



# **Telecommunications Legislation Amendment (International Production Orders) Act 2021**

**No. 78, 2021**

**An Act to amend the *Telecommunications  
(Interception and Access) Act 1979*, and for other  
purposes**

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



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No. 78, 2021

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**An Act to amend the *Telecommunications  
(Interception and Access) Act 1979*, and for other  
purposes**

[Assented to 23 July 2021]

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Telecommunications Legislation Amendment  
(International Production Orders) Act 2021*.

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No. 78, 2021      *Telecommunications Legislation Amendment (International Production  
Orders) Act 2021*      1

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## 2 Commencement

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

| Commencement information                                                        |                                                                                                                                                                                                                                                                                                                        |              |
|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Column 1                                                                        | Column 2                                                                                                                                                                                                                                                                                                               | Column 3     |
| Provisions                                                                      | Commencement                                                                                                                                                                                                                                                                                                           | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent.                                                                                                                                                                                                                                                                            | 23 July 2021 |
| 2. Schedule 1, Parts 1 and 2                                                    | The day after this Act receives the Royal Assent.                                                                                                                                                                                                                                                                      | 24 July 2021 |
| 3. Schedule 1, Part 3                                                           | The later of:<br>(a) immediately after the commencement of the provisions covered by table item 2;<br>and<br>(b) the commencement of the <i>Federal Circuit and Family Court of Australia Act 2021</i> .<br><br>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. |              |
| 4. Schedule 1, Part 4                                                           | The day after this Act receives the Royal Assent.                                                                                                                                                                                                                                                                      | 24 July 2021 |

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.

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### 3 Schedules

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

## Schedule 1—Amendments

### Part 1—General amendments

#### *Australian Crime Commission Act 2002*

##### **1 Paragraph 19A(5)(d)**

After “*Telecommunications (Interception and Access) Act 1979*”, insert “and clause 152 of Schedule 1 to that Act”.

##### **2 Schedule 1**

After “*Telecommunications (Interception and Access) Act 1979*, sections 63 and 133”, insert “and clause 152 of Schedule 1”.

#### *Australian Security Intelligence Organisation Act 1979*

##### **3 At the end of section 18**

Add:

*Communicating information to the Australian Designated Authority etc.*

- (5) A person referred to in subsection (1) may communicate information to:
- (a) the Australian Designated Authority (within the meaning of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*); or
  - (b) an APS employee in the Attorney-General’s Department (within the meaning of that Schedule);
- for the purpose of the Australian Designated Authority exercising a power, or performing a function, under that Schedule.

##### **4 After subsection 94(2BB)**

Insert:

- (2BBA) A report under subsection (1) must also include a statement of:
- (a) the relevant statistics about applications made by the Organisation under clause 83 of Schedule 1 to the

*Telecommunications (Interception and Access) Act 1979*  
during the period; and

- (b) the relevant statistics about applications made by the Organisation under clause 92 of that Schedule during the period; and
- (c) the relevant statistics about applications made by the Organisation under clause 101 of that Schedule during the period; and
- (d) the number of international production orders issued under clause 89 of that Schedule that were given by the Australian Designated Authority to prescribed communications providers during the period; and
- (e) the number of international production orders issued under clause 98 of that Schedule that were given by the Australian Designated Authority to prescribed communications providers during the period; and
- (f) the number of international production orders issued under clause 107 of that Schedule that were given by the Australian Designated Authority to prescribed communications providers during the period; and
- (g) for each designated international agreement—the number of international production orders issued under Part 4 of that Schedule that:
  - (i) were given by the Australian Designated Authority to prescribed communications providers during the period; and
  - (ii) invoked the designated international agreement; and
- (h) if subparagraph 89(2)(e)(ii) or (f)(ii) of that Schedule applied to one or more international production orders issued under clause 89 of that Schedule during the period—the number of those orders; and
- (i) the number of international production orders cancelled by the Australian Designated Authority under clause 112 of that Schedule during the period; and
- (j) the number of international production orders revoked by the Director-General of Security under clause 116 of that Schedule during the period; and
- (k) if one or more international production orders issued under Part 4 of that Schedule were cancelled by the Australian

Designated Authority under clause 122 of that Schedule during the period—the number of those orders; and

- (l) if there were one or more occasions during the period when protected information obtained in accordance with an international production order issued under Part 4 of that Schedule was communicated by an ASIO official to a person other than an ASIO official—the number of those occasions; and
- (m) if one or more objections were received by the Australian Designated Authority under clause 121 of that Schedule during the period in relation to international production orders issued under Part 4 of that Schedule:
  - (i) the number of international production orders to which those objections relate; and
  - (ii) the number of each type of those orders; and
  - (iii) for each designated international agreement—the number of those orders that invoked the designated international agreement.

(2BBB) An expression used in subsection (2BBA) has same meaning as in Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*.

## ***Freedom of Information Act 1982***

### **5 Schedule 3**

After “*Telecommunications (Interception and Access) Act 1979*, sections 63 and 133”, insert “and clause 152 of Schedule 1”.

## ***Inspector-General of Intelligence and Security Act 1986***

### **5A After section 34**

Insert:

**34AA Disclosure of IPO information to the Ombudsman and the Australian Designated Authority etc.**

- (1) The Inspector-General, or a member of the staff of the Inspector-General, may divulge or communicate IPO information to an Ombudsman official if:
  - (a) the information is relevant to the Ombudsman's functions or powers; and
  - (b) the Inspector-General is satisfied on reasonable grounds that the Ombudsman has satisfactory arrangements in place for protecting the information.
- (2) The Inspector-General, or a member of the staff of the Inspector-General, may divulge or communicate IPO information to an Australian Designated Authority official if:
  - (a) the information is relevant to the Australian Designated Authority's functions or powers under Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*; and
  - (b) the Inspector-General is satisfied on reasonable grounds that the Australian Designated Authority has satisfactory arrangements in place for protecting the information.
- (3) In this section:

*Australian Designated Authority* has the same meaning as in Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*.

*Australian Designated Authority official* means:

- (a) the Australian Designated Authority; or
- (b) a person who:
  - (i) is an APS employee in the Department administered by the Attorney-General; and
  - (ii) has duties relating to the functions or powers of the Australian Designated Authority under Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*.

*IPO information* means:

- (a) protected information within the meaning of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*; or
- (b) information relevant to the operation of that Schedule.

**Ombudsman official** has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.

## ***Intelligence Services Act 2001***

### **5B After paragraph 29(1)(be)**

Insert:

- (bf) to commence, by the earlier of the following:
    - (i) the fifth anniversary of the day on which Schedule 1 to the *Telecommunications (Interception and Access) Act 1979* commences;
    - (ii) the third anniversary of the day on which the first designated international agreement (within the meaning of that Schedule) enters into force for Australia;
- a review of the operation, effectiveness and implications of that Schedule; and

## ***International Criminal Court Act 2002***

### **6 After subsection 69A(1)**

Insert:

- (1A) The Attorney-General may authorise, in writing, the provision of material to the ICC if:
  - (a) the ICC has requested the material; and
  - (b) the Attorney-General is satisfied that the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and
  - (c) the material is or includes protected information (within the meaning of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*) that:

- (i) was obtained in accordance with an international production order issued under Part 2 or 3 of that Schedule; or
- (ii) relates to such an international production order; and
- (d) if the material is or includes protected information (within the meaning of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*) that:
  - (i) was obtained in accordance with an international production order issued under clause 30 or 60 of that Schedule; or
  - (ii) relates to such an international production order; the Attorney-General is satisfied that the investigation is into, or the proceeding relates to, an offence punishable by a maximum penalty of imprisonment for 7 years or more, or imprisonment for life; and
- (e) the Attorney-General is satisfied that the material is lawfully in the possession of a law enforcement agency.

#### **7 Subsection 69A(2)**

Omit “The authorisation”, substitute “An authorisation under subsection (1) or (1A)”.

### ***Law Enforcement Integrity Commissioner Act 2006***

#### **8 Subsection 5(1) (paragraph (c) of the definition of *law enforcement secrecy provision*)**

After “*Telecommunications (Interception and Access) Act 1979*”, insert “and clause 152 of Schedule 1 to that Act”.

### ***Mutual Assistance in Criminal Matters Act 1987***

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

Insert:

***international production order*** has the same meaning as in Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*.

**10 Subsection 3(1) (definition of *protected information*)**

Repeal the definition.

**11 Subsection 3(1)**

Insert:

***protected IPO intercept information*** means information that:

- (a) is protected information (within the meaning of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*); and
- (b) either:
  - (i) was obtained in accordance with an international production order issued under clause 30 or 60 of that Schedule; or
  - (ii) relates to such an international production order.

***protected IPO stored communications information*** means information that:

- (a) is protected information (within the meaning of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*); and
- (b) either:
  - (i) was obtained in accordance with an international production order issued under clause 39 or 69 of that Schedule; or
  - (ii) relates to such an international production order.

***protected IPO telecommunications data information*** means information that:

- (a) is protected information (within the meaning of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*); and
- (b) either:
  - (i) is telecommunications data obtained in accordance with an international production order; or
  - (ii) relates to an international production order that required the disclosure of telecommunications data.

***protected SD information*** means information that is protected information within the meaning of paragraph 44(1)(a), (aa), (b) or (c) of the *Surveillance Devices Act 2004*.

***telecommunications data*** (except when used in Part IIIB) has the same meaning as in Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*.

**12 Subsection 13A(2) (table item 1, column 1)**

Omit “protected information”, substitute “protected SD information”.

**13 Subsection 13A(2) (at the end of the table)**

Add:

|   |                                                                                                                                                   |                                                                                                                                   |
|---|---------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| 4 | material that is or includes protected IPO intercept information                                                                                  | a serious offence punishable by a maximum penalty of imprisonment for 7 years or more, imprisonment for life or the death penalty |
| 5 | material that is or includes:<br>(a) protected IPO stored communications information; or<br>(b) protected IPO telecommunications data information | a serious offence punishable by a maximum penalty of imprisonment for 3 years or more, imprisonment for life or the death penalty |

***Ombudsman Act 1976***

**13A After subsection 35(3)**

Insert:

- (3A) Subsection (2) does not prevent an officer from divulging or communicating IPO information to an IGIS official if:
- (a) the information is relevant to the functions or powers of the Inspector-General of Intelligence and Security; and
  - (b) the Ombudsman is satisfied on reasonable grounds that the Inspector-General of Intelligence and Security has satisfactory arrangements in place for protecting the information.

- (3B) Subsection (2) does not prevent an officer from divulging or communicating IPO information to an Australian Designated Authority official if:
- (a) the information is relevant to the Australian Designated Authority's functions or powers under Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*; and
  - (b) the Ombudsman is satisfied on reasonable grounds that the Australian Designated Authority has satisfactory arrangements in place for protecting the information.

**13B At the end of section 35**

Add:

- (9) In this section:

***Australian Designated Authority*** has the same meaning as in Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*.

***Australian Designated Authority official*** means:

- (a) the Australian Designated Authority; or
- (b) a person who:
  - (i) is an APS employee in the Department administered by the Attorney-General; and
  - (ii) has duties relating to the functions or powers of the Australian Designated Authority under Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*.

***IGIS official*** has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.

***IPO information*** means:

- (a) protected information within the meaning of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*; or
- (b) information relevant to the operation of that Schedule.

***Telecommunications (Interception and Access) Act 1979***

**14 Title**

Omit “related”, substitute “other”.

**15 Subsection 5(1) (at the end of the definition of access)**

Add “This definition does not apply to Schedule 1.”.

**19 Subsection 5(1) (at the end of the definition of equipment)**

Add “This definition does not apply to Schedule 1.”.

**20 Subsection 5(1) (definition of intended recipient)**

Before “has”, insert “(except when used in Schedule 1)”.

**21 Subsection 5(1) (definition of issuing authority)**

Before “means”, insert “(except when used in Schedule 1)”.

**22 Subsection 5(1) (at the end of the definition of lawfully accessed information)**

Add “, but does not include information obtained in accordance with an international production order (within the meaning of Schedule 1)”.

**23 Subsection 5(1) (definition of nominated AAT member)**

Before “means”, insert “(except when used in Schedule 1)”.

**24 Subsection 5(1) (definition of record)**

Before “means” (first occurring), insert “(except when used in Schedule 1)”.

**25 Subsection 5(1) (definition of relevant statistics)**

Before “means”, insert “(except when used in Schedule 1)”.

**26 Subsection 5(1) (definition of stored communication)**

Before “means”, insert “(except when used in Schedule 1)”.

**27 Subsection 5(1) (at the end of the definition of *telecommunications network*)**

Add “This definition does not apply to Schedule 1.”.

**28 Subsection 5(1) (definition of *telephone application*)**

Before “means”, insert “(except when used in Schedule 1)”.

**29 Section 5A**

After “this Act”, insert “(other than Schedule 1)”.

**30 Section 5F**

After “this Act”, insert “(other than Schedule 1)”.

**31 Section 5G**

After “this Act”, insert “(other than Schedule 1)”.

**32 Subsection 6(1)**

After “this Act”, insert “(other than Schedule 1)”.

**33 Subsection 6D(1) (definition of *eligible Judge*)**

Before “means”, insert “(except when used in Schedule 1)”.

**34 Subsections 6D(3) and (4)**

After “this Act”, insert “(other than Schedule 1)”.

**35 After subsection 6DB(3)**

Insert:

(3A) An appointment under subsection (1) has no effect for the purposes of Schedule 1.

**36 Subsection 6DB(4)**

After “this Act”, insert “(other than Schedule 1)”.

**37 Subsection 6E(1)**

Omit “subsection (2)”, substitute “subsections (2) and (3)”.

**38 At the end of section 6E**

Add:

- (3) A reference in this Act to lawfully intercepted information does not include a reference to information obtained in accordance with an international production order (within the meaning of Schedule 1).

**39 Section 6P**

After “this Act”, insert “(other than Schedule 1)”.

**40 After paragraph 7(2)(bb)**

Insert:

- (bc) an act or thing done in compliance with an international production order (within the meaning of Schedule 1); or

**41 After paragraph 108(2)(cb)**

Insert:

- (cc) an act or thing done in compliance with an international production order (within the meaning of Schedule 1); or

**42 After section 299**

Insert:

**299A Schedule 1**

Schedule 1 has effect.

**43 At the end of the Act**

Add:

**Schedule 1—International production orders**

Note: See section 299A.

## Part 1—Introduction

### 1 Simplified outline of this Schedule

- This Schedule provides for a scheme to facilitate cooperation in law enforcement matters between Australia and each foreign country that is a party to a designated international agreement.
- The scheme deals with electronic information held by, or under the control of, prescribed communications providers.
- The scheme has the following components:
  - (a) the issue under this Schedule of international production orders that are directed to prescribed communications providers;
  - (b) in a case where a corresponding order is issued by a competent authority of a foreign country in accordance with a designated international agreement—the exemption of acts or things done in compliance with such an order from Commonwealth laws restricting interception or disclosure.
- The scheme extends to matters outside Australia.
- An international production order may be issued for purposes in connection with:
  - (a) the investigation of an offence of a serious nature; or
  - (b) the monitoring of a person subject to a control order, so as to protect the public from terrorist acts, prevent support for terrorist acts and hostile acts overseas and detect breaches of the control order; or
  - (c) the carrying out by the Organisation of its functions.
- There are 3 types of international production orders:
  - (a) international production orders relating to interception; and

- (b) international production orders relating to stored communications; and
- (c) international production orders relating to telecommunications data.

## 2 Definitions

In this Schedule:

**access**, when used in relation to material, includes:

- (a) access that is subject to a pre-condition (for example, the use of a password); and
- (b) access by way of push technology; and
- (c) access by way of a standing request.

**account** includes:

- (a) a free account; and
- (b) a pre-paid account; and
- (c) anything that may reasonably be regarded as the equivalent of an account.

**ASIO official** means:

- (a) the Director-General of Security; or
- (b) a Deputy Director-General of Security; or
- (c) an ASIO employee; or
- (d) an ASIO affiliate.

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

**Australian Designated Authority** means the Secretary of the Attorney-General's Department.

**based in** a foreign country has the meaning given by clause 10A.

**certified copy**:

- (a) in relation to an international production order issued under clause 30—has the meaning given by clause 174; or
- (b) in relation to an international production order issued under clause 39—has the meaning given by clause 175; or

- (c) in relation to an international production order issued under clause 48—has the meaning given by clause 176; or
- (d) in relation to an international production order issued under clause 60—has the meaning given by subclause 177(2); or
- (e) in relation to an international production order issued under clause 69—has the meaning given by subclause 177(4); or
- (f) in relation to an international production order issued under clause 78—has the meaning given by subclause 177(6); or
- (g) in relation to an international production order issued under clause 89—has the meaning given by subclause 178(2); or
- (h) in relation to an international production order issued under clause 98—has the meaning given by subclause 178(4); or
- (i) in relation to an international production order issued under clause 107—has the meaning given by subclause 178(6).

***control order IPO agency*** means a control order warrant agency.

***designated international agreement*** has the meaning given by clause 3.

***eligible Judge*** has the meaning given by clause 14.

***eligible position-holder*** means an ASIO employee, or an ASIO affiliate, who holds, or is acting in, a position in the Organisation that is equivalent to or higher than a position occupied by an Executive Level 2 APS employee.

***general electronic content service*** has the meaning given by clause 8.

***general electronic content service provider*** means a person who provides a general electronic content service to the public or a section of the public.

***individual transmission service*** means a transmission service to the extent to which the service is supplied using a particular telecommunications identifier.

***individual message/call application service*** means a message/call application service to the extent to which the service is provided using a particular telecommunications identifier.

***intended recipient*** of a communication has the meaning given by clause 11.

***intercept*** means:

- (a) record; or
- (b) live stream to a single destination.

***international production order*** means an international production order issued under this Schedule.

***issuing authority*** means a person in respect of whom an appointment is in force under clause 16.

***manager*** of a prescribed communications provider means:

- (a) the chief executive officer (however described) of the provider; or
- (b) any other individual who is involved in the management of the provider.

***material*** means material:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or
- (d) whether in the form of visual images (moving or otherwise); or
- (e) whether in the form of signals; or
- (f) whether in any other form; or
- (g) whether in any combination of forms.

***meets the enforcement threshold*** has the meaning given by clause 125.

***member of staff of the Attorney-General's Department*** means:

- (a) the Secretary of the Attorney-General's Department; or
- (b) an APS employee in that Department.

***message*** means a message:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or

- (d) whether in the form of visual images (animated or otherwise); or
- (e) whether in the form of signals; or
- (f) whether in any other form; or
- (g) whether in any combination of forms.

**message application service** has the meaning given by clause 4.

**message/call application service** means:

- (a) a message application service; or
- (b) a voice call application service; or
- (c) a video call application service.

**message/call application service provider** means a person who provides a message/call application service to the public or a section of the public.

**network entity** means a person who owns or operates a telecommunications network that is used to supply a transmission service to the public or a section of the public.

**nominated AAT member** means a member of the Administrative Appeals Tribunal in respect of whom a nomination is in force under clause 15 to issue international production orders under Division 2 of Part 2, and Division 2 of Part 3, of this Schedule.

**nominated AAT Security Division member** means a member of the Administrative Appeals Tribunal in respect of whom a nomination is in force under clause 17 to issue international production orders under Part 4 of this Schedule.

**operates in** a foreign country has the meaning given by clause 10A.

**posted** on a general electronic content service has the meaning given by clause 9.

**prescribed communications provider** means:

- (a) a network entity; or
- (b) a transmission service provider; or
- (c) a message/call application service provider; or
- (d) a storage/back-up service provider; or

- (e) a general electronic content service provider.

**protected information** means:

- (a) information obtained in accordance with an international production order; or
- (b) information about any of the following:
  - (i) an application for an international production order;
  - (ii) the issue of an international production order;
  - (iii) the existence or non-existence of an international production order;
  - (iv) compliance or non-compliance with an international production order;
  - (v) the revocation of an international production order;
  - (vi) the cancellation of an international production order.

**relevant agency** means:

- (a) an interception agency; or
- (b) a criminal law-enforcement agency; or
- (c) an enforcement agency; or
- (d) a control order IPO agency.

**relevant statistics**, in relation to applications of a particular kind, means the following statistics:

- (a) how many applications of that kind were made;
- (b) how many applications of that kind were withdrawn;
- (c) how many applications of that kind were refused;
- (d) how many international production orders were issued in response to applications of that kind.

**senior position-holder** has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

**serious category 1 offence** means:

- (a) an offence that is punishable by a maximum term of imprisonment of 3 years or more; or
- (b) an offence that is punishable by imprisonment for life.

Note: For the definition of **offence**, see section 5.

**serious category 2 offence** means:

- (a) a serious offence (see section 5D); or
- (b) an offence that is punishable by a maximum term of imprisonment of 7 years or more; or
- (c) an offence that is punishable by imprisonment for life.

Note: For the definition of *offence*, see section 5.

*service* includes a website. This definition does not apply to the definition of *transmission service*.

*statutory requirements certificate* means a certificate under subclause 3B(2).

*storage/back-up service* has the meaning given by clause 7.

*storage/back-up service provider* means a person who provides a storage/back-up service to the public or a section of the public.

*stored communication* means:

- (a) a communication that:
  - (i) has been carried by a transmission service; and
  - (ii) is not being carried by a transmission service; and
  - (iii) is held on equipment that is operated by, and is in the possession of, the transmission service provider who supplied the transmission service; or
- (b) a communication that:
  - (i) has been carried by a transmission service; and
  - (ii) is not being carried by a transmission service; and
  - (iii) is held on equipment that is operated by, and is in the possession of, the network entity who owns or operates a telecommunications network used to supply the transmission service; or
- (c) a message that:
  - (i) has been sent or received using a message/call application service provided by a message/call application service provider; and
  - (ii) is held on equipment that is operated by, and is in the possession of, the message/call application service provider; or
- (d) a recording of a voice call that:

- (i) has been made or received using a message/call application service provided by a message/call application service provider; and
  - (ii) is held on equipment that is operated by, and is in the possession of, the message/call application service provider; or
- (e) a recording of a video call that:
  - (i) has been made or received using a message/call application service provided by a message/call application service provider; and
  - (ii) is held on equipment that is operated by, and is in the possession of, the message/call application service provider; or
- (f) material that:
  - (i) has been uploaded by an end-user for storage or back-up by a storage/back-up service provided by a storage/back-up service provider; and
  - (ii) is held on equipment that is operated by, and is in the possession of, the storage/back-up service provider; or
- (g) material that:
  - (i) is accessible to, or deliverable to, one or more of the end-users using a general electronic content service provided by a general electronic content service provider; and
  - (ii) is held on equipment that is operated by, and is in the possession of, the general electronic content service provider.

***telecommunications data:***

- (a) when used in relation to a communication carried by an individual transmission service—means information about the communication (other than information that is the contents or substance of the communication); or
- (b) when used in relation to an individual transmission service—means information about the individual transmission service; or
- (c) when used in relation to a message sent or received using an individual message/call application service—means

- information about the message (other than information that is the contents or substance of the message); or
- (d) when used in relation to a voice call made or received using an individual message/call application service—means information about the voice call (other than information that is the contents or substance of the voice call); or
  - (e) when used in relation to a video call made or received using an individual message/call application service—means information about the video call (other than information that is the contents or substance of the video call); or
  - (f) when used in relation to an individual message/call application service—means information about the individual message/call application service; or
  - (g) when used in relation to material that has been uploaded by an end-user for storage or back-up by a storage/back-up service—means information about the material (other than information that is the content or substance of the material); or
  - (h) when used in relation to an account that a person has with a storage/back-up service—means information relating to the account; or
  - (i) when used in relation to material that has been posted on a general electronic content service—means information about the material (other than information that is the content or substance of the material); or
  - (j) when used in relation to an account that a person has with a general electronic content service—means information relating to the account; or
  - (k) when used otherwise than in relation to a matter or thing mentioned in any of the preceding paragraphs—means:
    - (i) information about a communication carried by an individual transmission service (other than information that is the contents or substance of the communication); or
    - (ii) information about an individual transmission service; or
    - (iii) information about a message sent or received using an individual message/call application service (other than information that is the contents or substance of the message); or
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- (iv) information about a voice call made or received using an individual message/call application service (other than information that is the contents or substance of the voice call); or
- (v) information about a video call made or received using an individual message/call application service (other than information that is the contents or substance of the video call); or
- (vi) information about an individual message/call application service; or
- (vii) information about material that has been uploaded by an end-user for storage or back-up by a storage/back-up service (other than information that is the content or substance of the material); or
- (viii) information relating to an account that a person has with a storage/back-up service; or
- (ix) information about material that has been posted on a general electronic content service (other than information that is the content or substance of the material); or
- (x) information relating to an account that a person has with a general electronic content service.

