed to be based on evidence that would be admissible in the prosecution of a person for that offence.

28 After paragraph 61(2)(d)

Insert:

(da) the general nature and the extent of any information disclosed by the CEO during that year to a body corporate under section 59AB;

29 Application of this Part

The amendments made by this Part apply to any ACC information, whether the information comes into the possession of the ACC before or after this item commences.

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Schedule 3—Amendments relating to returnable items for the ACC

Australian Crime Commission Act 2002

1 Subsection 4(1)

Insert:

Commonwealth officer:

(a) has the meaning given by subsection 3(1) of the *Crimes Act 1914*; and

(b) includes members of the staff of the ACC.

2 Subsection 4(1)

Insert:

returnable item means:

(a) a thing seized under a warrant issued under section 22; or

(b) a thing, or a document, produced:

(i) under a notice given under section 29; or

(ii) during an examination conducted under Division 2 of Part II.

3 Subsection 4(1) (paragraph (d) of the definition of *serious and organised crime*)

Omit "within the meaning of the *Proceeds of Crime Act 2002*".

4 Subsection 4(1) (subparagraph (da)(ii) of the definition of *serious and organised crime*)

Omit "within the meaning of the *Proceeds of Crimes Act 2002*".

5 Subsection 4(1)

Insert:

serious offence:

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(a) in the definition of ***serious and organised crime***—has the meaning given by the *Proceeds of Crime Act 2002*; and

(b) otherwise—has the meaning given by subsection 3C(1) of the *Crimes Act 1914*.

6 Subsection 4(1)

Insert:

State or Territory law enforcement agency has the meaning given by subsection 3ZQU(7) of the *Crimes Act 1914*.

7 Subsection 4(1)

Insert:

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

8 Subsection 4(1)

Insert:

terrorist act has the same meaning as in subsection 100.1(1) of the *Criminal Code*.

9 Subsections 22(8) and (9)

Repeal the subsections.

10 At the end of Division 1A of Part II

Add:

24AA Use of and sharing returnable items

Use of returnable items by persons who are not members of the staff of the ACC

(1) The CEO may make a returnable item available to a constable, or Commonwealth officer, who is not a member of the staff of the ACC, to use for any or all of the following purposes if it is necessary to do so for that purpose:

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(a) a purpose referred to in subsection 3ZQU(1) of the *Crimes Act 1914*;
(b) the performance of the functions of the ACC referred to in section 7A of this Act;
(c) the performance of the functions of the Board referred to in section 7C of this Act.

(2) A constable or Commonwealth officer, who is not a member of the staff of the ACC, may use a returnable item for all or any of the purposes referred to in subsection (1) if it is necessary to do so for that purpose.

Use of returnable items by members of the staff of the ACC

(3) The head of the special ACC operation/investigation to which a returnable item relates may make the item available to another member of the staff of the ACC to use for the purpose of the performance of all or any of the functions referred to in section 7A or 7C.

(4) A member of the staff of the ACC may use a returnable item for the purpose of the performance of all or any of the functions referred to in section 7A or 7C.

Use of returnable items for State or Territory purposes

(5) The CEO may make a returnable item available to a constable or Commonwealth officer to use for any purpose for which the making available of the item is required or authorised by a law of a State or Territory.

(6) A constable or Commonwealth officer may use a returnable item for any other use that is required or authorised by or under a law of a State or a Territory.

Section does not limit any other law of the Commonwealth

(7) To avoid doubt, this section does not limit any other law of the Commonwealth that:
(a) requires or authorises the use of a document or other thing; or

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(b) requires or authorises the making available (however described) of a document or other thing.

Sharing returnable item for use by State, Territory or foreign agency

(8) The CEO may make a returnable item available to:

(a) a State or Territory law enforcement agency; or

(b) an agency that has responsibility for:

(i) law enforcement in a foreign country; or

(ii) intelligence gathering for a foreign country; or

(iii) the security of a foreign country;

to be used by that agency for a purpose mentioned in subsection (1), (5) or (6) and the purpose of any or all of the following (but not for any other purpose):

(c) preventing, investigating or prosecuting an offence against a law of a State or Territory;

(d) proceedings under a corresponding law (within the meaning of the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*);

(e) proceedings for the forfeiture of the item under a law of a State or Territory;

(f) deciding whether to institute proceedings or to take any other action mentioned in any of paragraphs 3ZQU(1)(a) to (l) (inclusive) of the *Crimes Act 1914*, subsection (5) or (6) of this section, or paragraph (c), (d) or (e) of this subsection.

Ministerial arrangements for sharing

(9) This section does not prevent the Minister from making an arrangement with a Minister of a State or Territory for:

(a) the making available to a State or Territory law enforcement agency of that State or Territory, for purposes mentioned in subsections (1), (6) and (8), of returnable items; and

(b) the disposal by the agency of such items when they are no longer of use to that agency for those purposes.

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

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24AB When returnable items must be returned

(1) If the CEO is satisfied that a returnable item is not required (or is no longer required) for a purpose mentioned in section 24AA or for other judicial or administrative review proceedings, the CEO must take reasonable steps to return the item to:

(a) the person from whom the item was seized, or the person who produced the item; or

(b) the owner, if the person mentioned in paragraph (a) is not entitled to possess it.

(2) However, the CEO does not have to take those steps if:

(a) either:

(i) the returnable item may be retained because of an order under subsection 24AC(2), or any other order under that subsection has been made in relation to the item; or

(ii) the CEO has applied for such an order and the application has not been determined; or

(b) the returnable item may otherwise be retained, destroyed or disposed of under a law, or an order of a court or tribunal, of the Commonwealth or of a State or a Territory; or

(c) the returnable item is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.

(3) To avoid doubt, if the returnable item is a document, the CEO is required to take reasonable steps to return the document only if the ACC took possession of that document.

24AC Issuing officer may permit a returnable item to be retained, forfeited etc.

(1) An issuing officer may, on application by the CEO, make an order under subsection (2) in relation to a returnable item.

Preventing use in committing terrorist act, terrorism offence or serious offence

(2) The issuing officer may make any of the orders referred to in subsection (3) if the issuing officer is satisfied that there are reasonable grounds to suspect that, if the returnable item is

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returned to either of the following persons, the item is likely to be used by that person or another person in the commission of a terrorist act, a terrorism offence or a serious offence:

(a) the owner of the item;

(b) the person from whom the item was seized, or the person who produced the item.

(3) The orders are as follows:

(a) an order that the item may be retained for the period specified in the order;

(b) an order that the item is forfeited to the Commonwealth;

(c) if the item is not a document—an order that:

(i) the item be sold and the proceeds given to the owner of the item; or

(ii) the item be sold in some other way;

(d) an order that the item is to be destroyed or otherwise disposed of.

Item must be returned if issuing officer not satisfied

(4) The issuing officer must order that the returnable item be returned to the following person if the issuing officer is not satisfied as mentioned in subsection (2):

(a) the person from whom the item was seized, or the person who produced the item;

(b) if the person referred to in paragraph (a) is not entitled to possess the item—the owner of the item.

CEO to notify persons with an interest in returnable item

(5) Before making the application, the CEO must:

(a) take reasonable steps to discover who has an interest in the returnable item; and

(b) if it is practicable to do so, notify each person who the CEO believes to have such an interest of the proposed application.

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Person with interest may appear and be heard

(6) The issuing officer must allow a person who has an interest in the returnable item to appear and be heard in determining the application.

Function conferred in personal capacity

(7) A function of making an order under this section is conferred on an issuing officer in a personal capacity and not as a court or a member of a court.

(8) An issuing officer performing a function of, or connected with, making an order under this section has the same protection and immunity as if he or she were performing that function as, or as a member of, a court (being the court of which the issuing officer is a member).

11 Application of this Schedule

The amendments made by this Schedule apply to any returnable item, whether seized or produced before or after this Schedule commences.

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Schedule 4—Amendments relating to the Integrity Commissioner's investigative powers

Law Enforcement Integrity Commissioner Act 2006

1 Subsection 5(1)

Insert:

constable means:

(a) a member or special member of the AFP; or

(b) a member of the police force or police service of a State or Territory.

2 Subsection 5(1)

Insert:

Federal Court means the Federal Court of Australia.

3 Subsection 5(1)

Insert:

in contempt of ACLEI has the meaning given by section 96A.

4 Subsection 20(1) (note)

Omit "referred", substitute "notified".

5 Section 21 (heading)

Repeal the heading, substitute:

21 Law enforcement agency head to pass on new information in relation to corruption issue already notified

6 Part 8 (heading)

Repeal the heading, substitute:

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Part 8—Public inquiries by Integrity Commissioner

7 Subdivision A of Division 1 of Part 9 (heading)

Repeal the heading, substitute:

Subdivision A—Notices to give information or to produce documents or things

8 Sections 75 and 76

Repeal the sections, substitute:

75 Notice to give information or to produce document or thing

Giving notice

(1) For the purpose of investigating a corruption issue, the Integrity Commissioner may, by notice in writing, require a person to do either or both of the following:

(a) give the information specified in the notice;

(b) produce the documents or things specified in the notice;

if the Integrity Commissioner has reasonable grounds to suspect that the information, documents or things will be relevant to the investigation.

Note: In certain cases, disclosing the existence of a notice, or any information about it, is an offence: see section 77B.

(2) The Integrity Commissioner may require that information specified under paragraph (1)(a) is to be given in writing.

(3) The notice must:

(a) be served on the person; and

(b) be signed by the Integrity Commissioner; and

(c) specify the period within which, and the manner in which, the person must comply with the notice.

(4) The period specified under paragraph (3)(c) must be at least 14 days after the day the notice is served on the person, unless the Integrity Commissioner considers that allowing a 14-day period

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would significantly prejudice a corruption investigation, in which case a shorter period may be specified.

(5) If a shorter period is specified under paragraph (3)(c), the Integrity Commissioner must record, in writing:
  (a) the name of the corruption investigation that would be prejudiced; and
  (b) why a 14-day period would significantly prejudice the investigation.

(6) The Integrity Commissioner may serve a notice on a person without holding a hearing.

76 Compliance with notice

Compliance with notice

(1) A person served with a notice under section 75 must comply with the notice:
  (a) within the period specified in the notice; or
  (b) within such further time as the Integrity Commissioner allows under subsection (3).

Note 1: Failure to comply with a notice is an offence: see section 78.

Note 2: See also subsection 150(2) in relation to section 149 certified information.

Extension of time

(2) A person served with a notice under section 75 may apply to the Integrity Commissioner, in writing, for further time to comply with the notice:
  (a) before the period expires; or
  (b) as soon as possible after the period expires.

(3) The Integrity Commissioner may allow a person served with a notice further time to comply with the notice whether or not an application has been made.

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Acknowledgement

(4) If a person served with a notice has given the information and/or produced the documents or things specified in the notice, the Integrity Commissioner must give the person a written acknowledgement of that fact.

9 Subsection 77(1)

Omit "to the Integrity Commissioner in accordance with a request under section 75 or 76", substitute "in accordance with a notice under section 75".

10 After Subdivision A of Division 1 of Part 9

Insert:

Subdivision AA—Prohibitions against disclosing information about notices

77A Disclosure of notice may be prohibited

Application

(1) This section applies in respect of a notice served on a person under section 75.

Notation prohibiting disclosure of information about notice

(2) The Integrity Commissioner may include a notation in the notice to the effect that disclosure of information about:

(a) the notice; or

(b) any official matter connected with the notice;

is prohibited except in the circumstances (if any) specified in the notation.

(3) The Integrity Commissioner must include a notation in the notice if the Integrity Commissioner is satisfied that failure to do so would reasonably be expected to prejudice:

(a) a person's safety or reputation; or

(b) the fair trial of a person who has been, or may be, charged with an offence; or

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(c) the investigation to which the notice relates or another corruption investigation; or

(d) any action taken as a result of an investigation referred to in paragraph (c).

(4) The Integrity Commissioner may include a notation in the notice if the Integrity Commissioner is satisfied that:

(a) failure to do so might prejudice:

(i) a person's safety or reputation; or

(ii) the fair trial of a person who has been, or may be, charged with an offence; or

(iii) the investigation to which the notice relates or another corruption investigation; or

(iv) any action taken as a result of an investigation referred to in subparagraph (iii); or

(b) failure to do so might otherwise be contrary to the public interest.

(5) The Integrity Commissioner must not include a notation in the notice in any other case.

Written statement to accompany notation

(6) If a notation is included in the notice, it must be accompanied by a written statement setting out the rights and obligations conferred or imposed by section 77B on the person on whom the notice is served.