***telecommunications identifier*** means:

- (a) the address or identifier used by a network entity or a transmission service provider for the purposes of:
  - (i) directing a communication to its intended destination; or
  - (ii) identifying the origin of a communication; or
- (b) the address or identifier used by a message/call application service provider for the purposes of:
  - (i) directing a message to its intended destination; or
  - (ii) identifying the origin of a message; or
- (c) the address or identifier used by a message/call application service provider for the purposes of:
  - (i) directing a voice call to its intended destination; or
  - (ii) identifying the origin of a voice call; or
- (d) the address or identifier used by a message/call application service provider for the purposes of:

- (i) directing a video call to its intended destination; or
- (ii) identifying the origin of a video call;

and includes (for example):

- (e) a telephone number; and
- (f) a unique identifier for a device (for example, an electronic serial number or a Media Access Control address); and
- (g) a user account identifier; and
- (h) an internet protocol address; and
- (i) an email address.

**telecommunications network** means a system, or series of systems, that carries, or is capable of carrying, communications by means of guided and/or unguided electromagnetic energy.

**telephone application** means an application made by telephone for an international production order.

**telephone number** includes a mobile telephone number.

**transmission service** means a service for carrying communications by means of guided and/or unguided electromagnetic energy.

**transmission service provider** means a person who supplies a transmission service to the public or a section of the public.

**uploaded** has a meaning affected by clause 10.

**urgent circumstances** has a meaning affected by clause 17A.

**use** has a meaning affected by clause 12.

**video call** includes a video call that has an audio component.

**video call application service** has the meaning given by clause 6.

**voice call** includes a call that involves a recorded or synthetic voice.

**voice call application service** has the meaning given by clause 5.

### 3 Designated international agreement

#### *Bilateral agreement*

- (1) For the purposes of this Schedule, if:
- (a) there is an agreement between Australia and a foreign country; and
  - (b) a copy of the English text of the agreement is set out in the regulations; and
  - (c) the agreement has entered into force for Australia and the foreign country;
- then:
- (d) if the agreement is affected by an amendment, where:
    - (i) a copy of the English text of the amendment is set out in the regulations; and
    - (ii) the amendment has entered into force for Australia and the foreign country;the agreement, as affected by such an amendment, is a ***designated international agreement***; or
  - (e) if paragraph (d) does not apply—the agreement is a ***designated international agreement***.

Note: An agreement mentioned in paragraph (a) is a treaty to which Australia is a party. Proposed treaty actions, such as amendments of treaties and extensions of the duration of treaties, are subject to Australia's treaty-making process. In 2021, the parliamentary scrutiny process for proposed treaty actions included tabling in both Houses of the Parliament and consideration by the Joint Standing Committee on Treaties.

- (1A) If:
- (a) there is an agreement between Australia and a foreign country; and
  - (b) the agreement deals with (among other things) the issue of orders (however described) by a competent authority (however described) of the foreign country;
- a copy of the English text of the agreement must not be set out in regulations made for the purposes of paragraph (1)(b) unless a statutory requirements certificate is in force under clause 3B in relation to the foreign country and the agreement.

(2) If:

- (a) there is an agreement between Australia and a foreign country; and
- (b) the agreement deals with (among other things) the issue of orders (however described) by a competent authority (however described) of the foreign country; and
- (c) one or more offences against the law of the foreign country are death penalty offences;

a copy of the English text of the agreement must not be set out in regulations made for the purposes of paragraph (1)(b) unless the Minister has received a written assurance from the government of the foreign country, relating to the use or non-use of Australian-sourced information obtained by virtue of the agreement, in connection with any proceeding by way of a prosecution for a death penalty offence in the foreign country. For the purposes of this subclause, information is obtained by virtue of the agreement if it is obtained in accordance with such an order.

Note 1: For *Australian-sourced information*, see subclause (8).

Note 2: For *death penalty offence*, see subclause (7A).

*Multilateral agreement*

(3) For the purposes of this Schedule, if:

- (a) there is an agreement between Australia and 2 or more foreign countries; and
- (b) a copy of the English text of the agreement is set out in the regulations; and
- (c) the agreement has entered into force for Australia;

then:

- (d) if the agreement is affected by an amendment, where:
  - (i) a copy of the English text of the amendment is set out in the regulations; and
  - (ii) the amendment has entered into force for Australia;the agreement, as affected by such an amendment, is a ***designated international agreement***; or
- (e) if paragraph (d) does not apply—the agreement is a ***designated international agreement***.

Note: An agreement mentioned in paragraph (a) is a treaty to which Australia is a party. Proposed treaty actions, such as amendments of treaties and extensions of the duration of treaties, are subject to Australia's treaty-making process. In 2021, the parliamentary scrutiny process for proposed treaty actions included tabling in both Houses of the Parliament and consideration by the Joint Standing Committee on Treaties.

(4) If there is an agreement between Australia and 2 or more foreign countries, the regulations may declare that one or more of those foreign countries are *recognised parties* to the agreement for the purposes of this Schedule.

(4A) If:

- (a) there is an agreement between Australia and 2 or more foreign countries; and
- (b) the agreement deals with (among other things) the issue of orders (however described) by a competent authority (however described) of each of the foreign countries;

a foreign country that is a party to the agreement must not be declared under subclause (4) unless a statutory requirements certificate is in force under clause 3B in relation to the foreign country and the agreement.

(5) If:

- (a) there is an agreement between Australia and 2 or more foreign countries; and
- (b) the agreement deals with (among other things) the issue of orders (however described) by a competent authority (however described) of each of the foreign countries; and
- (c) one or more offences against the law of one or more of those foreign countries are death penalty offences;

a foreign country covered by paragraph (c) must not be declared under subclause (4) unless the Minister has received a written assurance from the government of the foreign country, relating to the use or non-use of Australian-sourced information obtained by virtue of the agreement, in connection with any proceeding by way of a prosecution for a death penalty offence in the foreign country. For the purposes of this subclause, information is obtained by virtue of the agreement if it is obtained in accordance with such an order.

Note 1: For *Australian-sourced information*, see subclause (8).

Note 2: For *death penalty offence*, see subclause (7A).

(6) If:

- (a) apart from this subclause, there is a designated international agreement between Australia and one or more foreign countries; and
- (b) one or more of those foreign countries are not recognised parties to the agreement;

this Schedule (other than subclauses (3) and (4)) has effect as if those foreign countries were not parties to the agreement.

Note: For *recognised parties*, see subclause (4).

*Announcement by Minister*

- (7) The Minister must announce, by notifiable instrument, the day an agreement mentioned in subclause (1) or (3) enters into force for Australia.

*Death penalty offence*

- (7A) For the purposes of this clause, *death penalty offence* means an offence against a law of a foreign country that is punishable by death.

*Australian-sourced information*

- (8) For the purposes of the application of subclause (2) or (5) to an order, information obtained in accordance with the order is *Australian-sourced information* if the order:
- (a) requires an act or thing to be done in Australia; or
  - (b) is directed to an individual who is physically present in Australia; or
  - (c) is directed to a body corporate that is incorporated in Australia; or
  - (d) is directed to a body established by or under a law of the Commonwealth, a State or a Territory.

### **3A Disallowance of regulations relating to designated international agreements**

#### *Scope*

- (1) This clause applies to regulations made for the purposes of clause 3.

#### *Disallowance*

- (2) Either House of the Parliament may, following a motion upon notice, pass a resolution disallowing the regulations. For the resolution to be effective:
- (a) the notice must be given in that House within 15 sitting days of that House after the copy of the regulations was tabled in that House under section 38 of the *Legislation Act 2003*; and
  - (b) the resolution must be passed, in pursuance of the motion, within 15 sitting days of that House after the giving of that notice.
- (3) If neither House passes such a resolution, the regulations takes effect on the day immediately after the last day upon which such a resolution could have been passed if it were assumed that notice of a motion to disallow the regulations was given in each House on the last day of the 15 sitting day period of that House mentioned in paragraph (2)(a).
- (4) If:
- (a) notice of a motion to disallow the regulations is given in a House of the Parliament within 15 sitting days of that House after the copy of the regulations was tabled in that House under section 38 of the *Legislation Act 2003*; and
  - (b) at the end of 15 sitting days of that House after the giving of that notice of motion:
    - (i) the notice has not been withdrawn and the motion has not been called on; or
    - (ii) the motion has been called on, moved and (where relevant) seconded and has not been withdrawn or otherwise disposed of;

the regulations is then taken to have been disallowed, and subclause (3) does not apply to the regulations.

- (5) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to the regulations.

Note 1: The 15 sitting day notice period mentioned in paragraph (2)(a) of this clause is the same as the 15 sitting day notice period mentioned in paragraph 42(1)(a) of the *Legislation Act 2003*.

Note 2: The 15 sitting day disallowance period mentioned in paragraph (2)(b) of this clause is the same as the 15 sitting day disallowance period mentioned in paragraph 42(1)(b) of the *Legislation Act 2003*.

### 3B Statutory requirements certificate—designated international agreements

#### *Scope*

- (1) This section applies if:
- (a) there is an agreement between Australia and one or more foreign countries; and
  - (b) the agreement deals with (among other things) the issue of orders (however described) by a competent authority (however described) of the foreign country, or each of the foreign countries, concerned.

#### *Certificate*

- (2) The Attorney-General may, after consulting the Minister and the Minister for Foreign Affairs, issue a certificate (a **statutory requirements certificate**) in relation to:
- (a) a foreign country that is a party to the agreement; and
  - (b) the agreement.
- (3) A statutory requirements certificate is a notifiable instrument.
- (4) The Attorney-General must not issue a statutory requirements certificate in relation to:
- (a) a foreign country that is a party to the agreement; and
  - (b) the agreement;
- unless the Attorney-General is satisfied that:

- (c) the agreement is appropriate in the circumstances, having regard only to:
  - (i) the foreign country's respect for the rule of law; and
  - (ii) the foreign country's respect for its obligations under international law relating to human rights; and
- (d) the following requirements are met in relation to orders (however described) issued by a competent authority (however described) of the foreign country:
  - (i) the agreement provides that orders are to be issued in compliance with the law of the foreign country;
  - (ii) the agreement provides that orders may only be issued for the purposes of obtaining information relevant to the prevention, detection, investigation or prosecution of serious crime (as defined in the agreement);
  - (iii) the agreement provides that orders may not be issued for the purposes of investigating, prosecuting or punishing a person on account of the person's political opinions;
  - (iv) the agreement, so far as it relates to orders, is appropriate in the circumstances, having regard only to the matters set out in subclause (5);
  - (v) the agreement does not permit orders to be issued for the purposes of obtaining information about the communications of a person who is an Australian citizen or a permanent resident of Australia;
  - (vi) the agreement provides for limitations and safeguards relating to the use, handling and disclosure of information obtained in accordance with orders;
  - (vii) the agreement does not permit orders to be issued on behalf of another country;
  - (viii) the agreement does not impose obligations on the foreign country to share information it has obtained in accordance with orders with another country; and
- (e) if one or more offences against the law of the foreign country are death penalty offences (within the meaning of clause 3)—the Minister has received a written assurance from the government of the foreign country in accordance with subclause 3(2) or (5).

- (5) For the purposes of subparagraph (4)(d)(iv), the matters are:
- (a) criteria for the issuing of orders; and
  - (b) limitations on the scope and objects of orders; and
  - (c) limits on the periods for which orders are in force;
- set out in the agreement or the law of the foreign country.

*Copy of certificate to be given to the Chair of the Joint Standing Committee on Treaties*

- (6) If the Attorney-General issues a statutory requirements certificate, the Attorney-General must:
- (a) give a copy of the certificate to the Chair of the Joint Standing Committee on Treaties; and
  - (b) do so as soon as practicable after the certificate is issued.

### 3C Australia's treaty-making process

Nothing in this Schedule is intended to modify or limit the application of Australia's treaty-making process relating to a designated international agreement, including the following proposed treaty actions:

- (a) an amendment of a designated international agreement;
- (b) an extension of the duration of a designated international agreement.

### 4 Message application service

- (1) For the purposes of this Schedule, ***message application service*** means a service that enables end-users to send or receive messages to or from other end-users using a transmission service.
- (2) For the purposes of subclause (1), it is immaterial whether the service also enables end-users to send or receive messages to or from persons (other than end-users) using a transmission service.

Example: A webmail service that enables end-users to send emails to, or receive emails from, any email address.

- (3) For the purposes of this Schedule, a person does not provide a message application service merely because the person supplies a transmission service that enables messages to be sent or received.

- (4) For the purposes of this Schedule, a person does not provide a message application service merely because the person provides a billing service, or a fee collection service, in relation to a message application service.

## **5 Voice call application service**

- (1) For the purposes of this Schedule, ***voice call application service*** means a service that enables end-users to make or receive voice calls to or from other end-users using a transmission service.
- (2) For the purposes of subclause (1), it is immaterial whether the service also enables end-users to make or receive voice calls to or from persons (other than end-users) using a transmission service.  
Example: A VOIP service that enables end-users to make voice calls to, or receive voice calls from, any telephone number.
- (3) For the purposes of this Schedule, a person does not provide a voice call application service merely because the person supplies a transmission service that enables voice calls to be made or received.
- (4) For the purposes of this Schedule, a person does not provide a voice call application service merely because the person provides a billing service, or a fee collection service, in relation to a voice call application service.

## **6 Video call application service**

- (1) For the purposes of this Schedule, ***video call application service*** means a service that enables end-users to make or receive video calls to or from other end-users using a transmission service.
- (2) For the purposes of subclause (1), it is immaterial whether the service also enables end-users to make or receive video calls to or from persons (other than end-users) using a transmission service.
- (3) For the purposes of this Schedule, a person does not provide a video call application service merely because the person supplies a transmission service that enables video calls to be made or received.

- (4) For the purposes of this Schedule, a person does not provide a video call application service merely because the person provides a billing service, or a fee collection service, in relation to a video call application service.

## 7 Storage/back-up service

- (1) For the purposes of this Schedule, **storage/back-up service** means a service that enables end-users to store or back-up material, where the uploading of the material for storage or back-up is by means of a transmission service.
- (2) For the purposes of this Schedule, a person does not provide a storage/back-up service merely because the person supplies a transmission service that enables material to be uploaded for storage or back-up.
- (3) For the purposes of this Schedule, a person does not provide a storage/back-up service merely because the person provides a billing service, or a fee collection service, in relation to a storage/back-up service.

## 8 General electronic content service

- (1) For the purposes of this Schedule, **general electronic content service** means:
- (a) a service that allows end-users to access material using a transmission service; or
  - (b) a service that delivers material to persons having equipment appropriate for receiving that material, where the delivery of the service is by means of a transmission service;
- but does not include:
- (c) a message/call application service; or
  - (d) a storage/back-up service; or
  - (e) a service prescribed by the regulations.
- (2) For the purposes of this Schedule, a person does not provide a general electronic content service merely because the person supplies a transmission service that enables material to be accessed or delivered.

- (3) For the purposes of this Schedule, a person does not provide a general electronic content service merely because the person provides a billing service, or a fee collection service, in relation to a general electronic content service.

## **9 When material is posted on a general electronic content service**

For the purposes of this Schedule, material is *posted* on a general electronic content service by a person if:

- (a) the person is an end-user of the service; and
- (b) the person causes the material to be accessible to, or delivered to, one or more other end-users using the service.

## **10 Uploaded material**

For the purposes of this Schedule, if:

- (a) a person uses a device; and
- (b) the device has software that automatically uploads material for storage or back-up by a storage/back-up service; and
- (c) as a result, material is automatically uploaded for storage or back-up by the storage/back-up service;

the person is taken to have uploaded the material for storage or back-up by the storage/back-up service.

## **10A When a prescribed communications provider is based in, or operates in, a foreign country**

*Based in a foreign country—individual*

- (1) For the purposes of the application of this Schedule to a prescribed communications provider who is an individual, the provider is **based in** a foreign country if, and only if, the provider is ordinarily resident in the foreign country.

*Based in a foreign country—body corporate*

- (2) For the purposes of the application of this Schedule to a prescribed communications provider that is a body corporate, the provider is **based in** a foreign country if, and only if:
- (a) the provider is incorporated in the foreign country; or

- (b) the provider has its principal place of business in the foreign country.

*Operates in a foreign country*

- (3) For the purposes of this Schedule, a prescribed communications provider ***operates in*** a foreign country if, and only if:
  - (a) the provider handles communications in the foreign country; or
  - (b) the provider holds stored communications in the foreign country; or
  - (c) the provider holds telecommunications data in the foreign country.

## 11 Intended recipient of a communication

For the purposes of this Schedule, the ***intended recipient*** of a communication is:

- (a) if the communication is addressed to an individual (either in the individual's own capacity or in the capacity of an employee or agent of another person)—the individual; or
- (b) if the communication is addressed to a person who is not an individual—the person; or
- (c) if the communication is not addressed to a person—the person who has, or whose employee or agent has, control over the individual transmission service that was used to receive the communication.

## 12 Use of a thing

A reference in this Schedule to the ***use*** of a thing is a reference to the use of the thing either:

- (a) in isolation; or
- (b) in conjunction with one or more other things.

Note: See also section 18A of the *Acts Interpretation Act 1901*.

## 13 Identification of a particular person

For the purposes of this Schedule, a particular person may be identified:

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- (a) by the person's full name; or
- (b) by a name by which the person is commonly known; or
- (c) as the person to whom a particular individual transmission service is supplied; or
- (d) as the person to whom a particular individual message/call application service is provided; or
- (e) as the person who has a particular account with a prescribed communications provider; or
- (f) as the person who has a particular telephone number; or
- (g) as the person who has a particular email address; or
- (h) as the person who has a particular internet protocol address; or
- (i) as the person who has a device that has a particular unique identifier (for example, an electronic serial number or a Media Access Control address); or
- (j) by any other unique identifying factor that is applicable to the person.

#### **14 Eligible judge**

- (1) For the purposes of this Schedule, ***eligible Judge*** means a Judge in relation to whom a consent under subclause (2) and a declaration under subclause (3) are in force.
- (2) A Judge may, by writing, consent to be nominated by the Attorney-General under subclause (3).
- (3) The Attorney-General may, by writing, declare Judges in relation to whom consents are in force under subclause (2) to be eligible Judges for the purposes of this Schedule.
- (4) An eligible Judge has, in relation to the performance or exercise of a function or power conferred on an eligible Judge by this Schedule, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

#### **15 Nominated AAT member**

- (1) The Attorney-General may, by writing, nominate a person who holds one of the following appointments to the Administrative

Appeals Tribunal to issue international production orders under Division 2 of Part 2, and Division 2 of Part 3, of this Schedule:

- (a) Deputy President;
  - (b) senior member (of any level);
  - (c) member (of any level).
- (2) Despite subclause (1), the Attorney-General must not nominate a person who holds an appointment as a part-time senior member or a member of the Tribunal unless the person:
- (a) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or of the Australian Capital Territory; and
  - (b) has been so enrolled for not less than 5 years.
- (3) A nomination ceases to have effect if the nominated AAT member ceases to hold an appointment of a kind set out in subclause (1).
- (4) A nominated AAT member has, in relation to the performance or exercise of a function or power conferred on a nominated AAT member by this Schedule, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

## **16 Issuing authority**

- (1) The Attorney-General may, by writing, appoint as an issuing authority:
- (a) a person who is:
    - (i) a judge of a court created by the Parliament; or
    - (ii) a magistrate;and in relation to whom a consent under subclause (2) is in force; or
  - (b) a person who:
    - (i) holds an appointment to the Administrative Appeals Tribunal as Deputy President, senior member (of any level) or member (of any level); and
    - (ii) is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or a Territory; and
    - (iii) has been so enrolled for at least 5 years.

- (2) A person who is:
  - (a) a judge of a court created by the Parliament; or
  - (b) a magistrate;may, by writing, consent to be appointed by the Attorney-General under subclause (1).
- (3) A person's appointment ceases to have effect if the person ceases to be a person whom the Attorney-General could appoint under this clause.
- (4) An appointment under subclause (1) has no effect for the purposes of a provision of this Act (other than this Schedule).
- (5) An issuing authority has, in relation to the performance or exercise of a function or power conferred on an issuing authority by this Schedule, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

## **17 Nominated AAT Security Division member**

- (1) The Attorney-General may, by writing, nominate a person who:
  - (a) holds one of the following appointments to the Administrative Appeals Tribunal:
    - (ii) senior member (of any level);
    - (iii) member (of any level); and
  - (b) is a member of the Security Division of the Administrative Appeals Tribunal;to issue international production orders under Part 4 of this Schedule.
- (2) Despite subclause (1), the Attorney-General must not nominate a person who holds an appointment as a part-time senior member or a member of the Administrative Appeals Tribunal unless the person:
  - (a) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or of the Australian Capital Territory; and
  - (b) has been so enrolled for not less than 5 years.

- (3) A nomination of a person under subclause (1) ceases to have effect if:
  - (a) the person ceases to hold an appointment of a kind set out in subclause (1); or
  - (b) the person ceases to be a member of the Security Division of the Administrative Appeals Tribunal.
- (3A) The Attorney-General may, by writing, nominate a person who is a Deputy President of the Administrative Appeals Tribunal to issue international production orders under Part 4 of this Schedule.
- (3B) A nomination of a person under subclause (3A) ceases to have effect if the person ceases to be a Deputy President of the Administrative Appeals Tribunal.
- (4) A nominated AAT Security Division member has, in relation to the performance or exercise of a function or power conferred on a nominated AAT Security Division member by this Schedule, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.
- (5) For the purposes of this clause, a person is a *member of the Security Division of the Administrative Appeals Tribunal* if the person:
  - (a) is the head of that Division; or
  - (b) has been assigned to that Division.

#### **17A Urgent circumstances**

- (1) For the purposes of this Schedule, it is necessary, because of urgent circumstances, to make an application under Part 2 or 3 of this Schedule for an international production order by telephone if, and only if:
  - (a) an imminent risk of serious harm to a person or substantial damage to property exists; and
  - (b) the order is necessary for the purpose of dealing with that risk; and
  - (c) it is not practicable in the circumstances to make the application in writing.

- (2) For the purposes of this Schedule, it is necessary, because of urgent circumstances, to make an application under Part 4 of this Schedule for an international production order by telephone if, and only if:
  - (a) the delay caused by making a written application may be prejudicial to security; and
  - (b) it is not practicable in the circumstances to make the application in writing.
- (3) For the purposes of this Schedule, it is necessary, because of urgent circumstances, for the Attorney-General to consent orally to the making of an application under Part 4 of this Schedule for an international production order if, and only if:
  - (a) the delay caused by consenting in writing may be prejudicial to security; and
  - (b) it is not practicable in the circumstances to consent in writing.

## **18 Meaning of expressions in other provisions of this Act**

In determining the meaning of an expression (other than “international production order”) used in a provision of this Act (other than this Schedule), an expression used in this Schedule is to be disregarded.

## **19 Extra-territorial application**

This Schedule extends to acts, omissions, matters and things outside Australia.

## **20 Constitutional basis of this Schedule**

This Schedule relies on the Commonwealth’s legislative powers under paragraph 51(v) (communications) of the Constitution.

## **Part 2—International production orders relating to the enforcement of the criminal law**

### **Division 1—Introduction**

#### **21 Simplified outline of this Part**

- An international production order may be issued for purposes in connection with the investigation of an offence of a serious nature.
- There are 3 types of international production orders:
  - (a) international production orders relating to interception; and
  - (b) international production orders relating to stored communications; and
  - (c) international production orders relating to telecommunications data.
- An international production order is directed to a prescribed communications provider.
- An international production order may be issued in response to an application made by:
  - (a) in the case of an order relating to interception—an interception agency; or
  - (b) in the case of an order relating to stored communications—a criminal-law enforcement agency; or
  - (c) in the case of an order relating to telecommunications data—an enforcement agency.
- An application for an international production order must nominate a designated international agreement.

Note: An international production order comes into force when it is given to a prescribed communications provider under clause 111.

## **Division 2—International production orders relating to interception: enforcement of the criminal law**

### **Subdivision A—Applications**

#### **22 Application for international production order—enforcement of the criminal law**

- (1) An interception agency may apply to an eligible Judge or nominated AAT member for an international production order under clause 30 that:
  - (a) is in respect of:
    - (i) one or more individual transmission services; or
    - (ii) one or more individual message/call application services; and
  - (b) is directed to a prescribed communications provider.
- (2) The application must nominate a designated international agreement.
- (3) The application must be made on the interception agency's behalf by:
  - (a) in the case of the Australian Federal Police—a member of the Australian Federal Police; or
  - (b) in the case of the Australian Commission for Law Enforcement Integrity:
    - (i) the Integrity Commissioner; or
    - (ii) an Assistant Integrity Commissioner; or
    - (iii) a staff member of the Australian Commission for Law Enforcement Integrity who is authorised in writing by the Integrity Commissioner for the purposes of this paragraph; or
  - (c) in the case of the ACC:
    - (i) the Chief Executive Officer of the ACC or an examiner; or
    - (ii) a member of a police force who is a member of the staff of the ACC; or

- (d) in the case of the Police Force of a State—an officer of that Police Force; or
- (e) in the case of the Crime Commission:
  - (i) a member of the Crime Commission; or
  - (ii) a member of the staff of the Crime Commission; or
- (f) in the case of the Independent Commission Against Corruption—an officer of that Commission; or
- (g) in the case of the IBAC—an IBAC officer; or
- (h) in the case of the Crime and Corruption Commission—a commission officer (within the meaning of the Crime and Corruption Act); or
- (i) in the case of the Law Enforcement Conduct Commission:
  - (i) the Chief Commissioner of the Commission; or
  - (ii) the Commissioner for Integrity of the Commission; or
  - (iii) an Assistant Commissioner of the Commission; or
  - (iv) a member of the staff of the Law Enforcement Conduct Commission; or
- (j) in the case of the Corruption and Crime Commission—an officer of the Corruption and Crime Commission; or
- (k) in the case of the Independent Commissioner Against Corruption:
  - (i) the Independent Commissioner Against Corruption; or
  - (ii) the Deputy Commissioner referred to in section 9 of the Independent Commissioner Against Corruption Act; or
  - (iii) a member of the staff of the Independent Commissioner Against Corruption.

## **23 Form of application**

- (1) Subject to subclause (2), an application under clause 22 for an international production order must be in writing.
- (2) If the person making an application under clause 22 for an international production order on an interception agency's behalf:
  - (a) is the chief officer of the agency or a person in relation to whom an authorisation by the chief officer is in force under subclause (3); and

(b) thinks it necessary, because of urgent circumstances, to make the application by telephone;  
the person may make the application by telephone.

Note: See also clause 17A (urgent circumstances) and clause 172 (action required).

- (3) The chief officer of an interception agency may authorise in writing, for the purposes of subclause (2), persons who, or classes of persons who, are entitled under clause 22 to make applications on the agency's behalf.

## **24 Contents of application**

A written application under clause 22 by an interception agency for an international production order must set out:

- (a) the name of the agency; and
- (b) the name of the person making the application on the agency's behalf.

## **25 Affidavits to accompany written application**

- (1) A written application under clause 22 by an interception agency for an international production order must be accompanied by an affidavit complying with this clause.
- (2) The affidavit must set out the facts and other grounds on which the application is based.
- (3) If the application is for an international production order in respect of one or more individual transmission services, the affidavit must set out the following information, so far as it can be derived from the interception agency's records:
  - (a) the number of previous applications (if any) for international production orders that the agency has made under clause 22 in relation to those individual transmission services;
  - (b) the number of international production orders (if any) previously issued in response to such applications;
  - (c) particulars of the use made by the agency of intercepted communications made available to the agency under such orders.

- (4) If the application is for an international production order in respect of one or more individual message/call application services, the affidavit must set out the following information, so far as it can be derived from the interception agency's records:
- (a) the number of previous applications (if any) for international production orders that the agency has made under clause 22 in relation to those individual message/call application services;
  - (b) the number of international production orders (if any) previously issued in response to such applications;
  - (c) particulars of the use made by the agency of intercepted messages, voice calls or video calls made available to the agency under such orders.
- (5) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.

## **26 Information to be given on telephone application**

The information given to an eligible Judge or nominated AAT member in connection with a telephone application under clause 22 to the eligible Judge or nominated AAT member:

- (a) must include particulars of the urgent circumstances because of which the person making the application on the interception agency's behalf thinks it necessary to make the application by telephone; and
- (b) must include each matter that, if the application had been made in writing, clause 24 or 25 would have required the application, or an affidavit accompanying it, to set out; and
- (c) must be given orally or in writing, as the eligible Judge or nominated AAT member directs.

## **27 Giving further information to eligible Judge or nominated AAT member**

- (1) An eligible Judge or nominated AAT member may require further information to be given in connection with an application under

clause 22 to the eligible Judge or nominated AAT member for an international production order.

- (2) The further information:
- (a) must be given on oath if the application was made in writing; and
  - (b) must be given orally or otherwise, as the eligible Judge or nominated AAT member directs.

## **28 Application by interception agency of Victoria**

### *Scope*

- (1) This clause applies if an interception agency of Victoria applies, under clause 22, to an eligible Judge or nominated AAT member for an international production order under clause 30 that is in respect of:
- (a) one or more individual transmission services; or
  - (b) one or more individual message/call application services.

### *PIM may make submissions*

- (2) A Victorian PIM may, orally or in writing, make submissions to the eligible Judge or nominated AAT member about the following matters:
- (a) in the case of an application for an international production order that is in respect of one or more individual transmission services—the matters mentioned in subparagraphs 30(5)(a)(i) to (vi);
  - (b) in the case of an application for an international production order that is in respect of one or more individual message/call application services—the matters mentioned in subparagraphs 30(5)(b)(i) to (vi).

### *PIM may question certain persons*

- (3) The Victorian PIM may, for the purpose of making submissions under subclause (2), question:
- (a) the person making the application for the international production order on the interception agency's behalf; or

- (b) a person who, under clause 27, is required by the eligible Judge or nominated AAT member to give further information to the eligible Judge or nominated AAT member in connection with the application.

However, the Victorian PIM may only do so in the presence of the eligible Judge or nominated AAT member.

## 29 Application by interception agency of Queensland

### *Scope*

- (1) This clause applies if an interception agency of Queensland applies, under clause 22, to an eligible Judge or nominated AAT member for an international production order under clause 30 that is in respect of:
  - (a) one or more individual transmission services; or
  - (b) one or more individual message/call application services.

### *PIM may make submissions*

- (2) A Queensland PIM may, orally or in writing, make submissions to the eligible Judge or nominated AAT member about the following matters:
  - (a) in the case of an application for an international production order that is in respect of one or more individual transmission services—the matters mentioned in subparagraphs 30(5)(a)(i) to (vi);
  - (b) in the case of an application for an international production order that is in respect of one or more individual message/call application services—the matters mentioned in subparagraphs 30(5)(b)(i) to (vi).

### *PIM may question certain persons*

- (3) The Queensland PIM may, for the purpose of making submissions under subclause (2), question:
  - (a) the person making the application for the international production order on the interception agency's behalf; or
  - (b) a person who, under clause 27, is required by the eligible Judge or nominated AAT member to give further information

to the eligible Judge or nominated AAT member in connection with the application.

However, the Queensland PIM may only do so in the presence of the eligible Judge or nominated AAT member.

- (4) A Queensland PIM may, by writing, delegate to a Queensland deputy PIM the Queensland PIM's power under subclause (2) or (3), or both.
- (5) In exercising powers under the delegation, the Queensland deputy PIM must comply with any directions of the Queensland PIM.

## **Subdivision B—International production orders relating to interception**

### **30 Issue of international production order—enforcement of the criminal law**

#### *Scope*

- (1) This clause applies if an interception agency applies, under clause 22, to an eligible Judge or nominated AAT member for an international production order that:
  - (a) is in respect of:
    - (i) one or more individual transmission services; or
    - (ii) one or more individual message/call application services; and
  - (b) is directed to a prescribed communications provider.

#### *Issue of international production order*

- (2) If the eligible Judge or nominated AAT member is satisfied, on the basis of the information given to the eligible Judge or nominated AAT member under this Division in connection with the application, that:
  - (a) in the case of an application for an international production order that is in respect of one or more individual transmission services—there are reasonable grounds for suspecting that:
    - (i) the prescribed communications provider owns or operates a telecommunications network that is, or is

- likely to be, used to supply those individual transmission services; or
- (ii) the prescribed communications provider supplies those individual transmission services; and
- (b) in the case of an application for an international production order that is in respect of one or more individual message/call application services—there are reasonable grounds for suspecting that the prescribed communications provider provides those individual message/call application services; and
- (ba) the person who made the application on behalf of the agency reasonably suspects that the prescribed communications provider is based in, or operates in, a foreign country that is a party to the designated international agreement nominated in the application; and
- (c) Subdivision A has been complied with in relation to the application; and
- (d) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
- (e) in the case of an application for an international production order that is in respect of one or more individual transmission services—there are reasonable grounds for suspecting that a particular person is using, or is likely to use, those individual transmission services; and
- (f) in the case of an application for an international production order that is in respect of one or more individual message/call application services—there are reasonable grounds for suspecting that a particular person is using, or is likely to use, those individual message/call application services; and
- (g) in the case of an application for an international production order that is in respect of one or more individual transmission services—information that would be likely to be obtained by intercepting, under an order issued under this clause, communications that are being carried by those individual transmission services would be likely to assist in connection with the investigation by the interception agency of a serious category 2 offence, or serious category 2 offences, in which:
  - (i) the particular person is involved; or

- (ii) another person is involved with whom the particular person is likely to communicate using those individual transmission services; and
- (h) in the case of an application for an international production order that is in respect of one or more individual message/call application services—information that would be likely to be obtained by intercepting, under an order issued under this clause, messages sent or received, voice calls made or received, or video calls made or received, using those individual message/call application services would be likely to assist in connection with the investigation by the interception agency of a serious category 2 offence, or serious category 2 offences, in which:
  - (i) the particular person is involved; or
  - (ii) another person is involved with whom the particular person is likely to communicate using those individual message/call application services;

the eligible Judge or nominated AAT member may issue an order (to be known as an ***international production order***) directing the prescribed communications provider to:

- (i) in the case of an application for an international production order that is in respect of one or more individual transmission services:
  - (i) intercept communications carried by those individual transmission services during a specified period; and
  - (ii) make those intercepted communications available to the interception agency; and
  - (iii) disclose to the interception agency specified telecommunications data that relates to those intercepted communications; and
  - (iv) disclose to the interception agency specified telecommunications data that relates to those individual transmission services; or
- (j) in the case of an application for an international production order that is in respect of one or more individual message/call application services:
  - (i) intercept messages sent or received, voice calls made or received, or video calls made or received, using those

- individual message/call application services during a specified period; and
- (ii) make those intercepted messages, voice calls or video calls available to the interception agency; and
- (iii) disclose to the interception agency specified telecommunications data that relates to those intercepted messages, voice calls or video calls; and
- (iv) disclose to the interception agency specified telecommunications data that relates to those individual message/call application services.

Note: Subclauses (6) and (7) restrict the issuing of international production orders if subparagraph (2)(g)(ii) or (h)(ii) applies.

*Period specified in international production order*

- (3) A period specified in an international production order for the purposes of subparagraph (2)(i)(i) or (j)(i) must not begin before the time when the order is given to the prescribed communications provider.

Note: International production orders are given under clause 111.

- (4) The period specified in an international production order for the purposes of subparagraph (2)(i)(i) or (j)(i) must not be longer than:
  - (a) if subparagraph (2)(g)(ii) or (h)(ii) applies (as the case requires)—45 days; or
  - (b) otherwise—90 days.

*Matters to which eligible Judge or nominated AAT member must have regard*

- (5) In deciding whether to issue an international production order under subclause (2), the eligible Judge or nominated AAT member must have regard to the following matters:
  - (a) in the case of an application for an international production order that is in respect of one or more individual transmission services:
    - (i) how much the privacy of any person or persons would be likely to be interfered with by intercepting, under an international production order, communications that are

- being carried by those individual transmission services;  
and
- (ii) the gravity of the conduct constituting the serious category 2 offence or serious category 2 offences being investigated; and
  - (iii) how much the information mentioned in paragraph (2)(g) would be likely to assist in connection with the investigation by the interception agency of the serious category 2 offence or serious category 2 offences; and
  - (iv) to what extent methods of investigating the serious category 2 offence or serious category 2 offences that do not involve so intercepting communications have been used by, or are available to, the interception agency; and
  - (v) how much the use of such methods would be likely to assist in connection with the investigation by the interception agency of the serious category 2 offence or serious category 2 offences; and
  - (vi) how much the use of such methods would be likely to prejudice the investigation by the interception agency of the serious category 2 offence or serious category 2 offences, whether because of delay or for any other reason; and
  - (vii) in relation to an application by an interception agency of Victoria—any submissions made by a Victorian PIM under clause 28 to the eligible Judge or nominated AAT member; and
  - (viii) in relation to an application by an interception agency of Queensland—any submissions made by a Queensland PIM under clause 29 to the eligible Judge or nominated AAT member; and
  - (ix) such other matters (if any) as the eligible Judge or nominated AAT member considers relevant;
- (b) in the case of an application for an international production order that is in respect of one or more individual message/call application services:
- (i) how much the privacy of any person or persons would be likely to be interfered with by intercepting, under an international production order, messages sent or

- received, voice calls made or received, or video calls made or received, using those individual message/call application services; and
- (ii) the gravity of the conduct constituting the serious category 2 offence or serious category 2 offences being investigated; and
  - (iii) how much the information mentioned in paragraph (2)(h) would be likely to assist in connection with the investigation by the interception agency of the serious category 2 offence or serious category 2 offences; and
  - (iv) to what extent methods of investigating the serious category 2 offence or serious category 2 offences that do not involve so intercepting messages, voice calls or video calls have been used by, or are available to, the interception agency; and
  - (v) how much the use of such methods would be likely to assist in connection with the investigation by the interception agency of the serious category 2 offence or serious category 2 offences; and
  - (vi) how much the use of such methods would be likely to prejudice the investigation by the interception agency of the serious category 2 offence or serious category 2 offences, whether because of delay or for any other reason; and
  - (vii) in relation to an application by an interception agency of Victoria—any submissions made by a Victorian PIM under clause 28 to the eligible Judge or nominated AAT member; and
  - (viii) in relation to an application by an interception agency of Queensland—any submissions made by a Queensland PIM under clause 29 to the eligible Judge or nominated AAT member; and
  - (ix) such other matters (if any) as the eligible Judge or nominated AAT member considers relevant.

*Restriction on issuing order*

- (6) The eligible Judge or nominated AAT member must not issue an international production order under subclause (2) in a case where
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subparagraph (2)(g)(ii) applies unless the eligible Judge or nominated AAT member is satisfied that:

- (a) the interception agency has exhausted all other practicable methods of identifying the individual transmission services used, or likely to be used, by the person involved in the serious category 2 offence or serious category 2 offences mentioned in paragraph (2)(g); or
  - (b) interception of communications carried by individual transmission services used or likely to be used by that person would not otherwise be possible.
- (7) The eligible Judge or nominated AAT member must not issue an international production order under subclause (2) in a case where subparagraph (2)(h)(ii) applies unless the eligible Judge or nominated AAT member is satisfied that:
- (a) the interception agency has exhausted all other practicable methods of identifying the individual message/call application services used, or likely to be used, by the person involved in the serious category 2 offence or serious category 2 offences mentioned in paragraph (2)(h); or
  - (b) interception of messages sent or received, voice calls made or received, or video calls made or received, using individual message/call application services used or likely to be used by that person would not otherwise be possible.

### **31 Content of international production order**

#### *Scope*

- (1) This clause applies to an international production order issued under clause 30 in response to an application made by an interception agency.

#### *Content*

- (2) The order must be signed by the eligible Judge or nominated AAT member who issued it.
- (3) The order must set out the following:
- (a) the date on which the order was issued;
  - (b) the name of the interception agency;

- (c) the name of the prescribed communications provider to whom the order is directed;
  - (d) the name of the designated international agreement nominated in the application for the order;
  - (e) the applicable telecommunications identifiers:
    - (i) in the case of an order that is in respect of one or more individual transmission services—to which those individual transmission services relate; or
    - (ii) in the case of an order that is in respect of one or more individual message/call application services—to which those individual message/call application services relate;
  - (f) short particulars of each serious category 2 offence in relation to which the eligible Judge or nominated AAT member issuing the order was satisfied, on the application for the order, as mentioned in paragraph 30(2)(g) or (h) of this Schedule (as the case requires).
- (4) If the order directs a prescribed communications provider to intercept communications, the order may require the provider to:
- (a) intercept those communications in a specified way; and
  - (b) make those intercepted communications available to the interception agency in a specified way.
- (5) A requirement under subclause (4) may:
- (a) require that intercepted communications be made available to the interception agency directly; or
  - (b) require that intercepted communications be made available to the interception agency indirectly via the Australian Designated Authority.
- (6) If the order directs a prescribed communications provider to intercept messages, voice calls or video calls, the order may require the provider to:
- (a) intercept those messages, voice calls or video calls in a specified way; and
  - (b) make those intercepted messages, voice calls or video calls available to the interception agency in a specified way.
- (7) A requirement under subclause (6) may:

- (a) require that intercepted messages, voice calls or video calls be made available to the interception agency directly; or
  - (b) require that intercepted messages, voice calls or video calls be made available to the interception agency indirectly via the Australian Designated Authority.
- (8) If the order directs a prescribed communications provider to disclose telecommunications data to the interception agency, the order may require the provider to disclose that data to the agency in a specified way.
- (9) A requirement under subclause (8) may:
  - (a) require that the telecommunications data be disclosed to the interception agency directly; or
  - (b) require that the telecommunications data be disclosed to the interception agency indirectly via the Australian Designated Authority.
- (10) For the purposes of this clause, a specified way may deal with matters of timing.

Example: A requirement under subclause (4) may require that an intercepted communication be made available to the interception agency within 30 minutes after the communication was completed.

### **32 Issue of further international production order**

- (1) If:
  - (a) an international production order (the ***original order***) was issued under clause 30; and
  - (b) the original order was in respect of one or more individual transmission services; and
  - (c) the original order was directed to a prescribed communications provider;this Schedule does not prevent the issue of a further international production order under clause 30 that is:
  - (d) in respect of any or all of those services; and
  - (e) directed to the provider;so long as the period specified in the further order for the purposes of subparagraph 30(2)(i)(i) of this Schedule begins after the end of

the period specified in the original order for the purposes of that subparagraph.

(2) If:

- (a) an international production order (the *original order*) was issued under clause 30; and
- (b) the original order was in respect of one or more individual message/call application services; and
- (c) the original order was directed to a prescribed communications provider;

this Schedule does not prevent the issue of a further international production order under clause 30 that is:

- (d) in respect of any or all of those services; and
- (e) directed to the provider;

so long as the period specified in the further order for the purposes of subparagraph 30(2)(j)(i) of this Schedule begins after the end of the period specified in the original order for the purposes of that subparagraph.

### **Division 3—International production orders relating to stored communications: enforcement of the criminal law**

#### **Subdivision A—Applications**

#### **33 Application for international production order—enforcement of the criminal law**

- (1) A criminal law-enforcement agency may apply to an issuing authority for an international production order under clause 39 that:
  - (a) is in respect of a particular person; and
  - (b) is directed to a prescribed communications provider.
- (2) The application must nominate a designated international agreement.
- (3) The application must be made on the criminal law-enforcement agency's behalf by:

- (a) if the agency is referred to in subclause 22(3)—a person referred to in that subclause in relation to the agency; or
- (b) otherwise:
  - (i) the chief officer of the agency; or
  - (ii) an officer of the agency (by whatever name called) who holds, or is acting in, an office or position in the agency nominated under subclause (4).
- (4) The chief officer of the criminal law-enforcement agency may, in writing, nominate for the purposes of subparagraph (3)(b)(ii) an office or position in the agency that is involved in the management of the agency.
- (5) A nomination under subclause (4) is not a legislative instrument.

### **34 Form of application**

- (1) An application under clause 33 must be in writing.
- (2) However, a person making the application on the criminal law-enforcement agency's behalf may make the application by telephone if the person:
  - (a) is the chief officer of the agency or a person in relation to whom an authorisation by the chief officer is in force under subclause (3); and
  - (b) thinks it necessary, because of urgent circumstances, to make the application by telephone.

Note: See also clause 17A (urgent circumstances) and clause 172 (action required).

- (3) The chief officer of a criminal law-enforcement agency may, in writing, authorise persons (including classes of persons) for the purposes of subclause (2). However, each person must be entitled under clause 33 to make applications on the agency's behalf.

### **35 Contents of written application**

An application under clause 33 must, if it is in writing, set out:

- (a) the name of the criminal law-enforcement agency; and
- (b) the name of the person making the application on the agency's behalf.

### **36 Affidavits to accompany written application**

- (1) An application under clause 33 must, if it is in writing, be accompanied by an affidavit complying with this clause.
- (2) The affidavit must set out the facts and other grounds on which the application is based.
- (3) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.

### **37 Information to be given on telephone application**

The information given to an issuing authority in connection with a telephone application under clause 33 to the issuing authority:

- (a) must include particulars of the urgent circumstances because of which the person making the application on the criminal law-enforcement agency's behalf thinks it necessary to make the application by telephone; and
- (b) must include each matter that, if the application had been made in writing, clause 35 or 36 would have required the application, or an affidavit accompanying it, to set out; and
- (c) must be given orally or in writing, as the issuing authority directs.

### **38 Giving further information to issuing authority**

- (1) An issuing authority may require further information to be given in connection with an application under clause 33 to the issuing authority for an international production order.
- (2) The further information:
  - (a) must be given on oath if the application was made in writing; and
  - (b) must be given orally or otherwise, as the issuing authority directs.

## **Subdivision B—International production orders relating to stored communications**

### **39 Issue of international production order—enforcement of the criminal law**

#### *Scope*

- (1) This clause applies if a criminal law-enforcement agency applies, under clause 33, to an issuing authority for an international production order that:
  - (a) is in respect of a particular person (the ***relevant person***); and
  - (b) is directed to a prescribed communications provider.

#### *Issue of international production order*

- (2) If the issuing authority is satisfied, on the basis of the information given to the issuing authority under this Division in connection with the application, that:
  - (a) there are reasonable grounds for suspecting that the prescribed communications provider holds any of the following stored communications:
    - (i) stored communications that consist of communications that the relevant person has made using a telecommunications network owned or operated by the prescribed communications provider;
    - (ii) stored communications that consist of communications that another person has made using a telecommunications network owned or operated by the prescribed communications provider, and for which the relevant person is the intended recipient;
    - (iii) stored communications that consist of communications that the relevant person has made using a transmission service supplied by the prescribed communications provider;
    - (iv) stored communications that consist of communications that another person has made using a transmission service supplied by the prescribed communications

- provider, and for which the relevant person is the intended recipient;
- (v) stored communications that consist of messages that the relevant person has sent or received using a message/call application service provided by the prescribed communications provider;
  - (vi) stored communications that consist of recordings of voice calls that the relevant person has made or received using a message/call application service provided by the prescribed communications provider;
  - (vii) stored communications that consist of recordings of video calls that the relevant person has made or received using a message/call application service provided by the prescribed communications provider;
  - (viii) stored communications that consist of material that the relevant person has uploaded for storage or back-up by a storage/back-up service provided by the prescribed communications provider;
  - (ix) stored communications that consist of material that the relevant person has posted to a general electronic content service provided by the prescribed communications provider; and
- (aa) the person who made the application on behalf of the agency reasonably suspects that the prescribed communications provider is based in, or operates in, a foreign country that is a party to the designated international agreement nominated in the application; and
  - (b) Subdivision A has been complied with in relation to the application; and
  - (c) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
  - (d) information that would be likely to be obtained by making a copy, under an order issued under this clause, of the stored communications would be likely to assist in connection with the investigation by the criminal law-enforcement agency of a serious category 1 offence, or serious category 1 offences, in which the relevant person is involved;

the issuing authority may issue an order (to be known as an ***international production order***) directing the prescribed communications provider to:

- (e) make a copy of any such stored communications; and
- (f) make the copy available to the criminal law-enforcement agency; and
- (g) if the stored communications consist of communications carried by an individual transmission service—disclose to the agency:
  - (i) specified telecommunications data that relates to those communications; and
  - (ii) specified telecommunications data that relates to the individual transmission service; and
- (h) if the stored communications consist of messages sent or received using an individual message/call application service—disclose to the agency:
  - (i) specified telecommunications data that relates to those messages; and
  - (ii) specified telecommunications data that relates to the individual message/call application service; and
- (i) if the stored communications consist of recordings of voice calls made or received using an individual message/call application service—disclose to the agency:
  - (i) specified telecommunications data that relates to those voice calls; and
  - (ii) specified telecommunications data that relates to the individual message/call application service; and
- (j) if the stored communications consist of recordings of video calls made or received using an individual message/call application service—disclose to the agency:
  - (i) specified telecommunications data that relates to those video calls; and
  - (ii) specified telecommunications data that relates to the individual message/call application service; and
- (k) if the stored communications consist of material that has been uploaded by an end-user for storage or back-up by a storage/back-up service—disclose to the agency:

- (i) specified telecommunications data that relates to that material; and
  - (ii) specified telecommunications data that relates to the end-user's account with the storage/back-up service; and
- (l) if the stored communications consist of material posted to a general electronic content service by an end-user—disclose to the agency:
  - (i) specified telecommunications data that relates to that material; and
  - (ii) specified telecommunications data that relates to the end-user's account with the general electronic content service.

*Matters to which issuing authority must have regard*

- (3) In deciding whether to issue an international production order under subclause (2), the issuing authority must have regard to the following matters:
  - (a) how much the privacy of any person or persons would be likely to be interfered with by the criminal law-enforcement agency obtaining, under an international production order, a copy of the stored communications;
  - (b) the gravity of the conduct constituting the serious category 1 offence or serious category 1 offences being investigated;
  - (c) how much the information mentioned in paragraph (2)(d) would be likely to assist in connection with the investigation by the criminal law-enforcement agency of the serious category 1 offence or serious category 1 offences;
  - (d) to what extent methods of investigating the serious category 1 offence or serious category 1 offences that do not involve so obtaining a copy of the stored communications have been used by, or are available to, the criminal law-enforcement agency;
  - (e) how much the use of such methods would be likely to assist in connection with the investigation by the criminal law-enforcement agency of the serious category 1 offence or serious category 1 offences;

- (f) how much the use of such methods would be likely to prejudice the investigation by the criminal law-enforcement agency of the serious category 1 offence or serious category 1 offences, whether because of delay or for any other reason;
- (g) such other matters (if any) as the issuing authority considers relevant.