Cancellation of notation

(7) A notation included in the notice is cancelled by this subsection if:

(a) the Integrity Commissioner concludes the investigation to which the notice relates; and

(b) any criminal proceedings or civil penalty proceedings resulting from the investigation are commenced.

(8) If a notation is cancelled by subsection (7), the Integrity Commissioner must advise the person who was served with the notated notice, in writing, of the cancellation.

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Relationship of notation with the Privacy Act 1988

(9) If:

(a) a notation has been included in the notice in relation to the disclosure of information about the notice or any official matter connected with the notice; and

(b) the notation has not been cancelled; and

(c) apart from this subsection, a credit reporting agency (within the meaning of section 11A of the *Privacy Act 1988*) would be required, under subsection 18K(5) of that Act, to make a note about the disclosure of the information;

such a note must not be made until the notation is cancelled.

77B Offences of disclosure

(1) A person commits an offence if:

(a) the person is served with a notice under section 75; and

(b) the notice includes a notation under section 77A; and

(c) the person discloses the existence of, or any information about:

(i) the notice; or

(ii) any official matter connected with the notice; and

(d) when the disclosure is made:

(i) the notation has not been cancelled by subsection 77A(7); and

(ii) the period of 5 years after the notice is served under section 75 has not ended.

Penalty: Imprisonment for 12 months.

(2) In proceedings for an offence against subsection (1), it is a defence if the person makes the disclosure:

(a) in the circumstances, if any, permitted by the terms of the notation; or

(b) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the notice; or

(c) to a legal aid officer for the purpose of seeking assistance under section 221 in relation to the notice; or

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(d) if the person is a body corporate—to an officer or agent of the body corporate for the purpose of ensuring compliance with the notice; or

(e) if the person is a legal practitioner—for the purpose of obtaining the agreement of another person under subsection 79(3) to the legal practitioner answering a question or producing a document or thing.

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

(3) A person commits an offence if:

(a) a disclosure is made to a person about:

(i) a notice under section 75 that includes a notation under section 77A; or

(ii) any official matter connected with a notice under section 75 that includes a notation under section 77A; and

(b) the disclosure is permitted under subsection (2) or (4) because the person is a person of a particular kind; and

(c) while the person is a person of that kind, the person discloses the existence of, or any information about:

(i) the notice; or

(ii) any official matter connected with the notice; and

(d) when the disclosure by the person is made:

(i) the notation has not been cancelled by subsection 77A(7); and

(ii) the period of 5 years after the notice is served under section 75 has not ended.

Penalty: Imprisonment for 12 months.

(4) In proceedings for an offence against subsection (3), it is a defence if the person discloses the information:

(a) if the person is an officer or agent of a body corporate referred to in paragraph (2)(d):

(i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the notice; or

(ii) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the notice; or

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(iii) to a legal aid officer for the purpose of seeking assistance under section 221 in relation to the notice; or

(b) if the person is a legal practitioner—for the purpose of giving legal advice, making representations, or seeking assistance under section 221, in relation to the notice; or

(c) if the person is a legal aid officer—for the purpose of obtaining legal advice or representation in relation to the notice.

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

(5) A person commits an offence if:

(a) a disclosure is made to a person about:

(i) a notice under section 75 that includes a notation under section 77A; or

(ii) any official matter connected with a notice under section 75 that includes a notation under section 77A; and

(b) the disclosure is permitted under subsection (2) or (4) because the person is a person of a particular kind; and

(c) when the person is no longer a person of that kind, the person:

(i) makes a record of the notice; or

(ii) discloses the existence of the notice; or

(iii) discloses any information about the notice or the existence of it; and

(d) when the record, or disclosure, is made by the person:

(i) the notation has not been cancelled by subsection 77A(7); and

(ii) the period of 5 years after the notice is served under section 75 has not ended.

Penalty: Imprisonment for 12 months.

(6) A reference in this section to disclosing something's existence includes disclosing information from which a person could reasonably be expected to infer its existence.

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11 Section 78

Repeal the section, substitute:

78 Failure to comply with notice

(1) A person commits an offence if:

(a) the person is served with a notice under section 75; and

(b) the person fails to comply with the notice:

(i) within the period specified in the notice; or

(ii) if the Integrity Commissioner has allowed the person further time under subsection 76(3)—within such further time.

Penalty: Imprisonment for 2 years.

Note 1: If a notice requires a document or thing to be produced, a legal practitioner may refuse to produce the document or thing in certain circumstances: see section 79.

Note 2: This section is not subject to the privilege against self-incrimination but there are limits on the uses to which the evidence the person gives may be put: see section 80.

(2) In proceedings for an offence against subsection (1), it is a defence if it is not reasonably practicable for the person to comply with the notice:

(a) within the period specified in the notice; or

(b) within such further time as allowed by the Integrity Commissioner under subsection 76(3).

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

12 Paragraphs 79(1)(a) and (b)

Omit "to the Integrity Commissioner".

13 Subsection 79(1)

Omit "requested to do so under section 76", substitute "served with a notice to do so under section 75".

14 Subsection 79(5)

Repeal the subsection, substitute:

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(5) If a legal practitioner gets agreement, as mentioned in subsection (3):

(a) the fact that he or she:

(i) gives information; or

(ii) produces a document or thing;

does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that information, document or thing; and

(b) the information or document does not cease to be the subject of legal professional privilege merely because it is given, produced or referred to.

15 Subsection 80(1)

Omit "requested to do so under section 75 or 76", substitute "served with a notice to do so under section 75".

16 Subsection 80(2)

Repeal the subsection.

17 Subsection 80(5)

Omit "requested to do so under section 75 or 76", substitute "served with a notice to do so under section 75".

18 Subsection 80(7)

Omit "or 76".

19 Subsections 81(1) and (2)

Omit "to the Integrity Commissioner in response to a request under section 75 or 76", substitute "in response to a notice served on the person under section 75".

20 Subsection 82(3)

Omit "corruption issue", substitute "a corruption issue".

21 Subsection 83(1)

After "the summons" (first occurring), insert "to do either or both of the following".

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22 Paragraph 83(1)(a)

Omit "or".

23 Paragraph 83(1)(b)

Repeal the paragraph, substitute:

(b) to produce documents or things specified in the summons;

if the Integrity Commissioner has reasonable grounds to suspect that the evidence, documents or things will be relevant to the investigation of a corruption issue or the conduct of a public inquiry.