#### **40 Content of international production order**

##### *Scope*

- (1) This clause applies to an international production order issued under clause 39 in response to an application made by a criminal law-enforcement agency.

##### *Content*

- (2) The order must be signed by the issuing authority who issued it.
- (3) The order must set out the following:
  - (a) the date on which the order was issued;
  - (b) the name of the criminal law-enforcement agency;
  - (c) the name of the prescribed communications provider to whom the order is directed;
  - (d) the name of the designated international agreement nominated in the application for the order;
  - (e) short particulars of each serious category 1 offence in relation to which the issuing authority issuing the order was satisfied, on the application for the order, as mentioned in paragraph 39(2)(d) of this Schedule.
- (4) If the order directs a prescribed communications provider to make a copy of stored communications available to the criminal law-enforcement agency, the order may require the provider to make that copy available to the agency in a specified way.
- (5) A requirement under subclause (4) may:
  - (a) require that a copy of stored communications be made available to the criminal law-enforcement agency directly; or

- (b) require that a copy of stored communications be made available to the criminal law-enforcement agency indirectly via the Australian Designated Authority.
- (6) If the order directs a prescribed communications provider to disclose telecommunications data to the criminal law-enforcement agency, the order may require the provider to disclose that data to the agency in a specified way.
- (7) A requirement under subclause (6) may:
  - (a) require that the telecommunications data be disclosed to the criminal law-enforcement agency directly; or
  - (b) require that the telecommunications data be disclosed to the criminal law-enforcement agency indirectly via the Australian Designated Authority.
- (8) For the purposes of this clause, a specified way may deal with matters of timing.

#### **41 Issue of further international production order**

If:

- (a) an international production order (the *original order*) was issued under clause 39; and
- (b) the original order was in respect of a particular person; and
- (c) the original order was directed to a prescribed communications provider;

this Schedule does not prevent the issue of a further international production order under clause 39 that:

- (d) is in respect of the person; and
- (e) is directed to the provider.

## **Division 4—International production orders relating to telecommunications data: enforcement of the criminal law**

### **Subdivision A—Applications**

#### **42 Application for international production order—enforcement of the criminal law**

- (1) An enforcement agency may apply to an issuing authority for an international production order under clause 48 that is directed to a prescribed communications provider.
- (2) The application must nominate a designated international agreement.
- (3) The application must be made on the enforcement agency's behalf by an authorised officer of the agency.

#### **43 Form of application**

- (1) An application under clause 42 must be in writing.
- (2) However, a person making the application on the enforcement agency's behalf may make the application by telephone if the person:
  - (a) is the chief officer of the agency or a person in relation to whom an authorisation by the chief officer is in force under subclause (3); and
  - (b) thinks it necessary, because of urgent circumstances, to make the application by telephone.

Note: See also clause 17A (urgent circumstances) and clause 172 (action required).

- (3) The chief officer of an enforcement agency may, in writing, authorise persons (including classes of persons) for the purposes of subclause (2). However, each person must be entitled under clause 42 to make applications on the agency's behalf.

#### **44 Contents of written application**

An application under clause 42 must, if it is in writing, set out:

- (a) the name of the enforcement agency; and
- (b) the name of the person making the application on the agency's behalf.

#### **45 Affidavits to accompany written application**

- (1) An application under clause 42 must, if it is in writing, be accompanied by an affidavit complying with this clause.
- (2) The affidavit must set out the facts and other grounds on which the application is based.
- (3) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.

#### **46 Information to be given on telephone application**

The information given to an issuing authority in connection with a telephone application under clause 42 to the issuing authority:

- (a) must include particulars of the urgent circumstances because of which the person making the application on the enforcement agency's behalf thinks it necessary to make the application by telephone; and
- (b) must include each matter that, if the application had been made in writing, clause 44 or 45 would have required the application, or an affidavit accompanying it, to set out; and
- (c) must be given orally or in writing, as the issuing authority directs.

#### **47 Giving further information to issuing authority**

- (1) An issuing authority may require further information to be given in connection with an application under clause 42 to the issuing authority for an international production order.
- (2) The further information:

- (a) must be given on oath if the application was made in writing;  
and
- (b) must be given orally or otherwise, as the issuing authority directs.

### **Subdivision B—International production orders relating to telecommunications data**

#### **48 Issue of international production order—enforcement of the criminal law**

##### *Scope*

- (1) This clause applies if an enforcement agency applies, under clause 42, to an issuing authority for an international production order that is directed to a prescribed communications provider.

##### *Issue of international production order*

- (2) If the issuing authority is satisfied, on the basis of the information given to the issuing authority under this Division in connection with the application, that:
  - (a) there are reasonable grounds for suspecting that the prescribed communications provider holds, or is likely to commence to hold, any of the following telecommunications data:
    - (i) telecommunications data that relates to communications carried by an individual transmission service supplied using a telecommunications network owned or operated by the prescribed communications provider;
    - (ii) telecommunications data that relates to an individual transmission service supplied using a telecommunications network owned or operated by the prescribed communications provider;
    - (iii) telecommunications data that relates to communications carried by an individual transmission service supplied by the prescribed communications provider;
    - (iv) telecommunications data that relates to an individual transmission service supplied by the prescribed communications provider;

- (v) telecommunications data that relates to messages sent or received using an individual message/call application service provided by the prescribed communications provider;
  - (vi) telecommunications data that relates to voice calls made or received using an individual message/call application service provided by the prescribed communications provider;
  - (vii) telecommunications data that relates to video calls made or received using an individual message/call application service provided by the prescribed communications provider;
  - (viii) telecommunications data that relates to an individual message/call application service provided by the prescribed communications provider;
  - (ix) telecommunications data that relates to material that has been uploaded by an end-user for storage or back-up by a storage/back-up service provided by the prescribed communications provider;
  - (x) telecommunications data that relates to material that has been posted on a general electronic content service provided by the prescribed communications provider; and
- (aa) the person who made the application on behalf of the agency reasonably suspects that the prescribed communications provider is based in, or operates in, a foreign country that is a party to the designated international agreement nominated in the application; and
  - (b) Subdivision A has been complied with in relation to the application; and
  - (c) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
  - (d) disclosing the telecommunications data to the enforcement agency, under an order issued under this clause, would be likely to assist in connection with the investigation by the enforcement agency of a serious category 1 offence, or serious category 1 offences;

the issuing authority may issue an order (to be known as an ***international production order***) directing the prescribed communications provider to do either or both of the following:

- (e) so far as the telecommunications data is held by the prescribed communications provider when the international production order comes into force—disclose any such telecommunications data to the agency;
- (f) so far as the telecommunications data commences to be held by the prescribed communications provider during a specified period—disclose any such telecommunications data to the agency.

*Period specified in international production order*

- (3) A period specified in an international production order for the purposes of paragraph (2)(f) must not begin before the time when the order is given to the prescribed communications provider.

Note: International production orders are given under clause 111.

- (4) A period specified in an international production order for the purposes of paragraph (2)(f) must not be longer than 90 days.

*Matters to which issuing authority must have regard*

- (5) In deciding whether to issue an international production order under subclause (2), the issuing authority must have regard to the following matters:
  - (a) how much the privacy of any person or persons would be likely to be interfered with by disclosing, under an international production order, the telecommunications data;
  - (b) the gravity of the conduct constituting the serious category 1 offence or serious category 1 offences being investigated;
  - (c) how much the telecommunications data would be likely to assist in connection with the investigation by the enforcement agency of the serious category 1 offence or serious category 1 offences;
  - (d) to what extent methods of investigating the serious category 1 offence or serious category 1 offences that do not involve so disclosing the telecommunications data have been used by, or are available to, the enforcement agency;

- (e) how much the use of such methods would be likely to assist in connection with the investigation by the enforcement agency of the serious category 1 offence or serious category 1 offences;
- (f) how much the use of such methods would be likely to prejudice the investigation by the enforcement agency of the serious category 1 offence or serious category 1 offences, whether because of delay or for any other reason;
- (g) such other matters (if any) as the issuing authority considers relevant.

## **49 Content of international production order**

### *Scope*

- (1) This clause applies to an international production order issued under clause 48 in response to an application made by an enforcement agency.

### *Content*

- (2) The order must be signed by the issuing authority who issued it.
- (3) The order must set out the following:
  - (a) the date on which the order was issued;
  - (b) the name of the enforcement agency;
  - (c) the name of the prescribed communications provider to whom the order is directed;
  - (d) the name of the designated international agreement nominated in the application for the order;
  - (e) short particulars of each serious category 1 offence in relation to which the issuing authority issuing the order was satisfied, on the application for the order, as mentioned in paragraph 48(2)(d) of this Schedule.
- (4) If the order directs a prescribed communications provider to disclose telecommunications data to the enforcement agency, the order may require the provider to disclose that data to the agency in a specified way.
- (5) A requirement under subclause (4) may:

- (a) require that the telecommunications data be disclosed to the enforcement agency directly; or
  - (b) require that the telecommunications data be disclosed to the enforcement agency indirectly via the Australian Designated Authority.
- (6) For the purposes of this clause, a specified way may deal with matters of timing.

Example: If a requirement under subclause (4) relates to telecommunications data that commences to be held by a prescribed communications provider during a specified period, the requirement may require that the telecommunications data be disclosed to the enforcement agency within 30 minutes after the telecommunications data commences to be held.

## **50 Issue of further international production order**

If:

- (a) an international production order (the *original order*) was issued under clause 48; and
- (b) the original order was directed to a prescribed communications provider; and
- (c) the original order relates to the investigation by an enforcement agency of a serious category 1 offence, or serious category 1 offences;

this Schedule does not prevent the issue of a further international production order under clause 48 that:

- (d) is directed to the provider; and
- (e) relates to the investigation by the enforcement agency of that offence or those offences.

## **Part 3—International production orders relating to control orders**

### **Division 1—Introduction**

#### **51 Simplified outline of this Part**

- If a control order is in force in relation to a person, an international production order may be issued for purposes in connection with the monitoring of the person, so as to protect the public from terrorist acts, prevent support for terrorist acts and hostile acts overseas and detect breaches of the control order.
- There are 3 types of international production orders:
  - (a) international production orders relating to interception; and
  - (b) international production orders relating to stored communications; and
  - (c) international production orders relating to telecommunications data.
- An international production order is directed to a prescribed communications provider.
- An international production order may be issued in response to an application made by a control order IPO agency.
- An application for an international production order must nominate a designated international agreement.
- If an international production order is issued in relation to an application made by a control order IPO agency, the agency must notify the international production order to the Ombudsman.

Note: An international production order comes into force when it is given to a prescribed communications provider under clause 111.

## **Division 2—International production orders relating to interception: control orders**

### **Subdivision A—Applications**

#### **52 Application for international production order—control order**

- (1) A control order IPO agency may apply to an eligible Judge or nominated AAT member for an international production order under clause 60 that:
  - (a) is in respect of:
    - (i) one or more individual transmission services; or
    - (ii) one or more individual message/call application services; and
  - (b) is directed to a prescribed communications provider.
- (2) The application must nominate a designated international agreement.
- (3) The application must be made on the control order IPO agency's behalf by:
  - (a) if the agency is referred to in subclause 22(3)—a person referred to in that subclause in relation to the agency; or
  - (b) otherwise:
    - (i) the chief officer of the agency; or
    - (ii) an officer of the agency (by whatever name called) who holds, or is acting in, an office or position in the agency nominated under subclause (4).
- (4) The chief officer of the control order IPO agency may, in writing, nominate for the purposes of subparagraph (3)(b)(ii) an office or position in the agency that is involved in the management of the agency.

#### **53 Form of application**

- (1) Subject to subclause (2), an application under clause 52 for an international production order must be in writing.

- (2) If the person making an application under clause 52 for an international production order on a control order IPO agency's behalf:
- (a) is the chief officer of the agency or a person in relation to whom an authorisation by the chief officer is in force under subclause (3); and
  - (b) thinks it necessary, because of urgent circumstances, to make the application by telephone;
- the person may make the application by telephone.

Note: See also clause 17A (urgent circumstances) and clause 172 (action required).

- (3) The chief officer of a control order IPO agency may authorise in writing, for the purposes of subclause (2), persons who, or classes of persons who, are entitled under clause 52 to make applications on the agency's behalf.

## **54 Contents of application**

A written application under clause 52 by a control order IPO agency for an international production order must set out:

- (a) the name of the agency; and
- (b) the name of the person making the application on the agency's behalf.

## **55 Affidavits to accompany written application**

- (1) A written application under clause 52 by a control order IPO agency for an international production order must be accompanied by an affidavit complying with this clause.
- (2) The affidavit must set out the facts and other grounds on which the application is based.
- (3) If the application is for an international production order in respect of one or more individual transmission services, the affidavit must set out the following information, so far as it can be derived from the control order IPO agency's records:

- (a) the number of previous applications (if any) for international production orders that the agency has made under clause 52 in relation to those individual transmission services;
  - (b) the number of international production orders (if any) previously issued in response to such applications;
  - (c) particulars of the use made by the agency of intercepted communications made available to the agency under such orders.
- (4) If the application is for an international production order in respect of one or more individual message/call application services, the affidavit must set out the following information, so far as it can be derived from the control order IPO agency's records:
  - (a) the number of previous applications (if any) for international production orders that the agency has made under clause 52 in relation to those individual message/call application services;
  - (b) the number of international production orders (if any) previously issued in response to such applications;
  - (c) particulars of the use made by the agency of intercepted messages, voice calls or video calls made available to the agency under such orders.
- (5) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.

## **56 Information to be given on telephone application**

The information given to an eligible Judge or nominated AAT member in connection with a telephone application under clause 52 to the eligible Judge or nominated AAT member:

- (a) must include particulars of the urgent circumstances because of which the person making the application on the control order IPO agency's behalf thinks it necessary to make the application by telephone; and
- (b) must include each matter that, if the application had been made in writing, clause 54 or 55 would have required the application, or an affidavit accompanying it, to set out; and

- (c) must be given orally or in writing, as the eligible Judge or nominated AAT member directs.

### **57 Giving further information to eligible Judge or nominated AAT member**

- (1) An eligible Judge or nominated AAT member may require further information to be given in connection with an application under clause 52 to the eligible Judge or nominated AAT member for an international production order.
- (2) The further information:
  - (a) must be given on oath if the application was made in writing; and
  - (b) must be given orally or otherwise, as the eligible Judge or nominated AAT member directs.

### **58 Application by control order IPO agency of Victoria**

#### *Scope*

- (1) This clause applies if a control order IPO agency of Victoria applies, under clause 52, to an eligible Judge or nominated AAT member for an international production order under clause 60 that is in respect of:
  - (a) one or more individual transmission services; or
  - (b) one or more individual message/call application services.

#### *PIM may make submissions*

- (2) A Victorian PIM may, orally or in writing, make submissions to the eligible Judge or nominated AAT member about the following matters:
  - (a) in the case of an application for an international production order that is in respect of one or more individual transmission services—the matters mentioned in paragraphs 60(5)(a) to (g);
  - (b) in the case of an application for an international production order that is in respect of one or more individual message/call

application services—the matters mentioned in paragraphs 60(6)(a) to (g).

*PIM may question certain persons*

- (3) The Victorian PIM may, for the purpose of making submissions under subclause (2), question:
- (a) the person making the application for the international production order on the control order IPO agency's behalf; or
  - (b) a person who, under clause 57, is required by the eligible Judge or nominated AAT member to give further information to the eligible Judge or nominated AAT member in connection with the application.

However, the Victorian PIM may only do so in the presence of the eligible Judge or nominated AAT member.

## **59 Application by control order IPO agency of Queensland**

*Scope*

- (1) This clause applies if a control order IPO agency of Queensland applies, under clause 52, to an eligible Judge or nominated AAT member for an international production order under clause 60 that is in respect of:
- (a) one or more individual transmission services; or
  - (b) one or more individual message/call application services.

*PIM may make submissions*

- (2) A Queensland PIM may, orally or in writing, make submissions to the eligible Judge or nominated AAT member about the following matters:
- (a) in the case of an application for an international production order that is in respect of one or more individual transmission services—the matters mentioned in paragraphs 60(5)(a) to (g);
  - (b) in the case of an application for an international production order that is in respect of one or more individual message/call application services—the matters mentioned in paragraphs 60(6)(a) to (g).

*PIM may question certain persons*

- (3) The Queensland PIM may, for the purpose of making submissions under subclause (2), question:
- (a) the person making the application for the international production order on the control order IPO agency's behalf; or
  - (b) a person who, under clause 57, is required by the eligible Judge or nominated AAT member to give further information to the eligible Judge or nominated AAT member in connection with the application.
- However, the Queensland PIM may only do so in the presence of the eligible Judge or nominated AAT member.
- (4) A Queensland PIM may, by writing, delegate to a Queensland deputy PIM the Queensland PIM's power under subclause (2) or (3), or both.
- (5) In exercising powers under the delegation, the Queensland deputy PIM must comply with any directions of the Queensland PIM.

**Subdivision B—International production orders relating to interception**

**60 Issue of international production order—control order**

*Scope*

- (1) This clause applies if a control order IPO agency applies, under clause 52, to an eligible Judge or nominated AAT member for an international production order that:
- (a) is in respect of:
    - (i) one or more individual transmission services; or
    - (ii) one or more individual message/call application services; and
  - (b) is directed to a prescribed communications provider.

*Issue of international production order*

- (2) If the eligible Judge or nominated AAT member is satisfied, on the basis of the information given to the eligible Judge or nominated

AAT member under this Division in connection with the application, that:

- (a) in the case of an application for an international production order that is in respect of one or more individual transmission services—there are reasonable grounds for suspecting that:
  - (i) the prescribed communications provider owns or operates a telecommunications network that is, or is likely to be, used to supply those individual transmission services; or
  - (ii) the prescribed communications provider supplies those individual transmission services; and
- (b) in the case of an application for an international production order that is in respect of one or more individual message/call application services—there are reasonable grounds for suspecting that the prescribed communications provider provides those individual message/call application services; and
- (ba) the person who made the application on behalf of the agency reasonably suspects that the prescribed communications provider is based in, or operates in, a foreign country that is a party to the designated international agreement nominated in the application; and
- (c) Subdivision A has been complied with in relation to the application; and
- (d) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
- (e) in the case of an application for an international production order that is in respect of one or more individual transmission services—there are reasonable grounds for suspecting that a particular person is using, or is likely to use, those individual transmission services; and
- (f) in the case of an application for an international production order that is in respect of one or more individual message/call application services—there are reasonable grounds for suspecting that a particular person is using, or is likely to use, those individual message/call application services; and

- (g) in the case of an application for an international production order that is in respect of one or more individual transmission services:
  - (i) a control order is in force in relation to the particular person; or
  - (ii) a control order is in force in relation to another person, and the particular person is likely to communicate with the other person using those individual transmission services; and
- (h) in the case of an application for an international production order that is in respect of one or more individual message/call application services:
  - (i) a control order is in force in relation to the particular person; or
  - (ii) a control order is in force in relation to another person, and the particular person is likely to communicate with the other person using those individual message/call application services; and
- (i) in the case of an application for an international production order that is in respect of one or more individual transmission services—information that would be likely to be obtained by intercepting, under an order issued under this clause, communications that are being carried by those individual transmission services would be likely to substantially assist in connection with:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with; and
- (j) in the case of an application for an international production order that is in respect of one or more individual message/call application services—information that would be likely to be obtained by intercepting, under an order issued under this clause, messages sent or received, voice calls made or

received, or video calls made or received, using those individual message/call application services would be likely to substantially assist in connection with:

- (i) the protection of the public from a terrorist act; or
- (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
- (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
- (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;

the eligible Judge or nominated AAT member may issue an order (to be known as an ***international production order***) directing the prescribed communications provider to:

- (k) in the case of an application for an international production order that is in respect of one or more individual transmission services:
  - (i) intercept communications carried by those individual transmission services during a specified period; and
  - (ii) make those intercepted communications available to the control order IPO agency; and
  - (iii) disclose to the control order IPO agency specified telecommunications data that relates to those intercepted communications; and
  - (iv) disclose to the control order IPO agency specified telecommunications data that relates to those individual transmission services; or
- (l) in the case of an application for an international production order that is in respect of one or more individual message/call application services:
  - (i) intercept messages sent or received, voice calls made or received, or video calls made or received, using those individual message/call application services during a specified period; and
  - (ii) make those intercepted messages, voice calls or video calls available to the control order IPO agency; and

- (iii) disclose to the control order IPO agency specified telecommunications data that relates to those intercepted messages, voice calls or video calls; and
- (iv) disclose to the control order IPO agency specified telecommunications data that relates to those individual message/call application services.

- Note 1: Part 5.3 of the *Criminal Code* creates offences relating to terrorist acts.
- Note 2: Part 5.5 of the *Criminal Code* creates offences relating to engaging in a hostile activity in a foreign country.
- Note 3: Section 104.27 of the *Criminal Code* creates an offence of contravening a control order.
- Note 4: Subclauses (7) and (8) restrict the issuing of international production orders if subparagraph (2)(g)(ii) or (h)(ii) applies.

*Period specified in international production order*

- (3) A period specified in an international production order for the purposes of subparagraph (2)(k)(i) or (l)(i) must not begin before the time when the order is given to the prescribed communications provider.

Note: International production orders are given under clause 111.

- (4) The period specified in an international production order for the purposes of subparagraph (2)(k)(i) or (l)(i) must not be longer than:
  - (a) if subparagraph (2)(g)(ii) or (h)(ii) applies (as the case requires)—45 days; or
  - (b) otherwise—90 days.

*Matters to which eligible Judge or nominated AAT member must have regard*

- (5) In deciding whether to issue an international production order under subclause (2) (in the case of an application for an international production order that is in respect of one or more individual transmission services), the eligible Judge or nominated AAT member must have regard to the following matters:
  - (a) how much the privacy of any person or persons would be likely to be interfered with by intercepting, under an international production order, communications that are being carried by those individual transmission services;

- (b) how much the information referred to in paragraph (2)(i) would be likely to assist in connection with:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;
- (c) to what extent methods for:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;that do not involve so intercepting communications have been used by, or are available to, the agency;
- (d) how much the use of such methods would be likely to assist in connection with:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;
- (e) how much the use of such methods would be likely to prejudice:
  - (i) the protection of the public from a terrorist act; or

- (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;  
whether because of delay or for any other reason;
  - (f) whether intercepting, under an international production order, communications carried by those individual transmission services would be the method that is likely to have the least interference with any person's privacy;
  - (g) the possibility that the person in relation to whom the control order is in force:
    - (i) has engaged, is engaging, or will engage, in a terrorist act; or
    - (ii) has provided, is providing, or will provide, support for a terrorist act; or
    - (iii) has facilitated, is facilitating, or will facilitate, a terrorist act; or
    - (iv) has provided, is providing, or will provide, support for the engagement in a hostile activity in a foreign country; or
    - (v) has facilitated, is facilitating, or will facilitate, the engagement in a hostile activity in a foreign country; or
    - (vi) has contravened, is contravening, or will contravene, the control order; or
    - (vii) will contravene a succeeding control order;
  - (h) in relation to an application by a control order IPO agency of Victoria—any submissions made by a Victorian PIM under clause 58 to the eligible Judge or nominated AAT member;
  - (i) in relation to an application by a control order IPO agency of Queensland—any submissions made by a Queensland PIM under clause 59 to the eligible Judge or nominated AAT member;
  - (j) such other matters (if any) as the eligible Judge or nominated AAT member considers relevant.
-

- (6) In deciding whether to issue an international production order under subclause (2) (in the case of an application for an international production order that is in respect of one or more individual message/call application services), the eligible Judge or nominated AAT member must have regard to the following matters:
- (a) how much the privacy of any person or persons would be likely to be interfered with by intercepting, under an international production order, messages sent or received, voice calls made or received, or video calls made or received, using those individual message/call application services;
  - (b) how much the information referred to in paragraph (2)(j) would be likely to assist in connection with:
    - (i) the protection of the public from a terrorist act; or
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
    - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
    - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;
  - (c) to what extent methods for:
    - (i) the protection of the public from a terrorist act; or
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
    - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
    - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;that do not involve so intercepting messages, voice calls or video calls have been used by, or are available to, the agency;
  - (d) how much the use of such methods would be likely to assist in connection with:
    - (i) the protection of the public from a terrorist act; or

- (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;
- (e) how much the use of such methods would be likely to prejudice:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;
- whether because of delay or for any other reason;
- (f) whether intercepting, under an international production order, messages sent or received, voice calls made or received, or video calls made or received, using those individual message/call application services would be the method that is likely to have the least interference with any person's privacy;
- (g) the possibility that the person in relation to whom the control order is in force:
  - (i) has engaged, is engaging, or will engage, in a terrorist act; or
  - (ii) has provided, is providing, or will provide, support for a terrorist act; or
  - (iii) has facilitated, is facilitating, or will facilitate, a terrorist act; or
  - (iv) has provided, is providing, or will provide, support for the engagement in a hostile activity in a foreign country; or

- (v) has facilitated, is facilitating, or will facilitate, the engagement in a hostile activity in a foreign country; or
- (vi) has contravened, is contravening, or will contravene, the control order; or
- (vii) will contravene a succeeding control order;
- (h) in relation to an application by a control order IPO agency of Victoria—any submissions made by a Victorian PIM under clause 58 to the eligible Judge or nominated AAT member; and
- (i) in relation to an application by a control order IPO agency of Queensland—any submissions made by a Queensland PIM under clause 59 to the eligible Judge or nominated AAT member;
- (j) such other matters (if any) as the eligible Judge or nominated AAT member considers relevant.