24 Subsection 90(2)

Omit "give a such a direction", substitute "give such a direction".

25 Paragraph 92(2)(e)

Omit "95(2)", substitute "95(3)".

26 Subsection 95(5)

Repeal the subsection, substitute:

(5) If a legal practitioner gets agreement, as mentioned in subsection (3):

(a) the fact that he or she:

(i) answers the question; or

(ii) produces a document or thing;

does not otherwise affect a claim of legal professional privilege that anyone may make in relation to the answer, document or thing; and

(b) the answer or document does not cease to be the subject of legal professional privilege merely because it is given, produced or referred to.

27 Subsection 96(2)

Repeal the subsection.

28 Paragraph 96(4)(c)

After "section", insert "77B, 92 or".

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29 After Subdivision E of Division 2 of Part 9

Insert:

Subdivision EA—Contempt of ACLEI

96A Contempt of ACLEI

(1) A person is ***in contempt of ACLEI*** if he or she:

(a) when served with a summons to attend a hearing:

(i) fails to attend as required by the summons; or

(ii) fails to appear and report from day to day unless excused or released from further attendance by the Integrity Commissioner; or

(iii) refuses or fails to be sworn or make an affirmation at the hearing; or

(iv) subject to subsection (2), refuses or fails to answer a question at the hearing that the Integrity Commissioner requires the person to answer; or

(v) subject to subsection (3), refuses or fails to produce a document or thing that the person was required to produce by a summons or notice under this Act that was served on him or her as prescribed; or

(b) is a legal practitioner who is required to answer a question or produce a document or thing at a hearing and both of the following apply:

(i) the answer to the question would disclose, or the document or thing contains, a privileged communication made by or to the legal practitioner in his or her capacity as a legal practitioner;

(ii) he or she refuses to comply with the requirement and does not, when required by the Integrity Commissioner, give the Integrity Commissioner the name and address of the person to whom or by whom the communication was made; or

(c) gives evidence at a hearing that he or she knows is false or misleading in a material particular; or

(d) insults, disturbs or uses insulting language towards someone who the person knows:

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(i) is the Integrity Commissioner; and

(ii) is holding a hearing in the performance of his or her functions, or the exercise of his or her powers, as Integrity Commissioner; or

(e) creates a disturbance, or takes part in creating or continuing a disturbance, in or near a place that the person knows is being used to hold a hearing for the purpose of:

(i) investigating a corruption issue; or

(ii) conducting a public inquiry; or

(f) obstructs or hinders the Integrity Commissioner in the performance of his or her functions; or

(g) interrupts a hearing that is being held for the purpose of:

(i) investigating a corruption issue; or

(ii) conducting a public inquiry; or

(h) threatens a person present at a hearing that is being held for the purpose of:

(i) investigating a corruption issue; or

(ii) conducting a public inquiry.

(2) Subparagraph (1)(a)(iv) does not apply in the case of a legal practitioner who refuses or fails to answer a question at a hearing on the ground that the answer to the question would disclose a privileged communication made by or to the legal practitioner in his or her capacity as a legal practitioner.

(3) Subparagraph (1)(a)(v) does not apply in the case of a legal practitioner who refuses or fails to produce a document or thing at a hearing on the ground that the document or thing contains a privileged communication made by or to the legal practitioner in his or her capacity as a legal practitioner.

96B Federal Court or Supreme Court to deal with contempt

Application

(1) If, in respect of a hearing, the Integrity Commissioner is of the opinion that a person is in contempt of ACLEI, the Integrity Commissioner may apply to either of the following courts for the person to be dealt with in relation to the contempt:

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(a) the Federal Court;
(b) the Supreme Court of the State or Territory in which the hearing is held.

(2) Before making the application, the Integrity Commissioner must inform the person that the Integrity Commissioner proposes to make the application.

(3) The application must be accompanied by a certificate that states:
(a) the grounds for making the application; and
(b) evidence in support of the application.

(4) A copy of the certificate must be given to the person before, or at the same time as, the application is made.

(5) To avoid doubt, if the Integrity Commissioner makes an application under this section, the Integrity Commissioner need not give the evidence to the relevant person or authority under section 142.

How court may deal with application

(6) If, after:
(a) considering the matters specified in the certificate; and
(b) hearing or receiving any evidence or statements by or in support of ACLEI; and
(c) hearing or receiving any evidence or statements by or in support of the person;
the court to which the application was made finds that the person was in contempt of ACLEI, the court may deal with the person as if the acts or omissions involved constituted a contempt of that court.

(7) For the purposes of determining whether a person is in contempt of ACLEI under subsection (1), Chapter 2 of the *Criminal Code* applies as if:
(a) being in contempt of ACLEI were an offence; and
(b) references to a person being criminally responsible for an offence were references to a person being responsible for being in contempt of ACLEI.

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96C Conduct of contempt proceedings

(1) This section applies if an application is made to the Federal Court or to the Supreme Court of a State or Territory under section 96B.

(2) Proceedings in relation to the application are, subject to this Act, to be instituted, carried on, heard and determined in accordance with the laws (including any Rules of Court) that apply in relation to the punishment of a contempt of the court to which the application was made.

(3) In proceedings relating to the application, a certificate under subsection 96B(3) is prima facie evidence of the matters specified in the certificate.

96D Person in contempt may be detained

(1) If the Integrity Commissioner proposes to make an application under subsection 96B(1) in respect of a person, the Integrity Commissioner may, during the hearing concerned, direct a constable or an authorised officer to detain the person for the purpose of bringing the person before the relevant court for the hearing of the application.

(2) If the person is so detained:
   (a) the Integrity Commissioner must apply to the court as soon as practicable under subsection 96B(1) in respect of the person; and
   (b) the person must, subject to subsection (3) of this section, be brought before the court as soon as practicable.

(3) The court may:
   (a) direct that the person be released from detention on condition that he or she will appear before the court in relation to the application; or
   (b) order that the person continue to be detained until the application is determined.

(4) The court may also impose any other condition on the release, for example:
   (a) that the person surrender his or her passport; or

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(b) that the person give an undertaking as to his or her living arrangements; or

(c) that the person report as required to:

(i) the AFP; or

(ii) a police force or police service of a State; or

(iii) any other authority or person responsible for the enforcement of the laws of the Commonwealth or of the States.

(5) The court may at any time vary or revoke a condition imposed under subsection (4).