*Restriction on issuing order*

- (7) The eligible Judge or nominated AAT member must not issue an international production order under subclause (2) in a case where subparagraph (2)(g)(ii) applies, unless the eligible Judge or nominated AAT member is satisfied that:
  - (a) the control order IPO agency has exhausted all other practicable methods of identifying the individual transmission services used, or likely to be used, by the person to whom the control order referred to in subparagraph (2)(g)(ii) relates; or
  - (b) interception of communications carried by individual transmission services used or likely to be used by that person would not otherwise be possible.
- (8) The eligible Judge or nominated AAT member must not issue an international production order under subclause (2) in a case where: subparagraph (2)(h)(ii) applies, unless the eligible Judge or nominated AAT member is satisfied that:
  - (a) the control order IPO agency has exhausted all other practicable methods of identifying the individual message/call application services used, or likely to be used, by the person the person to whom the control order referred to in subparagraph (2)(h)(ii) relates; or

- (b) interception of messages sent or received, voice calls made or received, or video calls made or received, using individual message/call application services used or likely to be used by that person would not otherwise be possible.

## **61 Content of international production order**

### *Scope*

- (1) This clause applies to an international production order issued under clause 60 in response to an application made by a control order IPO agency.

### *Content*

- (2) The order must be signed by the eligible Judge or nominated AAT member who issued it.
- (3) The order must set out the following:
  - (a) the date on which the order was issued;
  - (b) the name of the control order IPO agency;
  - (c) the name of the prescribed communications provider to whom the order is directed;
  - (d) the name of the designated international agreement nominated in the application for the order;
  - (e) the applicable telecommunications identifiers:
    - (i) in the case of an order that is in respect of one or more individual transmission services—to which those individual transmission services relate; or
    - (ii) in the case of an order that is in respect of one or more individual message/call application services—to which those individual message/call application services relate;
  - (f) a statement to the effect that the order is issued on the basis of a control order made in relation to a person;
  - (g) the name of the person;
  - (h) either:
    - (i) a statement to the effect that the control order is an interim control order; or

- (ii) a statement to the effect that the control order is a confirmed control order.
- (4) If the order directs a prescribed communications provider to intercept communications, the order may require the provider to:
  - (a) intercept those communications in a specified way; and
  - (b) make those intercepted communications available to the control order IPO agency in a specified way.
- (5) A requirement under subclause (4) may:
  - (a) require that intercepted communications be made available to the control order IPO agency directly; or
  - (b) require that intercepted communications be made available to the control order IPO agency indirectly via the Australian Designated Authority.
- (6) If the order directs a prescribed communications provider to intercept messages, voice calls or video calls, the order may require the provider to:
  - (a) intercept those messages, voice calls or video calls in a specified way; and
  - (b) make those intercepted messages, voice calls or video calls available to the control order IPO agency in a specified way.
- (7) A requirement under subclause (6) may:
  - (a) require that intercepted messages, voice calls or video calls be made available to the control order IPO agency directly; or
  - (b) require that intercepted messages, voice calls or video calls be made available to the control order IPO agency indirectly via the Australian Designated Authority.
- (8) If the order directs a prescribed communications provider to disclose telecommunications data to the control order IPO agency, the order may require the provider to disclose that data to the agency in a specified way.
- (9) A requirement under subclause (8) may:
  - (a) require that the telecommunications data be disclosed to the control order IPO agency directly; or

- (b) require that the telecommunications data be disclosed to the control order IPO agency indirectly via the Australian Designated Authority.
- (10) For the purposes of this clause, a specified way may deal with matters of timing.
  - Example: A requirement under subclause (4) may require that an intercepted communication be made available to the control order IPO agency within 30 minutes after the communication was completed.

## 62 Issue of further international production order

- (1) If:
  - (a) an international production order (the *original order*) was issued under clause 60; and
  - (b) the original order was in respect of one or more individual transmission services; and
  - (c) the original order was directed to a prescribed communications provider;this Schedule does not prevent the issue of a further international production order under clause 60 that is:
  - (d) in respect of any or all of those services; and
  - (e) directed to the provider;so long as the period specified in the further order for the purposes of subparagraph 60(2)(k)(i) of this Schedule begins after the end of the period specified in the original order for the purposes of that subparagraph.
- (2) If:
  - (a) an international production order (the *original order*) was issued under clause 60; and
  - (b) the original order was in respect of one or more individual message/call application services; and
  - (c) the original order was directed to a prescribed communications provider;this Schedule does not prevent the issue of a further international production order under clause 60 that is:
  - (d) in respect of any or all of those services; and
  - (e) directed to the provider;

so long as the period specified in the further order for the purposes of subparagraph 60(2)(1)(i) of this Schedule begins after the end of the period specified in the original order for the purposes of that subparagraph.

### **Division 3—International production orders relating to stored communications: control orders**

#### **Subdivision A—Applications**

#### **63 Application for international production order—control order**

- (1) A control order IPO agency may apply to an issuing authority for an international production order under clause 69 that:
  - (a) is in respect of a particular person; and
  - (b) is directed to a prescribed communications provider.
- (2) The application must nominate a designated international agreement.
- (3) The application must be made on the control order IPO agency's behalf by:
  - (a) if the agency is referred to in subclause 22(3)—a person referred to in that subclause in relation to the agency; or
  - (b) otherwise:
    - (i) the chief officer of the agency; or
    - (ii) an officer of the agency (by whatever name called) who holds, or is acting in, an office or position in the agency nominated under subclause (4).
- (4) The chief officer of the control order IPO agency may, in writing, nominate for the purposes of subparagraph (3)(b)(ii) an office or position in the agency that is involved in the management of the agency.
- (5) A nomination under subclause (4) is not a legislative instrument.

#### **64 Form of application**

- (1) An application under clause 63 must be in writing.

- (2) However, a person making the application on the control order IPO agency's behalf may make the application by telephone if the person:

- (a) is the chief officer of the agency or a person in relation to whom an authorisation by the chief officer is in force under subclause (3); and
- (b) thinks it necessary, because of urgent circumstances, to make the application by telephone.

Note: See also clause 17A (urgent circumstances) and clause 172 (action required).

- (3) The chief officer of a control order IPO agency may, in writing, authorise persons (including classes of persons) for the purposes of subclause (2). However, each person must be entitled under clause 63 to make applications on the agency's behalf.

## **65 Contents of written application**

An application under clause 63 must, if it is in writing, set out:

- (a) the name of the control order IPO agency; and
- (b) the name of the person making the application on the agency's behalf.

## **66 Affidavits to accompany written application**

- (1) An application under clause 63 must, if it is in writing, be accompanied by an affidavit complying with this clause.
- (2) The affidavit must set out the facts and other grounds on which the application is based.
- (3) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.

## **67 Information to be given on telephone application**

The information given to an issuing authority in connection with a telephone application under clause 63 to the issuing authority:

- (a) must include particulars of the urgent circumstances because of which the person making the application on the control order IPO agency's behalf thinks it necessary to make the application by telephone; and
- (b) must include each matter that, if the application had been made in writing, clause 65 or 66 would have required the application, or an affidavit accompanying it, to set out; and
- (c) must be given orally or in writing, as the issuing authority directs.

## **68 Giving further information to issuing authority**

- (1) An issuing authority may require further information to be given in connection with an application under clause 63 to the issuing authority for an international production order.
- (2) The further information:
  - (a) must be given on oath if the application was made in writing; and
  - (b) must be given orally or otherwise, as the issuing authority directs.

## **Subdivision B—International production orders relating to stored communications**

### **69 Issue of international production order—control order**

#### *Scope*

- (1) This clause applies if a control order IPO agency applies, under clause 63, to an issuing authority for an international production order that:
  - (a) is in respect of a particular person (the **relevant person**); and
  - (b) is directed to a prescribed communications provider.

#### *Issue of international production order*

- (2) If the issuing authority is satisfied, on the basis of the information given to the issuing authority under this Division in connection with the application, that:

- (a) a control order is in force in relation to the relevant person;  
and
- (b) there are reasonable grounds for suspecting that the prescribed communications provider holds any of the following stored communications:
  - (i) stored communications that consist of communications that the relevant person has made using a telecommunications network owned or operated by the prescribed communications provider;
  - (ii) stored communications that consist of communications that another person has made using a telecommunications network owned or operated by the prescribed communications provider, and for which the relevant person is the intended recipient;
  - (iii) stored communications that consist of communications that the relevant person has made using a transmission service supplied by the prescribed communications provider;
  - (iv) stored communications that consist of communications that another person has made using a transmission service supplied by the prescribed communications provider, and for which the relevant person is the intended recipient;
  - (v) stored communications that consist of messages that the relevant person has sent or received using a message/call application service provided by the prescribed communications provider;
  - (vi) stored communications that consist of recordings of voice calls that the relevant person has made or received using a message/call application service provided by the prescribed communications provider;
  - (vii) stored communications that consist of recordings of video calls that the relevant person has made or received using a message/call application service provided by the prescribed communications provider;
  - (viii) stored communications that consist of material that the relevant person has uploaded for storage or back-up by a storage/back-up service provided by the prescribed communications provider;

- (ix) stored communications that consist of material that the relevant person has posted to a general electronic content service provided by the prescribed communications provider; and
  - (ba) the person who made the application on behalf of the agency reasonably suspects that the prescribed communications provider is based in, or operates in, a foreign country that is a party to the designated international agreement nominated in the application; and
  - (c) Subdivision A has been complied with in relation to the application; and
  - (d) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
  - (e) information that would be likely to be obtained by making a copy, under an order issued under this clause, of the stored communications would be likely to substantially assist in connection with:
    - (i) the protection of the public from a terrorist act; or
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
    - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
    - (iv) determining whether the control order has been, or is being, complied with;
- the issuing authority may issue an order (to be known as an ***international production order***) directing the prescribed communications provider to:
- (f) make a copy of any such stored communications; and
  - (g) make the copy available to the control order IPO agency; and
  - (h) if the stored communications consist of communications carried by an individual transmission service—disclose to the agency:
    - (i) specified telecommunications data that relates to those communications; and
    - (ii) specified telecommunications data that relates to the individual transmission service; and

- (i) if the stored communications consist of messages sent or received using an individual message/call application service—disclose to the agency:
  - (i) specified telecommunications data that relates to those messages; and
  - (ii) specified telecommunications data that relates to the individual message/call application service; or
- (j) if the stored communications consist of recordings of voice calls made or received using an individual message/call application service—disclose to the agency:
  - (i) specified telecommunications data that relates to those voice calls; and
  - (ii) specified telecommunications data that relates to the individual message/call application service; and
- (k) if the stored communications consist of recordings of video calls made or received using an individual message/call application service—disclose to the agency:
  - (i) specified telecommunications data that relates to those video calls; and
  - (ii) specified telecommunications data that relates to the individual message/call application service; and
- (l) if the stored communications consist of material that has been uploaded by an end-user for storage or back-up by a storage/back-up service—disclose to the agency:
  - (i) specified telecommunications data that relates to that material; and
  - (ii) specified telecommunications data that relates to the end-user's account with the storage/back-up service; and
- (m) if the stored communications consist of material posted to a general electronic content service by an end-user—disclose to the agency:
  - (i) specified telecommunications data that relates to that material; and
  - (ii) specified telecommunications data that relates to the end-user's account with the general electronic content service.

*Matters to which issuing authority must have regard*

- (3) In deciding whether to issue an international production order under subclause (2), the issuing authority must have regard to the following matters:
- (a) how much the privacy of any person or persons would be likely to be interfered with by the control order IPO agency obtaining, under an international production order, a copy of the stored communications;
  - (b) how much the information mentioned in paragraph (2)(e) would be likely to assist in connection with:
    - (i) the protection of the public from a terrorist act; or
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
    - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
    - (iv) determining whether the control order has been, or is being, complied with;
  - (c) to what extent methods for:
    - (i) the protection of the public from a terrorist act; or
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
    - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
    - (iv) determining whether the control order has been, or is being, complied with;that do not involve so obtaining a copy of the stored communications have been used by, or are available to, the control order IPO agency;
  - (d) how much the use of such methods would be likely to assist in connection with:
    - (i) the protection of the public from a terrorist act; or
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or

- (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
- (iv) determining whether the control order has been, or is being, complied with;
- (e) how much the use of such methods would be likely to prejudice:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order has been, or is being, complied with;whether because of delay or for any other reason;
- (f) such other matters (if any) as the issuing authority considers relevant.

## **70 Content of international production order**

### *Scope*

- (1) This clause applies to an international production order issued under clause 69 in response to an application made by a control order IPO agency.

### *Content*

- (2) The order must be signed by the issuing authority who issued it.
- (3) The order must set out the following:
  - (a) the date on which the order was issued;
  - (b) the name of the control order IPO agency;
  - (c) the name of the prescribed communications provider to whom the order is directed;
  - (d) the name of the designated international agreement nominated in the application for the order;

- (e) a statement to the effect that the order is issued on the basis of a control order made in relation to a person;
- (f) the name of the person;
- (g) either:
  - (i) a statement to the effect that the control order is an interim control order; or
  - (ii) a statement to the effect that the control order is a confirmed control order.
- (4) If the order directs a prescribed communications provider to make a copy of stored communications available to the control order IPO agency, the order may require the provider to make that copy available to the agency in a specified way.
- (5) A requirement under subclause (4) may:
  - (a) require that a copy of stored communications be made available to the control order IPO agency directly; or
  - (b) require that a copy of stored communications be made available to the control order IPO agency indirectly via the Australian Designated Authority.
- (6) If the order directs a prescribed communications provider to disclose telecommunications data to the control order IPO agency, the order may require the provider to disclose that data to the agency in a specified way.
- (7) A requirement under subclause (6) may:
  - (a) require that the telecommunications data be disclosed to the control order IPO agency directly; or
  - (b) require that the telecommunications data be disclosed to the control order IPO agency indirectly via the Australian Designated Authority.
- (8) For the purposes of this clause, a specified way may deal with matters of timing.

## **71 Issue of further international production order**

If:

- (a) an international production order (the ***original order***) was issued under clause 69; and

- (b) the original order was in respect of a particular person; and
  - (c) the original order was directed to a prescribed communications provider;
- this Schedule does not prevent the issue of a further international production order under clause 69 that:
- (d) is in respect of the person; and
  - (e) is directed to the provider.

## **Division 4—International production orders relating to telecommunications data: control orders**

### **Subdivision A—Applications**

#### **72 Application for international production order—control order**

- (1) A control order IPO agency may apply to an issuing authority for an international production order under clause 78 that:
  - (a) is in respect of a particular person; and
  - (b) is directed to a prescribed communications provider.
- (2) The application must nominate a designated international agreement.
- (3) The application must be made on the control order IPO agency's behalf by an authorised officer of the agency.

#### **73 Form of application**

- (1) An application under clause 72 must be in writing.
- (2) However, a person making the application on the control order IPO agency's behalf may make the application by telephone if the person:
  - (a) is the chief officer of the agency or a person in relation to whom an authorisation by the chief officer is in force under subclause (3); and
  - (b) thinks it necessary, because of urgent circumstances, to make the application by telephone.

Note: See also clause 17A (urgent circumstances) and clause 172 (action required).

- (3) The chief officer of a control order IPO agency may, in writing, authorise persons (including classes of persons) for the purposes of subclause (2). However, each person must be entitled under clause 72 to make applications on the agency's behalf.

#### **74 Contents of written application**

An application under clause 72 must, if it is in writing, set out:

- (a) the name of the control order IPO agency; and
- (b) the name of the person making the application on the agency's behalf.

#### **75 Affidavits to accompany written application**

- (1) An application under clause 72 must, if it is in writing, be accompanied by an affidavit complying with this clause.
- (2) The affidavit must set out the facts and other grounds on which the application is based.
- (3) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.

#### **76 Information to be given on telephone application**

The information given to an issuing authority in connection with a telephone application under clause 72 to the issuing authority:

- (a) must include particulars of the urgent circumstances because of which the person making the application on the control order IPO agency's behalf thinks it necessary to make the application by telephone; and
- (b) must include each matter that, if the application had been made in writing, clause 74 or 75 would have required the application, or an affidavit accompanying it, to set out; and
- (c) must be given orally or in writing, as the issuing authority directs.

## **77 Giving further information to issuing authority**

- (1) An issuing authority may require further information to be given in connection with an application under clause 72 to the issuing authority for an international production order.
- (2) The further information:
  - (a) must be given on oath if the application was made in writing; and
  - (b) must be given orally or otherwise, as the issuing authority directs.

## **Subdivision B—International production orders relating to telecommunications data**

### **78 Issue of international production order—control order**

#### *Scope*

- (1) This clause applies if a control order IPO agency applies, under clause 72, to an issuing authority for an international production order that:
  - (a) is in respect of a particular person (the **relevant person**); and
  - (b) is directed to a prescribed communications provider.

#### *Issue of international production order*

- (2) If the issuing authority is satisfied, on the basis of the information given to the issuing authority under this Division in connection with the application, that:
  - (a) a control order is in force in relation to the relevant person; and
  - (b) there are reasonable grounds for suspecting that the prescribed communications provider holds, or is likely to commence to hold, any of the following telecommunications data:
    - (i) telecommunications data that relates to communications that the relevant person has made using an individual transmission service supplied by the prescribed communications provider;

- (ii) telecommunications data that relates to an individual transmission service supplied using a telecommunications network owned or operated by the prescribed communications provider, where the individual transmission service is used, or is likely to be used, by the relevant person;
- (iii) telecommunications data that relates to an individual transmission service supplied by the prescribed communications provider, where the individual transmission service is used, or is likely to be used, by the relevant person;
- (iv) telecommunications data that relates to messages sent or received by the relevant person using an individual message/call application service provided by the prescribed communications provider;
- (v) telecommunications data that relates to voice calls made or received by the relevant person using an individual message/call application service provided by the prescribed communications provider;
- (vi) telecommunications data that relates to video calls made or received by the relevant person using an individual message/call application service provided by the prescribed communications provider;
- (vii) telecommunications data that relates to an individual message/call application service provided by the prescribed communications provider, where the individual message/call application service is used, or is likely to be used, by the relevant person;
- (viii) telecommunications data that relates to material that has been uploaded by the relevant person for storage or back-up by a storage/back-up service provided by the prescribed communications provider;
- (ix) telecommunications data that relates to material that has been posted by the relevant person on a general electronic content service provided by the prescribed communications provider; and
- (ba) the person who made the application on behalf of the agency reasonably suspects that the prescribed communications provider is based in, or operates in, a foreign country that is a

party to the designated international agreement nominated in the application; and

- (c) Subdivision A has been complied with in relation to the application; and
- (d) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
- (e) disclosing the telecommunications data to the agency, under an order issued under this clause, would be likely to substantially assist in connection with:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;

the issuing authority may issue an order (to be known as an ***international production order***) directing the prescribed communications provider to do either or both of the following:

- (f) so far as the telecommunications data is held by the prescribed communications provider when the international production order comes into force—disclose any such telecommunications data to the agency;
- (g) so far as the telecommunications data commences to be held by the prescribed communications provider during a specified period—disclose any such telecommunications data to the agency.

*Period specified in international production order*

- (3) A period specified in an international production order for the purposes of paragraph (2)(g) must not begin before the time when the order is given to the prescribed communications provider.

Note: International production orders are given under clause 111.

- (4) A period specified in an international production order for the purposes of paragraph (2)(g) must not be longer than 90 days.
- (5) In deciding whether to issue an international production order under subclause (2), the issuing authority must have regard to the following matters:
  - (a) how much the privacy of any person or persons would be likely to be interfered with by obtaining, under an international production order, the telecommunications data;
  - (b) how much the telecommunications data would be likely to assist in connection with:
    - (i) the protection of the public from a terrorist act; or
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
    - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
    - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;
  - (c) to what extent methods for:
    - (i) the protection of the public from a terrorist act; or
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
    - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
    - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;that do not involve so obtaining the telecommunications data have been used by, or are available to, the control order IPO agency;
  - (d) how much the use of such methods would be likely to assist in connection with:
    - (i) the protection of the public from a terrorist act; or
    - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or

- (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
- (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;
- (e) how much the use of such methods would be likely to prejudice:
  - (i) the protection of the public from a terrorist act; or
  - (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
  - (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
  - (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;whether because of delay or for any other reason;
- (f) such other matters (if any) as the issuing authority considers relevant.

## **79 Content of international production order**

### *Scope*

- (1) This clause applies to an international production order issued under clause 78 in response to an application made by a control order IPO agency.

### *Content*

- (2) The order must be signed by the issuing authority who issued it.
- (3) The order must set out the following:
  - (a) the date on which the order was issued;
  - (b) the name of the control order IPO agency;
  - (c) the name of the prescribed communications provider to whom the order is directed;

- (d) the name of the designated international agreement nominated in the application for the order;
  - (e) a statement to the effect that the order is issued on the basis of a control order made in relation to a person;
  - (f) the name of the person;
  - (g) either:
    - (i) a statement to the effect that the control order is an interim control order; or
    - (ii) a statement to the effect that the control order is a confirmed control order.
- (4) If the order directs a prescribed communications provider to disclose telecommunications data to the control order IPO agency, the order may require the provider to disclose that data to the agency in a specified way.
- (5) A requirement under subclause (4) may:
- (a) require that the telecommunications data be disclosed to the control order IPO agency directly; or
  - (b) require that the telecommunications data be disclosed to the control order IPO agency indirectly via the Australian Designated Authority.
- (6) For the purposes of this clause, a specified way may deal with matters of timing.
- Example: If a requirement under subclause (4) relates to telecommunications data that commences to be held by a prescribed communications provider during a specified period, the requirement may require that the telecommunications data be disclosed to the control order IPO agency within 30 minutes after the telecommunications data commences to be held.

## **80 Issue of further international production order**

If:

- (a) an international production order (the ***original order***) was issued under clause 78; and
- (b) the original order was in respect of a particular person; and
- (c) the original order was directed to a prescribed communications provider;

this Schedule does not prevent the issue of a further international production order under clause 78 that:

- (d) is in respect of the person; and
- (e) is directed to the provider.

## **Division 5—Notification to Ombudsman by control order IPO agencies in relation to international production orders**

### **81 Notification to Ombudsman by control order IPO agencies in relation to international production orders**

- (1) Within 3 months after an international production order is issued under this Part in response to an application by a control order IPO agency, the chief officer of the agency must:
  - (a) notify the Ombudsman that the order has been issued; and
  - (b) give to the Ombudsman a copy of the order.
- (2) If the chief officer of a control order IPO agency contravenes paragraph 114(1)(d) of this Schedule (so far as that paragraph relates to an international production order issued under this Part), the chief officer must:
  - (a) notify the Ombudsman of the contravention; and
  - (b) do so as soon as practicable after the contravention.
- (3) A failure to comply with subclause (1) or (2) does not affect the validity of an international production order.

## **Part 4—International production orders relating to national security**

### **Division 1—Introduction**

#### **82 Simplified outline of this Part**

- International production orders may be issued for purposes in connection with the carrying out by the Organisation of its functions.

- There are 3 types of international production orders:
  - (a) international production orders relating to interception; and
  - (b) international production orders relating to stored communications; and
  - (c) international production orders relating to telecommunications data.
- An international production order is directed to a prescribed communications provider.
- An international production order may be issued in response to an application made by the Organisation.
- An application for an international production order must nominate a designated international agreement.

Note: An international production order comes into force when it is given to a prescribed communications provider under clause 112.

## **Division 2—International production orders relating to interception: national security**

### **Subdivision A—Applications**

#### **83 Application for international production order—national security**

- (1) The Organisation may apply to a nominated AAT Security Division member for an international production order under clause 89 that:
  - (a) is in respect of:
    - (i) one or more individual transmission services; or
    - (ii) one or more individual message/call application services; and
  - (b) is directed to a prescribed communications provider.
- (2) The application must nominate a designated international agreement.

- (3) The application must be made on the Organisation's behalf by:
  - (a) the Director-General of Security; or
  - (b) a Deputy Director-General of Security; or
  - (c) a senior position-holder in relation to whom an authorisation is in force under subclause (4).
- (4) The Director-General of Security may authorise in writing, for the purposes of subclause (3), senior position-holders who, or classes of senior position-holders who, are entitled under subclause (1) to make applications on the Organisation's behalf.

*Attorney-General's consent to the making of an application*

- (5) The Organisation must not make an application under subclause (1) unless the Attorney-General has consented to the making of the application.
- (6) The Attorney-General must not consent to the making of an application under subclause (1) for an international production order that is in respect of one or more individual transmission services unless the Attorney-General is satisfied that:
  - (a) there are reasonable grounds for suspecting that those individual transmission services are being, or are likely to be:
    - (i) used by a person engaged in, or reasonably suspected of being engaged in, or of being likely to engage in, activities prejudicial to security; or
    - (ii) the means by which a person receives or sends a communication from or to another person who is engaged in, or reasonably suspected of being engaged in, or of being likely to engage in, activities prejudicial to security; or
    - (iii) used for purposes prejudicial to security; and
  - (b) information that would be likely to be obtained by intercepting, under an order issued in response to the application, communications that are being carried by those individual transmission services would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security.

- (7) The Attorney-General must not consent to the making of an application under subclause (1) for an international production order that is in respect of one or more individual message/call application services unless the Attorney-General is satisfied that:
- (a) there are reasonable grounds for suspecting that those individual message/call application services are being, or are likely to be:
    - (i) used by a person engaged in, or reasonably suspected of being engaged in, or of being likely to engage in, activities prejudicial to security; or
    - (ii) the means by which a person receives or sends a message, or receives or makes a voice call or video call, from or to another person who is engaged in, or reasonably suspected of being engaged in, or of being likely to engage in, activities prejudicial to security; or
    - (iii) used for purposes prejudicial to security; and
  - (b) information that would be likely to be obtained by intercepting, under an order issued in response to the application, messages sent or received, voice calls made or received, or video calls made or received, using those individual message/call application services would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security.

*Form of Attorney-General's consent to the making of an application*

- (8) Subject to subclause (9), a consent given by the Attorney-General under subclause (5) must be in writing.
- (9) If the person who proposes to make an application under subclause (1) on the Organisation's behalf thinks it necessary, because of urgent circumstances, for the Attorney-General to consent orally to the making of the application:
- (a) the person may request the Attorney-General to consent orally to the making of the application; and
  - (b) if the person makes such a request—the Attorney-General may consent orally to the making of the application.

Note: See also clause 17A (urgent circumstances).

- (9A) At the same time as a request is made by a person under subclause (9), the person must inform the Attorney-General of the particulars of the urgent circumstances because of which the person thought it necessary for the Attorney-General to consent orally to the making of the application concerned.
- (10) If, in response to a request made by a person under subclause (9), the Attorney-General consents orally to the making of an application, the person must:
  - (a) give the Attorney-General a written report that sets out:
    - (i) particulars of the urgent circumstances because of which the person thought it necessary for the Attorney-General to consent orally; and
    - (ii) whether the application was granted, withdrawn or refused; and
  - (b) do so within 3 working days after the day on which the application was granted, withdrawn or refused.
- (11) If, in response to a request made by a person under subclause (9), the Attorney-General consents orally to the making of an application, the Organisation must:
  - (a) give the Inspector-General of Intelligence and Security a copy of the relevant report under subclause (10); and
  - (b) do so within 3 working days after the day on which the application was granted, withdrawn or refused.

## **84 Form of application**

- (1) Subject to subclause (2), an application under clause 83 for an international production order must be in writing.
- (2) If the person making an application under clause 83 for an international production order on the Organisation's behalf thinks it necessary, because of urgent circumstances, to make the application by telephone, the person may make the application by telephone.

Note: See also clause 17A (urgent circumstances) and clause 172 (action required).

## **85 Contents of application**

A written application under clause 83 for an international production order must set out:

- (a) a statement to the effect that the application is made by the Organisation; and
- (b) the name of the person making the application on the Organisation's behalf.

## **86 Affidavits to accompany written application**

- (1) A written application under clause 83 for an international production order must be accompanied by an affidavit complying with this clause.
- (2) The affidavit must set out the facts and other grounds on which the application is based.
- (3) If the application is for an international production order in respect of one or more individual transmission services, the affidavit must set out the following information, so far as it can be derived from the Organisation's records:
  - (a) the number of previous applications (if any) for international production orders that the Organisation has made under clause 83 in relation to those individual transmission services;
  - (b) the number of international production orders (if any) previously issued in response to such applications;
  - (c) particulars of the use made by the Organisation of intercepted communications made available to the Organisation under such orders.
- (4) If the application is for an international production order in respect of one or more individual message/call application services, the affidavit must set out the following information, so far as it can be derived from the Organisation's records:
  - (a) the number of previous applications (if any) for international production orders that the Organisation has made under clause 83 in relation to those individual message/call application services;

- (b) the number of international production orders (if any) previously issued in response to such applications;
  - (c) particulars of the use made by the Organisation of intercepted messages, voice calls or video calls made available to the Organisation under such orders.
- (5) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.

### **87 Information to be given on telephone application**

The information given to a nominated AAT Security Division member in connection with a telephone application under clause 83 to the nominated AAT Security Division member:

- (a) must include particulars of the urgent circumstances because of which the person making the application on the Organisation's behalf thinks it necessary to make the application by telephone; and
- (b) must include each matter that, if the application had been made in writing, clause 85 or 86 would have required the application, or an affidavit accompanying it, to set out; and
- (c) must be given orally or in writing, as the nominated AAT Security Division member directs.

### **88 Giving further information to nominated AAT Security Division member**

- (1) A nominated AAT Security Division member may require further information to be given in connection with an application under clause 83 to the nominated AAT Security Division member for an international production order.
- (2) The further information:
  - (a) must be given on oath if the application was made in writing; and
  - (b) must be given orally or otherwise, as the nominated AAT Security Division member directs.

## **Subdivision B—International production orders relating to interception**

### **89 Issue of international production order—national security**

#### *Scope*

- (1) This clause applies if the Organisation applies, under clause 83, to a nominated AAT Security Division member for an international production order that:
  - (a) is in respect of:
    - (i) one or more individual transmission services; or
    - (ii) one or more individual message/call application services; and
  - (b) is directed to a prescribed communications provider.

#### *Issue of international production order*

- (2) If the nominated AAT Security Division member is satisfied, on the basis of the information given to the nominated AAT Security Division member under this Division in connection with the application, that:
  - (a) in the case of an application for an international production order that is in respect of one or more individual transmission services—there are reasonable grounds for suspecting that:
    - (i) the prescribed communications provider owns or operates a telecommunications network that is, or is likely to be, used to supply those individual transmission services; or
    - (ii) the prescribed communications provider supplies those individual transmission services; and
  - (b) in the case of an application for an international production order that is in respect of one or more individual message/call application services—there are reasonable grounds for suspecting that the prescribed communications provider provides those individual message/call application services; and
  - (ba) the person who made the application on behalf of the Organisation reasonably suspects that the prescribed

- communications provider is based in, or operates in, a foreign country that is a party to the designated international agreement nominated in the application; and
- (c) Subdivision A has been complied with in relation to the application; and
  - (d) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
  - (e) in the case of an application for an international production order that is in respect of one or more individual transmission services—there are reasonable grounds for suspecting that those services are being, or are likely to be:
    - (i) used by a person engaged in, or reasonably suspected of being engaged in, or of being likely to engage in, activities prejudicial to security; or
    - (ii) the means by which a person receives or sends a communication from or to another person who is engaged in, or reasonably suspected of being engaged in, or of being likely to engage in, activities prejudicial to security; or
    - (iii) used for purposes prejudicial to security; and
  - (f) in the case of an application for an international production order that is in respect of one or more individual message/call application services—there are reasonable grounds for suspecting that those services are being, or are likely to be:
    - (i) used by a person engaged in, or reasonably suspected of being engaged in, or of being likely to engage in, activities prejudicial to security; or
    - (ii) the means by which a person receives or sends a message, or receives or makes a voice call or video call, from or to another person who is engaged in, or reasonably suspected of being engaged in, or of being likely to engage in, activities prejudicial to security; or
    - (iii) used for purposes prejudicial to security; and
  - (g) in the case of an application for an international production order that is in respect of one or more individual transmission services—there are reasonable grounds for suspecting that information that would be likely to be obtained by intercepting, under an order issued under this clause,

communications that are being carried by those individual transmission services would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security; and

- (h) in the case of an application for an international production order that is in respect of one or more individual message/call application services—there are reasonable grounds for suspecting that information that would be likely to be obtained by intercepting, under an order issued under this clause, messages sent or received, voice calls made or received, or video calls made or received, using those individual message/call application services would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security;

the nominated AAT Security Division member may issue an order (to be known as an ***international production order***) directing the prescribed communications provider to:

- (i) in the case of an application for an international production order that is in respect of one or more individual transmission services:
  - (i) intercept communications carried by those individual transmission services during a specified period; and
  - (ii) make those intercepted communications available to the Organisation; and
  - (iii) disclose to the Organisation specified telecommunications data that relates to those intercepted communications; and
  - (iv) disclose to the Organisation specified telecommunications data that relates to those individual transmission services; or
- (j) in the case of an application for an international production order that is in respect of one or more individual message/call application services:
  - (i) intercept messages sent or received, voice calls made or received, or video calls made or received, using those individual message/call application services during a specified period; and
  - (ii) make those intercepted messages, voice calls or video calls available to the Organisation; and

- (iii) disclose to the Organisation specified telecommunications data that relates to those intercepted messages, voice calls or video calls; and
- (iv) disclose to the Organisation specified telecommunications data that relates to those individual message/call application services.

Note: Subclauses (6) and (7) restrict the issuing of international production orders if subparagraph (2)(e)(ii) or (f)(ii) applies.

*Period specified in international production order*

- (3) A period specified in an international production order for the purposes of subparagraph (2)(i)(i) or (j)(i) must not begin before the time when the order is given to the prescribed communications provider.

Note: International production orders are given under clause 112.

- (4) The period specified in an international production order for the purposes of subparagraph (2)(i)(i) or (j)(i) must not be longer than:
  - (a) if subparagraph (2)(e)(ii) or (f)(ii) applies (as the case requires)—3 months; or
  - (b) otherwise—6 months.

*Matters to which nominated AAT Security Division member must have regard*

- (5) In deciding whether to issue an international production order under subclause (2), the nominated AAT Security Division member must have regard to the following matters:
  - (a) in the case of an application for an international production order that is in respect of one or more individual transmission services:
    - (i) to what extent methods of carrying out the Organisation's function of obtaining intelligence relating to security (so far as carrying out that function relates to the target) that are less intrusive than intercepting, under such an order, communications being carried by those individual transmission services have been used by, or are available to, the Organisation; and

- (ii) how much the use of such methods would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security (so far as carrying out that function relates to the target); and
  - (iii) how much the use of such methods would be likely to prejudice the Organisation in carrying out its function of obtaining intelligence relating to security (so far as carrying out that function relates to the target), whether because of delay or for any other reason; and
  - (iv) such other matters (if any) as the nominated AAT Security Division member considers relevant;
- (b) in the case of an application for an international production order that is in respect of one or more individual message/call application services:
  - (i) to what extent methods of carrying out the Organisation's function of obtaining intelligence relating to security (so far as carrying out that function relates to the target) that are less intrusive than intercepting, under such an order, messages sent or received, voice calls made or received, or video calls made or received, using those individual message/call application services have been used by, or are available to, the Organisation; and
  - (ii) how much the use of such methods would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security (so far as carrying out that function relates to the target); and
  - (iii) how much the use of such methods would be likely to prejudice the Organisation in carrying out its function of obtaining intelligence relating to security (so far as carrying out that function relates to the target), whether because of delay or for any other reason; and
  - (iv) such other matters (if any) as the nominated AAT Security Division member considers relevant.

Note: For **target**, see subclause (8).

*Restriction on issuing order*

- (6) The nominated AAT Security Division member must not issue an international production order under subclause (2) in a case where subparagraph (2)(e)(ii) applies unless the nominated AAT Security Division member is satisfied that:
  - (a) the Organisation has exhausted all other practicable methods of identifying the individual transmission services used, or likely to be used, by the other person mentioned in subparagraph (2)(e)(ii); or
  - (b) interception of communications carried by individual transmission services used or likely to be used by that other person would not otherwise be possible.
- (7) The nominated AAT Security Division member must not issue an international production order under subclause (2) in a case where subparagraph (2)(f)(ii) applies unless the nominated AAT Security Division member is satisfied that:
  - (a) the Organisation has exhausted all other practicable methods of identifying the individual message/call application services used, or likely to be used, by the other person mentioned in subparagraph (2)(f)(ii); or
  - (b) interception of messages sent or received, voice calls made or received, or video calls made or received, using individual message/call application services used or likely to be used by that other person would not otherwise be possible.

*Target*

- (8) For the purposes of this clause, **target** means:
  - (a) if subparagraph (2)(e)(i) or (f)(i) applies—the person referred to in that subparagraph; or
  - (b) if subparagraph (2)(e)(ii) or (f)(ii) applies—the other person referred to in that subparagraph; or
  - (c) if subparagraph (2)(e)(iii) or (f)(iii) applies—the purposes referred to in that subparagraph.

## **90 Content of international production order**

### *Scope*

- (1) This clause applies to an international production order issued under clause 89.

### *Content*

- (2) The order must be signed by the nominated AAT Security Division member who issued it.
- (3) The order must set out the following:
  - (a) the date on which the order was issued;
  - (b) the name of the prescribed communications provider to whom the order is directed;
  - (c) the name of the designated international agreement nominated in the application for the order;
  - (d) the applicable telecommunications identifiers:
    - (i) in the case of an order that is in respect of one or more individual transmission services—to which those individual transmission services relate; or
    - (ii) in the case of an order that is in respect of one or more individual message/call application services—to which those individual message/call application services relate.
- (4) If the order directs a prescribed communications provider to intercept communications, the order may require the provider to:
  - (a) intercept those communications in a specified way; and
  - (b) make those intercepted communications available to the Organisation in a specified way.
- (5) A requirement under subclause (4) may:
  - (a) require that intercepted communications be made available to the Organisation directly; or
  - (b) require that intercepted communications be made available to the Organisation indirectly via the Australian Designated Authority.

- (6) If the order directs a prescribed communications provider to intercept messages, voice calls or video calls, the order may require the provider to:
  - (a) intercept those messages, voice calls or video calls in a specified way; and
  - (b) make those intercepted messages, voice calls or video calls available to the Organisation in a specified way.
- (7) A requirement under subclause (6) may:
  - (a) require that intercepted messages, voice calls or video calls be made available to the Organisation directly; or
  - (b) require that intercepted messages, voice calls or video calls be made available to the Organisation indirectly via the Australian Designated Authority.
- (8) If the order directs a prescribed communications provider to disclose telecommunications data to the Organisation, the order may require the provider to disclose that data to the Organisation in a specified way.
- (9) A requirement under subclause (8) may:
  - (a) require that the telecommunications data be disclosed to the Organisation directly; or
  - (b) require that the telecommunications data be disclosed to the Organisation indirectly via the Australian Designated Authority.
- (10) For the purposes of this clause, a specified way may deal with matters of timing.

Example: A requirement under subclause (4) may require that an intercepted communication be made available to the Organisation within 30 minutes after the communication was completed.

## **91 Issue of further international production order**

- (1) If:
  - (a) an international production order (the ***original order***) was issued under clause 89; and
  - (b) the original order was in respect of one or more individual transmission services; and

- (c) the original order was directed to a prescribed communications provider;  
this Schedule does not prevent the issue of a further international production order under clause 89 that is:
    - (d) in respect of any or all of those services; and
    - (e) directed to the provider;so long as the period specified in the further order for the purposes of subparagraph 89(2)(i)(i) of this Schedule begins after the end of the period specified in the original order for the purposes of that subparagraph.
- (2) If:
- (a) an international production order (the *original order*) was issued under clause 89; and
  - (b) the original order was in respect of one or more individual message/call application services; and
  - (c) the original order was directed to a prescribed communications provider;
- this Schedule does not prevent the issue of a further international production order under clause 89 that is:
- (d) in respect of any or all of those services; and
  - (e) directed to the provider;
- so long as the period specified in the further order for the purposes of subparagraph 89(2)(j)(i) of this Schedule begins after the end of the period specified in the original order for the purposes of that subparagraph.

### **Division 3—International production orders relating to stored communications: national security**

#### **Subdivision A—Applications**

#### **92 Application for international production order—national security**

- (1) The Organisation may apply to a nominated AAT Security Division member for an international production order under clause 98 that:

- (a) is in respect of a particular person; and
  - (b) is directed to a prescribed communications provider.
- (2) The application must nominate a designated international agreement.
- (3) The application must be made on the Organisation's behalf by:
  - (a) the Director-General of Security; or
  - (b) a Deputy Director-General of Security; or
  - (c) a senior position-holder in relation to whom an authorisation is in force under subclause (4).
- (4) The Director-General of Security may authorise in writing, for the purposes of subclause (3), senior position-holders who, or classes of senior position-holders who, are entitled under subclause (1) to make applications on the Organisation's behalf.

*Attorney-General's consent to the making of an application*

- (5) The Organisation must not make an application under subclause (1) unless the Attorney-General has consented to the making of the application.
- (6) The Attorney-General must not consent to the making of an application under subclause (1) for an international production order that is in respect of a particular person unless the Attorney-General is satisfied that:
  - (a) there are reasonable grounds for suspecting that the person is engaged in, or is likely to engage in, activities prejudicial to security; and
  - (b) information that would be likely to be obtained by making a copy, under an international production order issued in response to the application, of the stored communications covered by the application would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security.

*Form of Attorney-General's consent to the making of an application*

- (7) Subject to subclause (8), a consent given by the Attorney-General under subclause (5) must be in writing.
- (8) If the person who proposes to make an application under subclause (1) on the Organisation's behalf thinks it necessary, because of urgent circumstances, for the Attorney-General to consent orally to the making of the application:
  - (a) the person may request the Attorney-General to consent orally to the making of the application; and
  - (b) if the person makes such a request—the Attorney-General may consent orally to the making of the application.

Note: See also clause 17A (urgent circumstances).

- (8A) At the same time as a request is made by a person under subclause (8), the person must inform the Attorney-General of the particulars of the urgent circumstances because of which the person thought it necessary for the Attorney-General to consent orally to the making of the application concerned.
- (9) If, in response to a request made by a person under subclause (8), the Attorney-General consents orally to the making of an application, the person must:
  - (a) give the Attorney-General a written report that sets out:
    - (i) particulars of the urgent circumstances because of which the person thought it necessary for the Attorney-General to consent orally; and
    - (ii) whether the application was granted, withdrawn or refused; and
  - (b) do so within 3 working days after the day on which the application was granted, withdrawn or refused.
- (10) If, in response to a request made by a person under subclause (8), the Attorney-General consents orally to the making of an application, the Organisation must:
  - (a) give the Inspector-General of Intelligence and Security a copy of the relevant report under subclause (9); and

- (b) do so within 3 working days after the day on which the application was granted, withdrawn or refused.

### **93 Form of application**

- (1) An application under clause 92 must be in writing.
- (2) If the person making an application under clause 92 for an international production order on the Organisation's behalf thinks it necessary, because of urgent circumstances, to make the application by telephone, the person may make the application by telephone.

Note: See also clause 17A (urgent circumstances) and clause 172 (action required).

### **94 Contents of written application**

An application under clause 92 must, if it is in writing, set out:

- (a) a statement to the effect that the application is made by the Organisation; and
- (b) the name of the person making the application on the Organisation's behalf.

### **95 Affidavits to accompany written application**

- (1) An application under clause 92 must, if it is in writing, be accompanied by an affidavit complying with this clause.
- (2) The affidavit must set out the facts and other grounds on which the application is based.
- (3) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.

### **96 Information to be given on telephone application**

The information given to a nominated AAT Security Division member in connection with a telephone application under clause 92 to the nominated AAT Security Division member:

- (a) must include particulars of the urgent circumstances because of which the person making the application on the Organisation's behalf thinks it necessary to make the application by telephone; and
- (b) must include each matter that, if the application had been made in writing, clause 94 or 95 would have required the application, or an affidavit accompanying it, to set out; and
- (c) must be given orally or in writing, as the nominated AAT Security Division member directs.

#### **97 Giving further information to nominated AAT Security Division member**

- (1) A nominated AAT Security Division member may require further information to be given in connection with an application under clause 92 to the nominated AAT Security Division member for an international production order.
- (2) The further information:
  - (a) must be given on oath if the application was made in writing; and
  - (b) must be given orally or otherwise, as the nominated AAT Security Division member directs.

#### **Subdivision B—International production orders relating to stored communications**

#### **98 Issue of international production order—national security**

##### *Scope*

- (1) This clause applies if the Organisation applies, under clause 92, to a nominated AAT Security Division member for an international production order that:
  - (a) is in respect of a particular person (the **relevant person**); and
  - (b) is directed to a prescribed communications provider.

*Issue of international production order*

- (2) If the nominated AAT Security Division member is satisfied, on the basis of the information given to the nominated AAT Security Division member under this Division in connection with the application, that:
- (a) there are reasonable grounds for suspecting that the relevant person is engaged in, or is likely to engage in, activities prejudicial to security; and
  - (b) there are reasonable grounds for suspecting that the prescribed communications provider holds any of the following stored communications:
    - (i) stored communications that consist of communications that the relevant person has made using a telecommunications network owned or operated by the prescribed communications provider;
    - (ii) stored communications that consist of communications that another person has made using a telecommunications network owned or operated by the prescribed communications provider, and for which the relevant person is the intended recipient;
    - (iii) stored communications that consist of communications that the relevant person has made using a transmission service supplied by the prescribed communications provider;
    - (iv) stored communications that consist of communications that another person has made using a transmission service supplied by the prescribed communications provider, and for which the relevant person is the intended recipient;
    - (v) stored communications that consist of messages that the relevant person has sent or received using a message/call application service provided by the prescribed communications provider;
    - (vi) stored communications that consist of recordings of voice calls that the relevant person has made or received using a message/call application service provided by the prescribed communications provider;

- (vii) stored communications that consist of recordings of video calls that the relevant person has made or received using a message/call application service provided by the prescribed communications provider;
  - (viii) stored communications that consist of material that the relevant person has uploaded for storage or back-up by a storage/back-up service provided by the prescribed communications provider;
  - (ix) stored communications that consist of material that the relevant person has posted to a general electronic content service provided by the prescribed communications provider; and
  - (ba) the person who made the application on behalf of the Organisation reasonably suspects that the prescribed communications provider is based in, or operates in, a foreign country that is a party to the designated international agreement nominated in the application; and
  - (c) Subdivision A has been complied with in relation to the application; and
  - (d) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
  - (e) information that would be likely to be obtained by making a copy, under an order issued under this clause, of the stored communications would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security;
- the nominated AAT Security Division member may issue an order (to be known as an ***international production order***) directing the prescribed communications provider to:
- (f) make a copy of any such stored communications; and
  - (g) make the copy available to the Organisation; and
  - (h) if the stored communications consist of communications carried by an individual transmission service—disclose to the Organisation:
    - (i) specified telecommunications data that relates to those communications; and
    - (ii) specified telecommunications data that relates to the individual transmission service; and
-

- (i) if the stored communications consist of messages sent or received using an individual message/call application service—disclose to the Organisation:
  - (i) specified telecommunications data that relates to those messages; and
  - (ii) specified telecommunications data that relates to the individual message/call application service; and
- (j) if the stored communications consist of recordings of voice calls made or received using an individual message/call application service—disclose to the Organisation:
  - (i) specified telecommunications data that relates to those voice calls; and
  - (ii) specified telecommunications data that relates to the individual message/call application service; and
- (k) if the stored communications consist of recordings of video calls made or received using an individual message/call application service—disclose to the Organisation:
  - (i) specified telecommunications data that relates to those video calls; and
  - (ii) specified telecommunications data that relates to the individual message/call application service; and
- (l) if the stored communications consist of material that has been uploaded by an end-user for storage or back-up by a storage/back-up service—disclose to the Organisation:
  - (i) specified telecommunications data that relates to that material; and
  - (ii) specified telecommunications data that relates to the end-user's account with the storage/back-up service; and
- (m) if the stored communications consist of material posted to a general electronic content service by an end-user—disclose to the Organisation:
  - (i) specified telecommunications data that relates to that material; and
  - (ii) specified telecommunications data that relates to the end-user's account with the general electronic content service.

*Matters to which nominated AAT Security Division member must have regard*

- (3) In deciding whether to issue an international production order under subclause (2), the nominated AAT Security Division member must have regard to the following matters:
  - (a) to what extent methods of carrying out the Organisation's function of obtaining intelligence relating to security (so far as carrying out that function relates to the relevant person) that are less intrusive than obtaining, under such an order, a copy of the stored communications have been used by, or are available to, the Organisation;
  - (b) how much the use of such methods would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security (so far as carrying out that function relates to the relevant person);
  - (c) how much the use of such methods would be likely to prejudice the Organisation in carrying out its function of obtaining intelligence relating to security (so far as carrying out that function relates to the relevant person);
  - (d) such other matters (if any) as the nominated AAT Security Division member considers relevant.