96E Integrity Commissioner may withdraw contempt application

(1) The Integrity Commissioner may, at any time, withdraw an application under subsection 96B(1).

(2) If:

(a) the Integrity Commissioner does so; and

(b) the person to whom the application relates is in detention under section 96D;

the person must be released from detention immediately.

96F Double jeopardy

(1) If an act or omission by a person is an offence against this Act and is also an offence against a law of a State, the person may be prosecuted and convicted under this Act or under that law of that State in respect of the act or omission, but nothing in this Act renders a person liable to be punished twice in respect of the same act or omission.

(2) If:

(a) an application is made to the Federal Court or a Supreme Court under subsection 96B(1) in respect of an act or omission by a person; and

(b) the person is dealt with by the court under that section in respect of the act or omission;

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the person is not liable to be prosecuted for an offence in respect of that act or omission.

(3) If a person is prosecuted for an offence in respect of an act or omission referred to in subsection 96A(1) without an application being made to the Federal Court or a Supreme Court under subsection 96B(1) in respect of the act or omission, an application must not be made under subsection 96B(1) in respect of the act or omission.

30 Section 93 (heading)

Repeal the heading, substitute:

93 Offences—attendance at hearings etc.

31 Section 94 (heading)

Repeal the heading, substitute:

94 Offences—disturbing or interrupting hearings

32 Subsection 99(1)

Repeal the subsection, substitute:

(1) An authorised officer may apply to a Judge of the Federal Court or of the Supreme Court of a State or Territory for a warrant to arrest a person if:

(a) both of the following apply:

(i) the person has been ordered to deliver his or her passport to the Integrity Commissioner (whether or not the person has complied with the order);

(ii) the authorised officer has reasonable grounds to believe that the person is likely to leave Australia for the purpose of avoiding giving evidence at a hearing before the Integrity Commissioner; or

(b) the person is to be served with a summons under section 83 and the authorised officer has reasonable grounds to believe that the person:

(i) has absconded or is likely to abscond; or

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(ii) is otherwise attempting, or likely to attempt, to evade service of the summons; or

(c) the authorised officer has reasonable grounds to believe that the person has committed an offence under subsection 93(1) or is likely to do so.

33 Subsection 100(1)

Omit all the words after "authorising", substitute "the arrest of the person".

34 After subsection 100(9)

Insert:

(9A) To avoid doubt, the authorised officer executing the warrant need not be the authorised officer who applied for the warrant.

35 Subsection 104(4)

Omit "a hearing that been held", substitute "a hearing that has been held".

36 At the end of subparagraph 110(4)(b)(iv)

Add "or".

37 After subparagraph 110(4)(b)(iv)

Insert:

(v) in any case—any eligible seizable item;

Note: This item relocates a subparagraph to its correct location within a paragraph.

38 Paragraph 117(2)(a)

After "authorised officer", insert "or a constable".

39 Paragraph 117(2)(b)

After "not an authorised officer", insert "or a constable".

40 Subsection 117(3)

Repeal the subsection, substitute:

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(3) Only an authorised officer or a constable may take part in searching a person.

41 At the end of section 142

Add:

Note: See also subsection 96B(5).

42 Paragraph 147(1)(d)

Omit "must".

43 Paragraph 150(2)(a)

Repeal the paragraph, substitute:

(a) a person is served with a notice under Division 1 of Part 9:

(i) to give information; or

(ii) to produce a document or thing; and

44 Subsection 150(2)

Omit "request", substitute "notice".

45 Paragraph 156(5)(a)

Omit "authorises", substitute "authorise".

46 Section 166 (heading)

Repeal the heading, substitute:

166 Application of Division

47 Section 166

Omit "Part", substitute "Division".

48 Subsection 167(5)

After "proposes to take action", insert ", or takes action,".

49 Subsection 167(5)

Omit "subsection 142(3) or (4)", substitute "subsection 144(3) or (4)".

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50 Paragraph 167(6)(b)

Omit "Integrity Commissioner's", substitute "special investigator's".

51 Subsection 187(2)

Omit "Integrity Commissioner", substitute "Assistant Integrity Commissioner".

Privacy Act 1988

52 Subsection 18K(5) (note)

Omit "section 91", substitute "sections 77A and 91".

Surveillance Devices Act 2004

53 Subsection 6(1) (definition of *federal law enforcement officer*)

After "paragraph (a)", insert ", (aa)".

54 Application—items 7 to 19

The amendments made by items 7 to 19 of this Schedule apply in relation to a notice served on a person under the *Law Enforcement Integrity Commissioner Act 2006* on or after this Schedule commences.

55 Application—section 96 of the *Law Enforcement Integrity Commissioner Act 2006*

Section 96 of the *Law Enforcement Integrity Commissioner Act 2006*, as amended by this Schedule, applies in relation to a hearing under that Act that begins on or after this Schedule commences.

56 Application—sections 96A to 96F of the *Law Enforcement Integrity Commissioner Act 2006*

Sections 96A to 96F of the *Law Enforcement Integrity Commissioner Act 2006*, as inserted by this Schedule, apply in relation to a hearing under that Act that begins on or after this Schedule commences.

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57 Application—section 100 of the *Law Enforcement Integrity Commissioner Act 2006*

Section 100 of the *Law Enforcement Integrity Commissioner Act 2006*, as amended by this Schedule, applies in relation to a warrant that is issued on or after this Schedule commences.

58 Application—item 37

The amendment made by item 37 of this Schedule applies in relation to a warrant issued on or after this Schedule commences.

59 Application—section 117 of the *Law Enforcement Integrity Commissioner Act 2006*

Section 117 of the *Law Enforcement Integrity Commissioner Act 2006*, as amended by this Schedule, applies in relation to a warrant that is executed on or after this Schedule commences.

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Schedule 5—Drugs, plants and precursors

Criminal Code Act 1995

1 Subsection 314.1(1) of the *Criminal Code* (after table item 1)

Insert:

1A	Benzylpiperazine (BZP)	2.0	250.0	0.75

2 Subsection 314.1(1) of the *Criminal Code* (after table item 7)

Insert:

7A	Ketamine	3.0	500.0	1.0

3 Subsection 314.1(1) of the *Criminal Code* (after table item 9)

Insert:

9A	Methcathinone	2.0	250.0	0.75

4 Subsection 314.1(1) of the *Criminal Code* (after table item 11)

Insert:

11A	4-Methylmethcathinone (4-MMC)	2.0	250.0	0.75

5 Subsection 314.3(1) of the *Criminal Code* (after table item 8)

Insert:

8A	Phenylpropanolamine	400.0	1.2

6 Subsection 314.4(1) of the *Criminal Code* (after table item 20)

Insert:

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20A	Benzylpiperazine (BZP)	2.0	0.75

7 Subsection 314.4(1) of the *Criminal Code* (after table item 83)

Insert:

83A	Ketamine	3.0	1.0

8 Subsection 314.4(1) of the *Criminal Code* (after table item 93)

Insert:

93A	Methamphetamine	2.0	0.75

9 Subsection 314.4(1) of the *Criminal Code* (table item 95)

Repeal the item, substitute:

95	Methcathinone	2.0	0.75

10 Subsection 314.4(1) of the *Criminal Code* (table item 99)

Repeal the item.

11 Subsection 314.4(1) of the *Criminal Code* (after table item 104)

Insert:

104A	4-Methylmethcathinone (4-MMC)	2.0	0.75

12 Subsection 314.6(1) of the *Criminal Code* (table item 10)

Repeal the item, substitute:

10	Phenylpropanolamine	3.2	1.2

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Customs Act 1901

13 Subsection 4(1)

Insert:

border controlled precursor has the same meaning as in Part 9.1 of the *Criminal Code*.

14 Subsection 183UA(1) (definition of *special forfeited goods*)

Repeal the definition, substitute:

special forfeited goods means:

(a) forfeited goods referred to in paragraph 229(1)(a) that are narcotic goods or consist of a border controlled precursor; and

(b) forfeited goods referred to in paragraph 229(1)(b), (e) or (n).

15 Subsection 183UA(1) (paragraph (b) of the definition of *special forfeited goods*)

Omit "or (n)", substitute ", (n) or (na)".

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Schedule 6—Proceeds of crime amendments

Part 1—Amendments

Director of Public Prosecutions Act 1983

1 Subsection 16A(1AB)

Repeal the subsection.

2 At the end of subsection 16A(1B)

Add:

Note: If the Director (or the Commissioner for the Australian Federal Police) applies for a restraining order under the *Proceeds of Crime Act 2002*, a court may make an order corresponding to the order mentioned in this subsection under section 28A of that Act.

3 Subsection 16A(2)

Omit ", (1AB)".

Proceeds of Crime Act 2002

4 Subsection 15B(1) (note 1)

Repeal the note, substitute:

Note 1: Paragraphs (a), (aa), (b) and (c) of the definition of ***authorised officer*** in section 338 cover certain persons performing functions under this Act for the Australian Federal Police, the Australian Commission for Law Enforcement Integrity, the Australian Crime Commission and Customs.

5 Section 15C (note)

Repeal the note, substitute:

Note: Paragraphs (a), (aa), (b) and (c) of the definition of ***authorised officer*** in section 338 cover certain persons performing functions under this Act for the Australian Federal Police, the Australian Commission for Law Enforcement Integrity, the Australian Crime Commission and Customs.

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6 Subsection 15D(1) (note)

Repeal the note, substitute:

Note: Paragraphs (a), (aa), (b) and (c) of the definition of ***authorised officer*** in section 338 cover certain persons performing functions under this Act for the Australian Federal Police, the Australian Commission for Law Enforcement Integrity, the Australian Crime Commission and Customs.

7 After section 15F

Insert:

15FA Prohibition of publication of evidence—proceedings for freezing orders

(1) If an *authorised officer applies to a magistrate for a *freezing order in accordance with this Division, the magistrate may make an order under subsection (2).

(2) If it appears to the magistrate to be necessary in order to prevent prejudice to the administration of justice, the magistrate may make an order prohibiting or restricting the publication of all or any of the following matters:

(a) if the application is made under section 15C (in person)—the matters referred to in that section that are contained in an affidavit made in support of the application;

(b) if the application is made under section 15D (by telephone or other electronic means)—the matters referred to in paragraph 15D(2)(a) that are contained, or that are to be contained, in an affidavit made in support of the application.

(3) The magistrate may make an order under subsection (2) at any time after the application is made and before it is determined.

(4) The power conferred by subsection (2) is in addition to, and is not taken to derogate from, any other power of the magistrate.

8 At the end of subsection 15P(1)

Add:

Note: Paragraphs (a), (aa), (b) and (c) of the definition of ***authorised officer*** in section 338 cover certain persons performing functions under this

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Act for the Australian Federal Police, the Australian Commission for Law Enforcement Integrity, the Australian Crime Commission and Customs.

9 At the end of Division 2 of Part 2-1

Add:

28A Prohibition of publication of evidence—proceedings for restraining orders

(1) If a *proceeds of crime authority applies to a court for a *restraining order, the court may make an order under subsection (2).

(2) If it appears to the court to be necessary in order to prevent prejudice to the administration of justice, the court may make an order prohibiting or restricting the publication of all or any of the matters referred to in the following provisions (whichever is applicable) that are contained in an affidavit made in support of the application:

(a) subsection 17(3);

(b) subsection 18(3);

(c) paragraph 19(1)(e);

(d) subsection 20(3);

(e) subsection 20A(3).

(3) The court may make an order under subsection (2) at any time after the application is made and before it is determined.

(4) The power conferred by subsection (2) is in addition to, and is not taken to derogate from, any other power of the court.

10 Section 338 (paragraph (a) of the definition of *authorised officer*)

Repeal the paragraph, substitute:

(a) any of the following, if authorised by the Commissioner of the Australian Federal Police:

(i) an *AFP member;

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(ii) an AFP employee within the meaning of the *Australian Federal Police Act 1979*;

(iii) an employee of an authority of a State or Territory, or an authority of the Commonwealth, within the meaning of the *Australian Federal Police Act 1979*, while he or she is assisting the Australian Federal Police in the performance of its functions under an agreement under section 69D of that Act; or

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Part 2—Application of amendments

11 Application—publication prohibitions relating to restraining and freezing orders

(1) The amendments of the *Director of Public Prosecutions Act 1983* made by items 1, 2 and 3 of this Schedule, and the amendment of the *Proceeds of Crime Act 2002* made by item 9 of this Schedule, apply in relation to an application made on or after the commencement of those items for a restraining order under the *Proceeds of Crime Act 2002* (whether the conduct on the basis of which the restraining order is sought occurred before, on or after that commencement).