## **99 Content of international production order**

*Scope*

- (1) This clause applies to an international production order issued under clause 98.

*Content*

- (2) The order must be signed by the nominated AAT Security Division member who issued it.
- (3) The order must set out the following:
  - (a) the date on which the order was issued;
  - (b) the name of the prescribed communications provider to whom the order is directed;

- (c) the name of the designated international agreement nominated in the application for the order.
- (4) If the order directs a prescribed communications provider to make a copy of stored communications available to the Organisation, the order may require the provider to make that copy available to the Organisation in a specified way.
- (5) A requirement under subclause (4) may:
  - (a) require that a copy of stored communications be made available to the Organisation directly; or
  - (b) require that a copy of stored communications be made available to the Organisation indirectly via the Australian Designated Authority.
- (6) If the order directs a prescribed communications provider to disclose telecommunications data to the Organisation, the order may require the provider to disclose that data to the Organisation in a specified way.
- (7) A requirement under subclause (6) may:
  - (a) require that the telecommunications data be disclosed to the Organisation directly; or
  - (b) require that the telecommunications data be disclosed to the Organisation indirectly via the Australian Designated Authority.
- (8) For the purposes of this clause, a specified way may deal with matters of timing.

## **100 Issue of further international production order**

If:

- (a) an international production order (the ***original order***) was issued under clause 98; and
- (b) the original order was in respect of a particular person; and
- (c) the original order was directed to a prescribed communications provider;

this Schedule does not prevent the issue of a further international production order under clause 98 that:

- (d) is in respect of the person; and

(e) is directed to the provider.

## **Division 4—International production orders relating to telecommunications data: national security**

### **Subdivision A—Applications**

#### **101 Application for international production order—national security**

- (1) The Organisation may apply to a nominated AAT Security Division member for an international production order under clause 107 that:
  - (a) is in respect of a particular person; and
  - (b) is directed to a prescribed communications provider.
- (2) The application must nominate a designated international agreement.
- (3) The application must be made on the Organisation's behalf by:
  - (a) the Director-General of Security; or
  - (b) a Deputy Director-General of Security; or
  - (c) an eligible position-holder in relation to whom an authorisation is in force under subclause (4).
- (4) The Director-General of Security may authorise in writing, for the purposes of subclause (3), eligible position-holders who, or classes of eligible position-holders who, are entitled under subclause (1) to make applications on the Organisation's behalf.

#### **102 Form of application**

- (1) An application under clause 101 must be in writing.
- (2) If the person making an application under clause 101 for an international production order on the Organisation's behalf thinks it necessary, because of urgent circumstances, to make the application by telephone, the person may make the application by telephone.

Note: See also clause 17A (urgent circumstances) and clause 172 (action required).

### **103 Contents of written application**

An application under clause 101 must, if it is in writing, set out:

- (a) a statement to the effect that the application is made by the Organisation; and
- (b) the name of the person making the application on the Organisation's behalf.

### **104 Affidavits to accompany written application**

- (1) An application under clause 101 must, if it is in writing, be accompanied by an affidavit complying with this clause.
- (2) The affidavit must set out the facts and other grounds on which the application is based.
- (3) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.

### **105 Information to be given on telephone application**

The information given to a nominated AAT Security Division member in connection with a telephone application under clause 101 to the nominated AAT Security Division member:

- (a) must include particulars of the urgent circumstances because of which the person making the application on the Organisation's behalf thinks it necessary to make the application by telephone; and
- (b) must include each matter that, if the application had been made in writing, clause 103 or 104 would have required the application, or an affidavit accompanying it, to set out; and
- (c) must be given orally or in writing, as the nominated AAT Security Division member directs.

## **106 Giving further information to nominated AAT Security Division member**

- (1) A nominated AAT Security Division member may require further information to be given in connection with an application under clause 101 to the nominated AAT Security Division member for an international production order.
- (2) The further information:
  - (a) must be given on oath if the application was made in writing; and
  - (b) must be given orally or otherwise, as the nominated AAT Security Division member directs.

## **Subdivision B—International production orders relating to telecommunications data**

### **107 Issue of international production order—national security**

#### *Scope*

- (1) This clause applies if the Organisation applies, under clause 101, to a nominated AAT Security Division member for an international production order that:
  - (a) is in respect of a particular person (the **relevant person**); and
  - (b) is directed to a prescribed communications provider.

#### *Issue of international production order*

- (2) If the nominated AAT Security Division member is satisfied, on the basis of the information given to the nominated AAT Security Division member under this Division in connection with the application, that:
  - (a) there are reasonable grounds for suspecting that the prescribed communications provider holds, or is likely to commence to hold, any of the following telecommunications data:
    - (i) telecommunications data that relates to communications that the relevant person has made using an individual

- transmission service supplied by the prescribed communications provider;
- (ii) telecommunications data that relates to an individual transmission service supplied using a telecommunications network owned or operated by the prescribed communications provider, where the individual transmission service is used, or is likely to be used, by the relevant person;
  - (iii) telecommunications data that relates to an individual transmission service supplied by the prescribed communications provider, where the individual transmission service is used, or is likely to be used, by the relevant person;
  - (iv) telecommunications data that relates to messages sent or received by the relevant person using an individual message/call application service provided by the prescribed communications provider;
  - (v) telecommunications data that relates to voice calls made or received by the relevant person using an individual message/call application service provided by the prescribed communications provider;
  - (vi) telecommunications data that relates to video calls made or received by the relevant person using an individual message/call application service provided by the prescribed communications provider;
  - (vii) telecommunications data that relates to an individual message/call application service provided by the prescribed communications provider, where the individual message/call application service is used, or is likely to be used, by the relevant person;
  - (viii) telecommunications data that relates to material that has been uploaded by the relevant person for storage or back-up by a storage/back-up service provided by the prescribed communications provider;
  - (ix) telecommunications data that relates to material that has been posted by the relevant person on a general electronic content service provided by the prescribed communications provider; and
-

- (aa) the person who made the application on behalf of the Organisation reasonably suspects that the prescribed communications provider is based in, or operates in, a foreign country that is a party to the designated international agreement nominated in the application; and
- (b) Subdivision A has been complied with in relation to the application; and
- (c) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
- (d) disclosing the telecommunications data to the Organisation, under an order issued under this clause, would be in connection with the performance by the Organisation of its functions;

the nominated AAT Security Division member may issue an order (to be known as an ***international production order***) directing the prescribed communications provider to do either or both of the following:

- (e) so far as the telecommunications data is held by the prescribed communications provider when the international production order comes into force—disclose any such telecommunications data to the Organisation;
- (f) so far as the telecommunications data commences to be held by the prescribed communications provider during a specified period—disclose any such telecommunications data to the Organisation.

*Period specified in international production order*

- (3) A period specified in an international production order for the purposes of paragraph (2)(f) must not begin before the time when the order is given to the prescribed communications provider.

Note: International production orders are given under clause 112.

- (4) A period specified in an international production order for the purposes of paragraph (2)(f) must not be longer than 90 days.

*Matters to which nominated AAT Security Division member must have regard*

- (5) In deciding whether to issue an international production order under subclause (2), the nominated AAT Security Division member must have regard to the following matters:
- (a) to what extent methods of performing the Organisation's functions (so far as performing those functions relates to the relevant person) that are less intrusive than obtaining, under such an order, the telecommunications data have been used by, or are available to, the Organisation;
  - (b) how much the use of such methods would be likely to assist the Organisation in performing its functions (so far as performing those functions relates to the relevant person);
  - (c) how much the use of such methods would be likely to prejudice the Organisation in performing its functions (so far as performing those functions relates to the relevant person), whether because of delay or for any other reason;
  - (d) such other matters (if any) as the nominated AAT Security Division member considers relevant.

## **108 Content of international production order**

*Scope*

- (1) This clause applies to an international production order issued under clause 107.

*Content*

- (2) The order must be signed by the nominated AAT Security Division member who issued it.
- (3) The order must set out the following:
- (a) the date on which the order was issued;
  - (b) the name of the prescribed communications provider to whom the order is directed;
  - (c) the name of the designated international agreement nominated in the application for the order.

- (4) If the order directs a prescribed communications provider to disclose telecommunications data to the Organisation, the order may require the provider to disclose that data to the Organisation in a specified way.
- (5) A requirement under subclause (4) may:
  - (a) require that the telecommunications data be disclosed to the Organisation directly; or
  - (b) require that the telecommunications data be disclosed to the Organisation indirectly via the Australian Designated Authority.
- (6) For the purposes of this clause, a specified way may deal with matters of timing.

Example: If a requirement under subclause (4) relates to telecommunications data that commences to be held by a prescribed communications provider during a specified period, the requirement may require that the telecommunications data be disclosed to the Organisation within 30 minutes after the telecommunications data commences to be held.

### **109 Issue of further international production order**

If:

- (a) an international production order (the *original order*) was issued under clause 107; and
- (b) the original order was in respect of a particular person; and
- (c) the original order was directed to a prescribed communications provider;

this Schedule does not prevent the issue of a further international production order under clause 107 that:

- (d) is in respect of the person; and
- (e) is directed to the provider.

## **Part 5—Giving of international production orders**

### **110 Simplified outline of this Part**

- |                                                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• Before an international production order is given to a prescribed communications provider, the Australian</li></ul> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|

Designated Authority must consider whether the order complies with the designated international agreement nominated in the application for the order.

- If the Australian Designated Authority is satisfied that the order complies with the designated international agreement nominated in the application for the order, the Australian Designated Authority must give the order to the prescribed communications provider. The order comes in force when it is given to the provider.
- If the Australian Designated Authority is not satisfied that the order complies with the designated international agreement nominated in the application for the order, the Australian Designated Authority must cancel the order.

### **111 Giving of international production orders—relevant agency**

- (1) If an international production order is issued under Part 2 or 3 of this Schedule:
  - (a) the relevant agency that applied for the order must:
    - (i) give the order, or a certified copy of the order, to the Australian Designated Authority; and
    - (ii) do so as soon as practicable after the order is issued; and
  - (b) the Australian Designated Authority must consider whether the order complies with the designated international agreement nominated in the application for the order; and
  - (c) if the Australian Designated Authority is satisfied that the order complies with the designated international agreement nominated in the application for the order—the Australian Designated Authority must:
    - (i) give the order, or the certified copy of the order, to the prescribed communications provider to whom the order is directed; and
    - (ii) do so as soon as practicable after becoming so satisfied; and
  - (d) if the Australian Designated Authority is not satisfied that the order complies with the designated international agreement

nominated in the application for the order—the Australian Designated Authority must:

- (i) cancel the order; and
- (ii) return the order, or the certified copy of the order, to the agency; and
- (iii) give the agency such advice as the Australian Designated Authority considers appropriate in relation to compliance with the designated international agreement.

Note: See clause 171 (which deals with electronic service of documents).

- (2) For the purposes of this Schedule, if the Australian Designated Authority gives a certified copy of an international production order to a prescribed communications provider under subclause (1), the Australian Designated Authority is taken to have given the order to the prescribed communications provider under subclause (1).
- (3) An international production order issued under Part 2 or 3 of this Schedule comes into force when it is given to the prescribed communications provider to whom the order is directed.
- (4) For the purposes of this Schedule, if the Australian Designated Authority gives an international production order to a prescribed communications provider under subclause (1), the order is taken to invoke the designated international agreement nominated in the application for the order.
- (5) If the Australian Designated Authority gives an international production order to a prescribed communications provider under subclause (1), the Australian Designated Authority must notify the giving of the order to the relevant agency that applied for the order.
- (6) A cancellation under paragraph (1)(d) is to be set out in a written instrument.
- (7) If an international production order is issued under Part 2 or 3 of this Schedule, the relevant agency that applied for the order may give the Australian Designated Authority information that is likely to assist the Australian Designated Authority in making a decision under this clause in relation to the order.

## 112 Giving of international production orders—the Organisation

- (1) If an international production order is issued under Part 4 of this Schedule:
- (a) the Organisation must:
    - (i) give the order, or a certified copy of the order, to the Australian Designated Authority; and
    - (ii) do so as soon as practicable after the order is issued; and
  - (b) the Australian Designated Authority must consider whether the order complies with the designated international agreement nominated in the application for the order; and
  - (c) if the Australian Designated Authority is satisfied that the order complies with the designated international agreement nominated in the application for the order—the Australian Designated Authority must:
    - (i) give the order, or the certified copy of the order, to the prescribed communications provider to whom the order is directed; and
    - (ii) do so as soon as practicable after becoming so satisfied; and
  - (d) if the Australian Designated Authority is not satisfied that the order complies with the designated international agreement nominated in the application for the order—the Australian Designated Authority must:
    - (i) cancel the order; and
    - (ii) return the order, or the certified copy of the order, to the Organisation; and
    - (iii) give the Organisation such advice as the Australian Designated Authority considers appropriate in relation to compliance with the designated international agreement.
- Note: See clause 171 (which deals with electronic service of documents).
- (2) For the purposes of this Schedule, if the Australian Designated Authority gives a certified copy of an international production order to a prescribed communications provider under subclause (1), the Australian Designated Authority is taken to have given the order to the prescribed communications provider under subclause (1).

- (3) An international production order issued under Part 4 of this Schedule comes into force when it is given to the prescribed communications provider to whom the order is directed.
- (4) For the purposes of this Schedule, if the Australian Designated Authority gives an international production order to a prescribed communications provider under subclause (1), the order is taken to invoke the designated international agreement nominated in the application for the order.
- (5) If the Australian Designated Authority gives an international production order to a prescribed communications provider under subclause (1), the Australian Designated Authority must notify the giving of the order to the Organisation.
- (6) A cancellation under paragraph (1)(d) is to be set out in a written instrument.
- (7) If an international production order is issued under Part 4 of this Schedule, the Organisation may give the Australian Designated Authority information that is likely to assist the Australian Designated Authority in making a decision under this clause in relation to the order.

## **Part 6—Revocation of international production orders**

### **113 Simplified outline of this Part**

- If an international production order was issued in response to an application made by a relevant agency, the chief officer of the agency:
  - (a) may revoke the order; and
  - (b) must revoke the order if the chief officer is satisfied that the grounds on which the order was issued have ceased to exist.

- If an international production order was issued in response to an application made by the Organisation, the Director-General of Security:
  - (a) may revoke the order; and
  - (b) must revoke the order if the Director-General of Security is satisfied that the grounds on which the order was issued have ceased to exist.
- If an international production order is revoked after it has come into force, the Australian Designated Authority must give the instrument of revocation to the prescribed communications provider to whom the order is directed.

#### **114 Revocation of international production orders—relevant agency**

- (1) If:
  - (a) an international production order was issued under Part 2 or 3 of this Schedule; and
  - (b) the order was issued in response to an application made by a relevant agency;the chief officer of the agency:
  - (c) may revoke the order; and
  - (d) must revoke the order if the chief officer is satisfied that the grounds on which the order was issued have ceased to exist.
- (2) A revocation under this clause is to be set out in a written instrument.
- (3) For the purposes of the application of subclause (1) to an international production order issued under Part 3 of this Schedule on the ground that a control order was in force in relation to a particular person when the international production order was issued, that ground is taken to have ceased to exist if, and only if, neither that control order, nor any succeeding control order, is in force.

### **115 Giving of instrument of revocation—relevant agency**

- (1) If an international production order is revoked under clause 114 by the chief officer of a relevant agency, the relevant agency must:
  - (a) give the instrument of revocation to the Australian Designated Authority; and
  - (b) do so as soon as practicable after the order is revoked.
- (2) If:
  - (a) the Australian Designated Authority gave an international production order to the prescribed communications provider to whom the order is directed; and
  - (b) the order was subsequently revoked under clause 114;the Australian Designated Authority must:
  - (c) give the instrument of revocation to the prescribed communications provider; and
  - (d) do so as soon as practicable after the instrument of revocation is given to the Australian Designated Authority.
- (3) A revocation under clause 114 takes effect:
  - (a) if the instrument of revocation is required to be given to the prescribed communications provider concerned—when the instrument is given; or
  - (b) otherwise—when the revocation is made.
- (4) If:
  - (a) an international production order is revoked under clause 114; and
  - (b) when the revocation takes effect, the Australian Designated Authority has not made a decision about the order under clause 111;clause 111 ceases to apply to the order when the revocation takes effect.

### **116 Revocation of international production orders—the Organisation**

- (1) If an international production order was issued under Part 4 of this Schedule, the Director-General of Security:
  - (a) may revoke the order; and

- (b) must revoke the order if the Director-General of Security is satisfied that the grounds on which the order was issued have ceased to exist.
- (2) A revocation under this clause is to be set out in a written instrument.

### **117 Giving of instrument of revocation—the Organisation**

- (1) If an international production order is revoked under clause 116 by the Director-General of Security, the Organisation must:
  - (a) give the instrument of revocation to the Australian Designated Authority; and
  - (b) do so as soon as practicable after the order is revoked.
- (2) If:
  - (a) the Australian Designated Authority gave an international production order to the prescribed communications provider to whom the order is directed; and
  - (b) the order was subsequently revoked under clause 116;the Australian Designated Authority must:
  - (c) give the instrument of revocation to the prescribed communications provider; and
  - (d) do so as soon as practicable after the instrument of revocation is given to the Australian Designated Authority.
- (3) A revocation under clause 116 takes effect:
  - (a) if the instrument of revocation is required to be given to the prescribed communications provider concerned—when the instrument is given; or
  - (b) otherwise—when the revocation is made.
- (4) If:
  - (a) an international production order is revoked under clause 116; and
  - (b) when the revocation takes effect, the Australian Designated Authority has not made a decision about the order under clause 112;clause 112 ceases to apply to the order when the revocation takes effect.

### **118 Delegation by the chief officer of a relevant agency**

- (1) The chief officer of a relevant agency may, by writing, delegate any or all of the chief officer's functions or powers under this Part to a certifying officer of the agency.
- (2) In performing functions, or exercising powers, under a delegation under subclause (1), the delegate must comply with any directions of the chief officer.

### **119 Delegation by the Director-General of Security**

- (1) The Director-General of Security may, by writing, delegate any or all of the Director-General of Security's functions or powers under this Part to a person who is:
  - (a) a Deputy Director-General of Security; or
  - (b) an ASIO employee.
- (2) In performing functions, or exercising powers, under a delegation under subclause (1), the delegate must comply with any directions of the Director-General of Security.

## **Part 7—Objections to, and cancellation of, international production orders**

### **120 Simplified outline of this Part**

- If an international production order is given to a prescribed communications provider, the provider may object to the order on the grounds that the order does not comply with the designated international agreement nominated in the application for the order.
- The Australian Designated Authority may cancel an international production order.

**121 Prescribed communications provider may object to international production order**

- (1) If an international production order is given to the prescribed communications provider to whom the order is directed, the provider may, by written notice given to the Australian Designated Authority, object to the order on the grounds that the order does not comply with the designated international agreement nominated in the application for the order.
- (2) The notice must:
  - (a) be given to the Australian Designated Authority within a reasonable time after the international production order is given to the prescribed communications provider; and
  - (b) set out the reasons why the provider considers that the order does not comply with the designated international agreement nominated in the application for the order.

**122 Cancellation of international production orders**

- (1) The Australian Designated Authority may cancel an international production order.
- (2) A cancellation under subclause (1) is to be set out in a written instrument.
- (3) If an international production order is cancelled under subclause (1), the Australian Designated Authority must:
  - (a) if the order was issued under Part 2 or 3 of this Schedule in response to an application by a relevant agency:
    - (i) inform the chief officer of the relevant agency of the cancellation; and
    - (ii) do so as soon as practicable after cancelling the order; or
  - (b) if the order was issued under Part 4 of this Schedule:
    - (i) inform the Organisation of the cancellation; and
    - (ii) do so as soon as practicable after cancelling the order.
- (4) If:

- (a) the Australian Designated Authority gave an international production order to the prescribed communications provider to whom the order is directed; and
  - (b) the order was subsequently cancelled under subclause (1);
- the Australian Designated Authority must:
  - (c) give the instrument of cancellation to the prescribed communications provider; and
  - (d) do so as soon as practicable after cancelling the order.
- (5) A cancellation under subclause (1) takes effect:
  - (a) if the instrument of cancellation is required to be given to the prescribed communications provider concerned—when the instrument is given; or
  - (b) otherwise—when the cancellation is made.
- (6) If:
  - (a) an international production order is cancelled under this clause; and
  - (b) when the cancellation takes effect, the Australian Designated Authority has not made a decision about the order under clause 111 or 112 (as the case may be);clause 111 or 112 (as the case may be) ceases to apply to the order when the cancellation takes effect.

## **Part 8—Compliance with international production orders**

### **123 Simplified outline of this Part**

- Civil penalties apply for failing to comply with international production orders.

### **124 Compliance with international production orders**

- If:
- (a) an international production order is given to the prescribed communications provider to whom the order is directed; and

- (b) the order is in force; and
  - (c) when the order is given, the prescribed communications provider meets the enforcement threshold;
- the prescribed communications provider must comply with the order to the extent to which the prescribed communications provider is capable of doing so.

Civil penalty: 238 penalty units.

## 125 When a prescribed communications provider meets the enforcement threshold

- (1) For the purposes of this Schedule, if:
- (a) a prescribed communications provider owns or operates a telecommunications network that is used to supply a transmission service to one or more Australians; or
  - (b) a prescribed communications provider supplies a transmission service to one or more Australians; or
  - (c) a prescribed communications provider provides a message/call application service to one or more Australians; or
  - (d) a prescribed communications provider provides a storage/back-up service to one or more Australians; or
  - (e) one or more Australians have posted material on a general electronic content service provided by a prescribed communications provider;
- the prescribed communications provider ***meets the enforcement threshold*** unless:
- (f) if paragraph (a) applies—the provider of a transmission service supplied using the telecommunications network cannot reasonably be considered to have offered or provided the transmission service on the basis of the service being available to Australians; and
  - (g) if paragraph (b) applies—the prescribed communications provider cannot reasonably be considered to have offered or provided the transmission service on the basis of the service being available to Australians; and
  - (h) if paragraph (c) applies—the prescribed communications provider cannot reasonably be considered to have offered or

provided the message/call application service on the basis of the service being available to Australians; and

- (i) if paragraph (d) applies—the prescribed communications provider cannot reasonably be considered to have offered or provided the storage/back-up service on the basis of the service being available to Australians; and
- (j) if paragraph (e) applies—the prescribed communications provider cannot reasonably be considered to have offered or provided the general electronic content service on the basis of the opportunity to post material on the service being available to Australians.

*Australian*

- (2) For the purposes of this clause, **Australian** means an individual who is ordinarily resident in Australia.

## **126 Civil penalty provision—enforcement**

*Enforceable civil penalty provision*

- (1) A civil penalty provision in this Part is enforceable under Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*.

Note: Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014* allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

*Authorised applicant*

- (2) For the purposes of Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, the Communications Access Co-ordinator is an authorised applicant in relation to a civil penalty provision in this Part.

*Relevant court*

- (3) For the purposes of Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, the Federal Court of Australia and the Federal Circuit Court of Australia are relevant courts in relation to a civil penalty provision in this Part.

*Penalty for a body corporate*

- (4) Paragraph 82(5)(a) of the *Regulatory Powers (Standard Provisions) Act 2014*, as it applies in relation to a civil penalty provision in this Part, has effect as if “5 times” were omitted and “200 times” were substituted.

*Extra-territorial application*

- (5) Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*, as it applies in relation to a civil penalty provision in this Part, extends to acts, omissions, matters and things outside Australia.

## **Part 9—Reporting and record-keeping requirements**

### **Division 1—Introduction**

#### **127 Simplified outline of this Part**

- The chief officer of a relevant agency and the Australian Designated Authority must give the Minister annual reports about matters relating to international production orders.
- The Director-General of Security must give the Attorney-General a report on the extent to which compliance by a prescribed communications provider with an international production order has assisted the Organisation in carrying out its functions.
- The Minister must cause to be prepared annual reports about matters relating to international production orders that were issued in response to applications made by relevant agencies.
- The chief officer of a relevant agency, the Director-General of Security and the Australian Designated Authority must ensure that records are kept of matters relating to international production orders.