Note: For the commencement of items 1, 2, 3 and 9 of this Schedule, see section 2.

(2) The amendment of the *Proceeds of Crime Act 2002* made by item 7 of this Schedule applies in relation to an application made on or after the commencement of that item for a freezing order under that Act (whether the conduct on the basis of which the freezing order is sought occurred before, on or after that commencement).

Note: Item 7 of this Schedule commences on the day after this Act receives the Royal Assent (see section 2).

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Schedule 7—Releasing federal offenders from prison

Crimes Act 1914

1 Subsection 16(1) (definition of *licence period*)

Repeal the definition, substitute:

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

(a) if a recognizance release order has been made for the federal sentence—at the end of the day before the person is eligible for release in accordance with the recognizance release order; and

(b) in any other case:

(i) at the end of the last day of any federal sentence that is, on the day of the release, being served or to be served (after deducting any remission or reduction that is applicable); or

(ii) if the person has been given a federal life sentence—at the end of the day specified in the licence as the day on which the licence period ends.

2 Subsection 16(1) (definition of *parole order*)

Repeal the definition, substitute:

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

3 Subsection 16(1) (definition of *parole period*)

Repeal the definition, substitute:

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

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4 Subsection 16(1) (definition of *released on parole*)

Omit "section 19AL", substitute "a parole order in accordance with section 19AM".

5 Subsection 16(1) (definition of *supervision period*)

Repeal the definition, substitute:

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

(a) starting when the person is released from prison on parole or licence; and

(b) ending at the earlier of the following times:

(i) the end of the person's parole period or licence period;

(ii) if the parole order or licence specifies an earlier time at which the supervision period is to end—that earlier time.

6 Sections 19AL and 19AM

Repeal the sections, substitute:

19AL Release on parole—making of parole order

(1) The Attorney-General must, before the end of a non-parole period fixed for one or more federal sentences imposed on a person, either make, or refuse to make, an order directing that the person be released from prison on parole (a ***parole order***).

Note 1: For when a person is released on parole in accordance with a parole order, see section 19AM.

Note 2: A person released on parole must comply with any conditions of the parole order during the parole period (see sections 19AMA, 19AN and 19AU).

Note 3: Subsection (4) of this section affects the operation of subsection (1) if the person will be serving a State or Territory sentence at the end of the non-parole period.

(2) If the Attorney-General refuses to make a parole order for a person under subsection (1) or paragraph (b) of this subsection, the Attorney-General must:

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(a) give the person a written notice, within 14 days after the refusal, that:
(i) informs the person of the refusal; and
(ii) includes a statement of reasons for the refusal; and
(iii) sets out the effect of paragraph (b) of this subsection; and
(b) reconsider the making of a parole order for the person and either make, or refuse to make, such an order, within 12 months after the refusal.

(3) A parole order must:
(a) be in writing; and
(b) specify whether or not the person is to be released subject to supervision; and
(c) if it is proposed that the supervision period for a person released on parole subject to supervision should end before the end of the person's parole period—specify the day on which the supervision period ends.

(4) Despite subsection (1), if the person will be serving a State or Territory sentence on the day after the end of the non-parole period, the requirement under that subsection to make, or refuse to make, a parole order does not apply:
(a) for a federal sentence, or federal sentences, that do not include a life sentence—if the parole period would end while the person would still be imprisoned for the State or Territory offence; and
(b) for a federal sentence, or federal sentences, that include a life sentence—until the release of the person from prison for the State or Territory offence (but a decision may be made under that subsection at any time during the 3 month period before the person's expected release); and
(c) in any case—if the State or Territory sentence is a life sentence for which a non-parole period has not been fixed.

Note: The effect of this subsection and subsection 19AM(2) is that a parole order may sometimes still be made for a person while the person is serving a State or Territory sentence, but the person will not be released in accordance with the parole order until the person is released from prison for the State or Territory sentence.

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19AM Release on parole—when is a person released

(1) A person must be released from prison on parole in accordance with a parole order on whichever of the following days is applicable (subject to subsections (2) and (3) and 19AZD(2)):

(a) for a parole order made before the end of the non-parole period—the earlier of the following days:

(i) the last day of the non-parole period;

(ii) an earlier day (if any) specified in the parole order for the purposes of this subparagraph (not being earlier than 30 days before the end of the non-parole period);

(b) for a parole order made after the end of the non-parole period—the later of the following days:

(i) the day after the parole order is made;

(ii) a later day (if any) specified in the parole order for the purposes of this subparagraph (not being later than 30 days after the order is made).

Note 1: Subsection (2) of this section provides a different release day if the person is imprisoned for a State or Territory offence on the release day that would otherwise apply under this subsection.

Note 2: Subsection (3) requires the person to certify his or her acceptance of the parole order conditions before he or she may be released.

Note 3: Subsection 19AZD(2) may allow a person to be released slightly earlier than the day that would otherwise apply under this subsection (for example if the release day would otherwise fall on a weekend or public holiday).

(2) However, if the person is imprisoned for a State or Territory offence on the day he or she would otherwise be eligible for release under subsection (1), the person must be released from prison on parole in accordance with the parole order on the same day he or she is released from prison (including on parole) for the State or Territory offence.

(3) Despite subsections (1) and (2), the person must not be released from prison on parole in accordance with the parole order unless, before, on or after the release day provided by subsection (1) or (2), the person certifies on the parole order (or a copy of the order) that he or she accepts the conditions to which the order is subject.

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Note: A person released on parole must comply with any conditions of the parole order during the parole period (see sections 19AN and 19AU).

19AMA Release on parole—parole period

(1) For the purposes of this Part, the ***parole period*** for a person for whom a parole order has been made is the period starting in accordance with subsection (2) and ending in accordance with subsection (3).

Note: A person released on parole must comply with any conditions of the parole order during the parole period (see sections 19AN and 19AU).

(2) The person's parole period starts at the earlier of the following times:

(a) when the person is released from prison on parole;

(b) if the person is serving a State or Territory sentence at the time the parole order is made—when the person certifies on the parole order (or a copy of the order) that he or she accepts the conditions to which the order is subject.

(3) The person's parole period ends:

(a) at the end of the last day of any federal sentence that is, on the day of the release, being served or to be served (after deducting any remission or reduction that is applicable); or

(b) if the person has been given a federal life sentence—at the later of the following times:

(i) 5 years after the person is released from prison on parole in accordance with section 19AM;

(ii) the end of a later day (if any) specified in the parole order for the purposes of this subparagraph (not being a day earlier than 5 years after the person's expected release from prison in accordance with the order).

7 Paragraph 19AN(1)(b)

Omit "if, under subsection 19AL(4), the day on which a supervision period ends is fixed in the parole order", substitute "if the parole order specifies in accordance with subsection 19AL(3) that the person is to be released subject to supervision".

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8 Subsection 19AN(2)

Omit all the words after "order by", substitute:

doing any or all of the following:

(a) varying or revoking a condition of the parole order;

(b) imposing additional conditions on the parole order;

(c) changing the day on which the supervision period ends.

9 Paragraph 19AP(6)(b)

Repeal the paragraph, substitute:

(b) specify whether or not the person is to be released subject to supervision; and

(c) if it is proposed that the supervision period for a person released on licence subject to supervision should end before the end of the person's licence period—specify the day on which the supervision period ends.

10 Paragraph 19AP(7)(b)

Omit "if, under subsection (6), the day on which a supervision period ends is fixed in the licence", substitute "if the licence specifies in accordance with subsection (6) that the person is to be released subject to supervision".

11 Subsection 19AP(8)

Omit all the words after "licence by", substitute:

doing any or all of the following:

(a) varying or revoking a condition of the licence;

(b) imposing additional conditions on the licence;

(c) changing the day on which the supervision period ends.

12 Application of amendments

Licences

(1) The amendments made by items 1, 9 and 11 of this Schedule apply in relation to a licence granted under section 19AP of the amended law at or after the commencement.

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Parole

(2) The amendments made by items 2, 3, 4, 6 and 8 of this Schedule:

(a) apply in relation to a person for whom a non-parole period has been fixed, whether the person is sentenced before, at or after the commencement; but

(b) do not apply in relation to a person if a parole order has been made for the person under section 19AL of the old law.

(3) Paragraph 19AL(2)(b) of the amended law applies in accordance with subitem (2) in relation to a person for whom an order has been made under paragraph 19AL(2)(b) of the old law (directing that the person not be released on parole) as if the Attorney-General had refused to make a parole order for the person at the commencement.

Note: This means the Attorney-General will be required to reconsider making a parole order for the person within 12 months of the commencement.

Supervision periods for licences and parole

(4) The amendments made by items 5, 7 and 10 of this Schedule apply in relation to a parole order made under section 19AL of the amended law, or a licence granted under section 19AP of the amended law, at or after the commencement.

Definitions

(5) In this item:

amended law means the *Crimes Act 1914*, as in force at and after the commencement.

commencement means the commencement of this item.

old law means the *Crimes Act 1914*, as in force immediately before the commencement.

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Schedule 8—Enforcement of fines

Crimes Act 1914

1 Paragraph 15A(1)(b)

After "the modifications", insert "(if any)".

2 Paragraphs 15A(1AB)(a), (b), (c) and (d)

Repeal the paragraphs.

3 Paragraph 15A(1AB)(g)

Omit "(a), (b), (c), (d),".

4 Before subsection 15A(1AD)

Insert:

(1ACB) To avoid doubt, if a court makes an order imposing a penalty for failure to pay a fine, whether or not the penalty is described in subsection (1AB), a person or authority other than a court may take action to enforce the penalty without making an application under paragraph (1AA)(a), even if the penalty is imposed as an alternative penalty.

5 Application

The amendment made by item 4 of this Schedule applies in relation to an order that is made before, on or after the commencement of this item.

6 Pending applications to court

(1) If:

(a) an application is made to a court under paragraph 15A(1AA)(a) of the *Crimes Act 1914* before the commencement of this item to impose a penalty described in:

(i) paragraph 15A(1AB)(a), (b), (c) or (d) of the old law; or

(ii) paragraph 15A(1AB)(g) of the old law to the extent that that paragraph relates to paragraph 15A(1AB)(a), (b), (c) or (d) of the old law; and

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(b) at commencement, the court has not made an order in relation to the application;

the application is taken to have been withdrawn.

(2) In this item:

old law means section 15A of the *Crimes Act 1914* as in force immediately before the commencement of this item.

7 Authority for past actions taken to enforce fines etc.

(1) This item applies in relation to an action taken, before the commencement of this item, by a person or authority (other than a court) to impose a penalty described in:

(a) paragraph 15A(1AB)(a), (b), (c) or (d) of the old law; or

(b) paragraph 15A(1AB)(g) of the old law to the extent that that paragraph relates to paragraph 15A(1AB)(a), (b), (c) or (d) of the old law.

(2) The person or authority had the power to take the action, and is taken always to have had the power to take the action, to impose such a penalty.

(3) In this item:

old law means section 15A of the *Crimes Act 1914* as in force immediately before the commencement of this item.

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Schedule 9—Re-appointment of Integrity Commissioner

Law Enforcement Integrity Commissioner Act 2006

1 Subsection 175(3)

Omit "5 years" (second occurring), substitute "7 years".

2 Application

The amendment made by item 1 of this Schedule applies in relation to a person appointed or re-appointed as the Law Enforcement Integrity Commissioner before, on or after the commencement of this item.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Crimes Legislation Amendment (Powers and Offences) Act 2012	24, 2012	4 Apr 2012	Sch 1 (items 1–75), Sch 2 (items 1–16), Sch 3, Sch 4, Sch 6 and Sch 8: 5 Apr 2012 (s 2(1) items 2, 4, 6, 7, 10, 11, 12, 13, 15) Sch 1 (items 76–80) and Sch 7: 4 Oct 2012 (s 2(1) items 3, 14) Sch 2 (items 17–29): 25 June 2012 Sch 5 (item 15): does not commence (s 2(1) item 9) Remainder: 4 Apr 2012 (s 2(1) items 1, 8, 16)	
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 2 (item 12): 4 Apr 2012 (s 2(1) item 12) Sch 2 (items 6–11): 5 Apr 2012 (s 2(1) items 10, 11)	—

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Endnote 4—Amendment history

Provision affected	How affected
Schedule 2	
Part 1	
item 3	am No 136, 2012
item 13	am No 136, 2012
item 14	am No 136, 2012
item 15	am No 136, 2012
Schedule 3	
item 4	am No 136, 2012
Schedule 4	
item 37	am No 136, 2012

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