## **Division 2—Reporting requirements**

### **128 Annual reports by relevant agencies**

The chief officer of a relevant agency must, within 3 months after the end of each financial year, give the Minister a written report that sets out:

- (a) the relevant statistics about applications made by the agency under clause 22 during the financial year; and
- (b) the relevant statistics about applications made by the agency under clause 33 during the financial year; and
- (c) the relevant statistics about applications made by the agency under clause 42 during the financial year; and
- (d) the relevant statistics about applications made by the agency under clause 52 during the financial year; and
- (e) the relevant statistics about applications made by the agency under clause 63 during the financial year; and
- (f) the relevant statistics about applications made by the agency under clause 72 during the financial year; and
- (g) for each designated international agreement—the number of applications made by the agency under Part 2 or 3 of this Schedule during the financial year that nominated the designated international agreement; and
- (h) if one or more international production orders were issued before the end of the financial year in response to applications made by the agency:
  - (i) the number of occasions during the financial year on which protected information obtained in accordance with those orders was shared with other relevant agencies; and
  - (ii) the number of arrests that were made during the financial year on the basis of protected information obtained in accordance with those orders; and
  - (iii) the number of prosecutions where protected information obtained in accordance with those orders was used in evidence during the financial year; and
  - (iv) the number of convictions during the financial year where protected information obtained in accordance

with those orders was used in evidence in the prosecutions that resulted in those convictions; and

- (i) if one or more international production orders were issued under clause 30 during the financial year, in response to applications made by the agency, on grounds relating to the investigation of one or more offences—the type or types of those offences; and
- (j) if one or more international production orders were issued under clause 39 during the financial year, in response to applications made by the agency, on grounds relating to the investigation of one or more offences—the type or types of those offences; and
- (k) if one or more international production orders were issued under clause 48 during the financial year, in response to applications made by the agency, on grounds relating to the investigation of one or more offences—the type or types of those offences; and
- (l) the number of international production orders revoked by the chief officer under clause 114 during the financial year; and
- (m) if subparagraph 30(2)(g)(ii) or (h)(ii) applied to one or more international production orders issued under clause 30 during the financial year in response to applications made by the agency—the number of those orders; and
- (n) if subparagraph 60(2)(g)(ii) or (h)(ii) applied to one or more international production orders issued under clause 60 during the financial year in response to applications made by the agency—the number of those orders.

## **129 Reports to be made to the Attorney-General by the Director-General of Security**

The Director-General of Security must:

- (a) give the Attorney-General, in respect of each international production order issued under clause 89, a written report on the extent to which compliance by a prescribed communications provider with the order has assisted the Organisation in carrying out its functions; and
- (b) do so within 3 months after whichever of the following first occurs:

- (i) the end of the last day on which the prescribed communications provider could have done an act or thing in compliance with the order;
- (ii) the time when the order ceases to be in force because of the revocation or cancellation of the order.

### **130 Annual reports by the Australian Designated Authority**

- (1) The Australian Designated Authority must, within 3 months after the end of each financial year, give the Minister a written report that sets out, for each relevant agency:
  - (a) if one or more international production orders issued in response to applications made by the agency were given by the Australian Designated Authority to prescribed communications providers during the financial year:
    - (i) the number of those orders; and
    - (ii) the number of each type of those orders; and
    - (iii) for each designated international agreement—the number of those orders that invoked the designated international agreement; and
  - (b) if subparagraph 30(2)(g)(ii) or (h)(ii) applied to one or more international production orders that were:
    - (i) issued under clause 30 in response to applications made by the agency; and
    - (ii) given by the Australian Designated Authority to prescribed communications providers during the financial year;the number of those orders; and
  - (c) if subparagraph 60(2)(g)(ii) or (h)(ii) applied to one or more international production orders that were:
    - (i) issued under clause 60 in response to applications made by the agency; and
    - (ii) given by the Australian Designated Authority to prescribed communications providers during the financial year;the number of those orders; and
  - (d) if one or more international production orders issued in response to applications made by the agency were cancelled

- by the Australian Designated Authority under clause 111 during the financial year—the number of those orders; and
- (e) if one or more international production orders issued in response to applications made by the agency were cancelled by the Australian Designated Authority under clause 122 during the financial year—the number of those orders; and
  - (f) if one or more instruments of revocation of international production orders issued in response to applications made by the agency were given by the Australian Designated Authority to prescribed communications providers during the financial year—the number of those instruments; and
  - (g) if one or more objections were received by the Australian Designated Authority under clause 121 during the financial year in relation to international production orders issued in response to applications made by the agency:
    - (i) the number of international production orders to which those objections relate; and
    - (ii) the number of each type of those orders; and
    - (iii) for each designated international agreement—the number of those orders that invoked the designated international agreement.

(2) The Minister must:

- (a) cause a copy of a report under subclause (1) to be given to the Attorney-General; and
- (b) do so as soon as practicable after receiving the report.

### **131 Annual reports by the Minister**

- (1) The Minister must, as soon as practicable after the end of each financial year, cause to be prepared a written report that:
  - (a) sets out, for each relevant agency, the information contained in the report by the chief officer of the agency under clause 128 for the financial year; and
  - (b) sets out the information contained in the report by the Australian Designated Authority under clause 130 for the financial year.

*Report to be tabled*

- (2) The Minister must cause a copy of a report under subclause (1) to be tabled in each House of the Parliament within 15 sitting days of that House after the report is prepared.
- (3) A report under subclause (1) must not be made in a manner that is likely to enable the identification of a person.
- (4) For the purposes of section 34C of the *Acts Interpretation Act 1901*, a report that subclause (1) requires to be prepared as soon as practicable after the end of a financial year is taken to be a periodic report that this Act requires a person to furnish to the Minister and that relates to the administration of this Schedule during the financial year.

### **132 Deferral of inclusion of information in Ministerial report**

*Scope*

- (1) This clause applies to information:
  - (a) included in a report given to the Minister:
    - (i) under clause 128 by the chief officer of a relevant agency; or
    - (ii) under clause 130 by the Australian Designated Authority; and
  - (b) that the Minister would, apart from this clause, be required to include in the next Ministerial report.

*Exclusion of information—relevant agency*

- (2) If:
  - (a) subparagraph (1)(a)(i) applies; and
  - (b) the chief officer of the relevant agency is satisfied that the information is control order information;the chief officer must advise the Minister in writing not to include the information in the next Ministerial report.
- (3) If the Minister is satisfied, on the advice of the chief officer, that the information is control order information, the Minister must:
  - (a) notify the chief officer in writing; and

- (b) not include the information in any Ministerial report until the Minister decides otherwise under subclause (5).

*Inclusion of information in subsequent report—relevant agency*

- (4) If the information has not been included in a Ministerial report because of subclause (3), the chief officer must, before the Minister prepares the next Ministerial report:
  - (a) reconsider whether the information is control order information; and
  - (b) if the chief officer is satisfied that the information is not control order information—advise the Minister in writing to include the information in the next Ministerial report.
- (5) If the Minister is satisfied, on the advice of the chief officer, that the information is not control order information, the Minister must:
  - (a) notify the chief officer in writing; and
  - (b) include the information in the next Ministerial report.

*Exclusion of information—Australian Designated Authority*

- (6) If:
  - (a) subparagraph (1)(a)(ii) applies; and
  - (b) the Australian Designated Authority is satisfied that the information is control order information;the Australian Designated Authority must advise the Minister in writing not to include the information in the next Ministerial report.
- (7) If the Minister is satisfied, on the advice of the Australian Designated Authority, that the information is control order information, the Minister must:
  - (a) notify the Australian Designated Authority in writing; and
  - (b) not include the information in any Ministerial report until the Minister decides otherwise under subclause (9).

*Inclusion of information in subsequent report—Australian Designated Authority*

- (8) If the information has not been included in a Ministerial report because of subclause (7), the Australian Designated Authority must, before the Minister prepares the next Ministerial report:
  - (a) reconsider whether the information is control order information; and
  - (b) if the Australian Designated Authority is satisfied that the information is not control order information—advise the Minister in writing to include the information in the next Ministerial report.
- (9) If the Minister is satisfied, on the advice of the Australian Designated Authority, that the information is not control order information, the Minister must:
  - (a) notify the chief officer in writing; and
  - (b) include the information in the next Ministerial report.

*Definitions*

- (10) In this clause:

***control order information*** means information that, if made public, could reasonably be expected to enable a reasonable person to conclude that:

- (a) an international production order is likely to be, or is not likely to be, in force under Part 3 of this Schedule in relation to:
  - (i) an individual transmission service used, or likely to be used, by a particular person; or
  - (ii) an individual message/call application service used, or likely to be used, by a particular person; or
- (iii) stored communications that consist of communications that a particular person has made using an individual transmission service; or
- (iv) stored communications that consist of messages that a particular person has sent or received using an individual message/call application service; or

- (v) stored communications that consist of recordings of voice calls that a particular person has made or received using an individual message/call application service; or
  - (vi) stored communications that consist of recordings of video calls that a particular person has made or received using an individual message/call application service; or
  - (vii) stored communications that consist of material that a particular person has uploaded for storage or back-up by a storage/back-up service; or
  - (viii) stored communications that consist of material that a particular person has posted to a general electronic content service; or
  - (ix) telecommunications data that relates to communications that a particular person has made using an individual transmission service; or
  - (x) telecommunications data that relates to an individual transmission service used, or likely to be used, by a particular person; or
  - (xi) telecommunications data that relates to messages sent or received by a particular person using an individual message/call application service; or
  - (xii) telecommunications data that relates to voice calls made or received by a particular person using an individual message/call application service; or
  - (xiii) telecommunications data that relates to video calls made or received by a particular person using an individual message/call application service; or
  - (xiv) telecommunications data that relates to an individual message/call application service used, or likely to be used, by a particular person; or
  - (xv) telecommunications data that relates to material that has been uploaded by a particular person for storage or back-up by a storage/back-up service; or
  - (xvi) telecommunications data that relates to material that has been posted by a particular person on a general electronic content service; or
  - (b) an international production order is likely to be, or is not likely to be, in force under Part 3 of this Schedule in relation to a particular person.
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**Ministerial report** means a report the Minister causes to be prepared under clause 131.

## **Division 3—Record-keeping requirements**

### **133 Keeping documents associated with international production orders—relevant agencies**

- (1) The chief officer of a relevant agency must cause the following to be kept in the agency's records:
  - (a) a copy of each written application made by the agency for an international production order;
  - (b) a copy of each affidavit that accompanied a written application made by the agency for an international production order;
  - (c) a copy of each international production order issued in response to an application made by the agency;
  - (d) a copy of each authorisation given by the chief officer under subclause 23(3);
  - (e) a copy of each authorisation given by the chief officer under subclause 34(3);
  - (f) a copy of each authorisation given by the chief officer under subclause 43(3);
  - (g) a copy of each authorisation given by the chief officer under subclause 53(3);
  - (h) a copy of each authorisation given by the chief officer under subclause 64(3);
  - (i) a copy of each authorisation given by the chief officer under subclause 73(3);
  - (j) if the chief officer revokes an international production order under clause 114—a copy of the instrument of revocation.
- (2) The period for which the chief officer of a relevant agency must cause a copy of a particular document to be kept in the agency's records under subclause (1) is the period:
  - (a) starting when the document came into existence; and
  - (b) ending:
    - (i) when 3 years have elapsed since the document came into existence; or

- (ii) when the Ombudsman gives a report to the Minister under clause 150 that is about records that include the copy;
- whichever happens earlier.

### **134 Other records to be kept—relevant agencies**

- (1) The chief officer of a relevant agency must cause the following to be kept in the agency's records:
  - (a) details of each telephone application made by the agency for an international production order;
  - (b) for each application made by the agency for an international production order—a statement as to whether the application was granted, refused or withdrawn;
  - (c) for each international production order issued in response to an application made by the agency:
    - (i) a record of the type of order; and
    - (ii) a record of the designated international agreement nominated in the application; and
    - (iii) a statement as to whether the international production order was issued on grounds relating to the investigation of one or more offences and, if so, the type or types of those offences; and
    - (iv) if subparagraph 30(2)(g)(ii) or (h)(ii) applied to the order—a statement to that effect; and
    - (v) if subparagraph 60(2)(g)(ii) or (h)(ii) applied to the order—a statement to that effect; and
    - (vi) if a period was specified in the order—details of that period; and
    - (vii) a record of the agency giving the order, or a certified copy of the order, to the Australian Designated Authority; and
    - (viii) details of each communication by an officer of the agency to a person other than an officer of the agency of protected information obtained in accordance with the order; and
    - (ix) a record of the prescribed communications provider to whom the order was directed; and

- (x) a statement as to whether the prescribed communications provider complied with the order; and
  - (xi) if the prescribed communications provider made intercepted communications, messages, voice calls or video calls available to the agency directly—a statement to that effect; and
  - (xii) if the prescribed communications provider made stored communications or telecommunications data available to the agency directly—a statement to that effect; and
  - (xiii) if the agency used protected information obtained in accordance with the order—a statement setting out details of that use of the protected information; and
  - (xiv) if the chief officer revoked the order under clause 114—a statement setting out the reasons for the revocation; and
  - (xv) if the Australian Designated Authority cancelled the order under clause 122—a record of the cancellation; and
  - (xvi) if a certifying officer of the agency certified a document to be a true copy of the order—a statement to that effect;
  - (d) documents indicating whether a record was destroyed in accordance with subclause 140(1) or (3);
  - (e) documents and other materials of a kind prescribed under subclause (2).
- (2) The Minister may, by legislative instrument, prescribe kinds of documents and other materials that the chief officer of a relevant agency must cause to be kept in the agency's records.
- (3) The period for which the chief officer of a relevant agency must cause a particular item to be kept in the agency's records under subclause (1) is the period:
- (a) starting when the item came into existence; and
  - (b) ending:
    - (i) when 3 years have elapsed since the item came into existence; or
    - (ii) when the Ombudsman gives a report to the Minister under clause 150 that is about records that include the item;

whichever happens earlier.

### **135 Keeping documents associated with international production orders—the Organisation**

- (1) The Director-General of Security must cause the following to be kept in the Organisation's records:
  - (a) a copy of each written application made under Part 4 of this Schedule for an international production order;
  - (b) a copy of each affidavit that accompanied a written application under Part 4 of this Schedule for an international production order;
  - (ba) a copy of each written request that the Attorney-General consent orally to the making of an application under Part 4 of this Schedule for an international production order;
  - (bb) a copy of each written consent by the Attorney-General to the making of an application under Part 4 of this Schedule for an international production order;
  - (bc) a copy of each report given to the Attorney-General under subclause 83(9) or 92(9);
  - (bd) a copy of each document of a kind specified in a written agreement between the Director-General of Security and the Inspector-General of Intelligence and Security;
  - (c) a copy of each international production order issued under Part 4 of this Schedule;
  - (d) a copy of each authorisation given by the Director-General of Security under subclause 83(4);
  - (e) a copy of each authorisation given by the Director-General of Security under subclause 92(4);
  - (f) a copy of each authorisation given by the Director-General of Security under subclause 101(4);
  - (g) if the Director-General of Security revoked an international production order under clause 116—a copy of the instrument of revocation.
- (2) The period for which the Director-General of Security must cause a copy of a particular document to be kept in the Organisation's records under subclause (1) is the period:
  - (a) starting when the document came into existence; and

- (b) if:
    - (i) the document relates to an international production order that was issued under Part 4 of this Schedule; and
    - (ii) information was obtained in accordance with the order; ending at the later of the following times:
      - (iii) when 3 years have elapsed since the document came into existence;
      - (iv) when the Organisation ceases to retain the information that was obtained in accordance with the order; and
  - (c) if paragraph (b) does not apply—ending when 3 years have elapsed since the document came into existence.
- (3) An agreement under paragraph (1)(bd) is not a legislative instrument.

### **136 Other records to be kept—the Organisation**

- (1) The Director-General of Security must cause the following to be kept in the Organisation's records:
- (a) details of each telephone application made under Part 4 of this Schedule for an international production order;
  - (b) for each application made under Part 4 of this Schedule for an international production order—a statement as to whether the application was granted, refused or withdrawn;
  - (ba) a record of each oral request that the Attorney-General consent orally to the making of an application under Part 4 of this Schedule for an international production order;
  - (bb) a record of each oral consent by the Attorney-General to the making of an application under Part 4 of this Schedule for an international production order;
  - (bc) each record of a kind specified in a written agreement between the Director-General of Security and the Inspector-General of Intelligence and Security;
  - (c) for each international production order issued under Part 4 of this Schedule:
    - (i) a record of the type of order; and
    - (ii) a record of the designated international agreement nominated in the application for the order; and

- (iii) if a period was specified in the order—details of that period; and
  - (iv) a record of the Organisation giving the order, or a certified copy of the order, to the Australian Designated Authority; and
  - (v) details of each communication by an ASIO official to a person other than an ASIO official of protected information obtained in accordance with the order; and
  - (vi) a record of the prescribed communications provider to whom the order was directed; and
  - (vii) a statement as to whether the prescribed communications provider complied with the order; and
  - (viii) if the prescribed communications provider made intercepted communications, messages, voice calls, video calls, stored communications or telecommunications data available to the Organisation directly—a statement to that effect; and
  - (ix) if the Organisation used protected information obtained in accordance with the order—a statement setting out details of that use of the protected information; and
  - (x) if the Director-General of Security revokes the order under clause 116—a statement setting out the reasons for the revocation; and
  - (xi) if the Australian Designated Authority cancelled the order under clause 122—a record of the cancellation; and
  - (xii) if a certifying person certified a document to be a true copy of the order—a statement to that effect;
  - (d) documents indicating whether a record was destroyed in accordance with subclause 140(2) or (4).
- (2) The period for which the Director-General of Security must cause a particular record to be kept in the Organisation's records under subclause (1) is the period:
- (a) starting when the record came into existence; and
  - (b) if:
    - (i) the record relates to an international production order that was issued under Part 4 of this Schedule; and
    - (ii) information was obtained in accordance with the order;
-

ending at the later of the following times:

- (iii) when 3 years have elapsed since the record came into existence;
  - (iv) when the Organisation ceases to retain the information that was obtained in accordance with the order; and
  - (c) if paragraph (b) does not apply—ending when 3 years have elapsed since the record came into existence.
- (3) An agreement under paragraph (1)(bc) is not a legislative instrument.

### **137 Keeping documents associated with international production orders—Australian Designated Authority**

- (1) The Australian Designated authority must cause the following to be kept in the Australian Designated Authority's records:
- (a) a copy of each international production order given by the Australian Designated Authority to a prescribed communications provider;
  - (b) if an instrument of revocation of an international production order was given by the Australian Designated Authority to a prescribed communications provider—a copy of the instrument of revocation;
  - (c) if an instrument of cancellation of an international production order was given by the Australian Designated Authority to a prescribed communications provider—a copy of the instrument of cancellation;
  - (d) a copy of each objection received by the Australian Designated Authority under clause 121.
- (2) The period for which the Australian Designated Authority must cause a document to be kept in the Australian Designated Authority's records under subclause (1) is the period:
- (a) starting when the document came into existence; and
  - (b) ending when 3 years have elapsed since the document came into existence.

**138 Other records to be kept—Australian Designated Authority**

- (1) The Australian Designated Authority must cause the following to be kept in the Australian Designated Authority's records:
  - (a) for each international production order given by the Australian Designated Authority to a prescribed communications provider:
    - (i) a record of the type of order; and
    - (ii) a record of the Australian entity that applied for the order; and
    - (iii) the name of the designated international agreement invoked by the order; and
    - (iv) the name of the prescribed communications provider; and
    - (v) if, in compliance with the order, the prescribed communications provider made intercepted communications, messages, voice calls or video calls available to an Australian entity directly—a statement to that effect; and
    - (vi) if, in compliance with the order, the prescribed communications provider made stored communications or telecommunications data available to an Australian entity directly—a statement to that effect;
  - (b) if an international production order is cancelled by the Australian Designated Authority under clause 111, 112 or 122—a record of the cancellation and the reasons for the cancellation;
  - (c) if an instrument of revocation of an international production order is given by the Australian Designated Authority to a prescribed communications provider—a record of the giving of the instrument;
  - (d) if an instrument of cancellation of an international production order is given by the Australian Designated Authority to a prescribed communications provider—a record of the giving of the instrument;
  - (e) if an objection is received by the Australian Designated Authority under clause 121:
    - (i) a record of the receipt of the objection; and

- (ii) a record of the international production order to which the objection relates; and
- (iii) a record of the type of order; and
- (iv) the name of the designated international agreement invoked by the order; and
- (v) the name of the prescribed communications provider to whom the order is directed; and
- (vi) the name of the Australian entity that applied for the order; and
- (vii) if the objection was referred to an authority (however described) of a foreign country—a record of the referral.

(2) If:

- (a) there is a designated international agreement between Australia and one or more foreign countries; and
- (b) the agreement deals with (among other things) the issue of orders (however described) by a competent authority (however described) of such a foreign country; and
- (c) such an order (the **incoming order**) is directed to a prescribed communications provider that:
  - (i) carries on activities in Australia; or
  - (ii) provides one or more services to end-users who are physically present in Australia; and
- (d) the provider notifies an authority (however described) of the foreign country that the provider objects to the incoming order:
  - (i) on the grounds that the incoming order does not comply with the designated international agreement; or
  - (ii) on similar grounds; and
- (e) the Australian Designated Authority is aware of the objection;

the Australian Designated Authority must cause the following to be kept in the Australian Designated Authority's records:

- (f) a record of the objection;
- (g) the name of the foreign entity that applied for the incoming order;
- (h) the name of the designated international agreement;
- (i) the name of the provider;

- (j) a record of whether the incoming order was cancelled (however described), withdrawn or set aside as a result of the objection;
  - (k) if the Australian Designated Authority made one or more representations to an authority (however described) of the foreign country that resulted in the incoming order being cancelled (however described), withdrawn or set aside—a record of those representations.
- (3) The period for which the Australian Designated Authority must cause a particular record to be kept in the Australian Designated Authority's records under subclause (1) or (2) is the period:
  - (a) starting when the record came into existence; and
  - (b) ending when 3 years have elapsed since the record came into existence.
- (4) For the purposes of this clause, *Australian entity* means:
  - (a) a relevant agency; or
  - (b) the Organisation.
- (5) For the purposes of this clause, *foreign entity* means an agency or authority of a foreign country.

## Division 4—Register of international production orders

### 139 Register of international production orders

- (1) The Australian Designated Authority must cause to be kept a register of international production orders.
- (2) The Australian Designated Authority must cause each of the following to be recorded in the register in relation to each international production order:
  - (a) the date of issue of the order;
  - (b) the type of order;
  - (c) particulars of the person who issued the order;
  - (d) if a relevant agency applied for the order—the name of the relevant agency;
  - (e) if the order was issued under Part 4 of this Schedule—the fact that the Organisation applied for the order;

- (f) the name of the prescribed communications provider to whom the order is directed;
- (g) the name of the designated international agreement nominated in the application for the order;
- (h) if the order was issued under clause 30—the period that was specified in the order for the purposes of subparagraph 30(2)(i)(i) or (j)(i);
- (i) if the order was issued under clause 60—the period that was specified in the order for the purposes of subparagraph 60(2)(k)(i) or (l)(i);
- (j) if the order was issued under clause 89—the period that was specified in the order for the purposes of subparagraph 89(2)(i)(i) or (j)(i);
- (k) if:
  - (i) the order was issued under clause 48; and
  - (ii) a period was specified in the order for the purposes of paragraph 48(2)(f);that period;
- (l) if:
  - (i) the order was issued under clause 78; and
  - (ii) a period was specified in the order for the purposes of paragraph 78(2)(g);that period;
- (m) if:
  - (i) the order was issued under clause 107; and
  - (ii) a period was specified in the order for the purposes of paragraph 107(2)(f);that period;
- (n) if the order was issued under Part 2 of this Schedule in response to an application made on grounds relating to the investigation of one or more offences—the type or types of those offences;
- (o) if the order was issued under Part 3 of this Schedule in relation to a control order—the name of the person to whom the control order relates.

- (3) An IGIS official may access information in the register for the purposes of the performance of a function or duty, or the exercise of a power, by the IGIS official.

## Division 5—Destruction of records

### 140 Destruction of records

#### *Interception*

- (1) If:
- (a) an international production order was issued in response to an application made by a relevant agency; and
  - (b) in compliance with the order, a prescribed communications provider makes:
    - (i) intercepted communications; or
    - (ii) intercepted messages; or
    - (iii) intercepted voice calls; or
    - (iv) intercepted video calls;available to the agency (whether directly or indirectly via the Australian Designated Authority); and
  - (c) a record of the intercepted communications, intercepted messages, intercepted voice calls, or intercepted video calls, as the case may be, is in the agency's possession; and
  - (d) the chief officer of the agency is satisfied that the record is not likely to be required for a purpose referred to in clause 153 or 157;
- the chief officer must cause the record to be destroyed immediately after becoming so satisfied.
- (2) If:
- (a) an international production order was issued under clause 89; and
  - (b) in compliance with the order, a prescribed communications provider makes:
    - (i) intercepted communications; or
    - (ii) intercepted messages; or
    - (iii) intercepted voice calls; or

- (iv) intercepted video calls;  
available to the Organisation (whether directly or indirectly  
via the Australian Designated Authority); and
- (c) a record of the intercepted communications, intercepted  
messages, intercepted voice calls, or intercepted video calls,  
as the case may be, is in the Organisation's possession; and
- (d) the Director-General of Security is satisfied that the record is  
not likely to be required for a purpose referred to in clause  
153 or 157;

the Director-General of Security must cause the record to be  
destroyed immediately after becoming so satisfied.

*Stored communications*

(3) If:

- (a) an international production order was issued in response to an  
application made by a relevant agency; and
- (b) in compliance with the order, a prescribed communications  
provider makes a copy of stored communications available to  
the agency (whether directly or indirectly via the Australian  
Designated Authority); and
- (c) the copy is in the agency's possession; and
- (d) the chief officer of the agency is satisfied that the copy is not  
likely to be required for a purpose referred to in clause 153 or  
158;

the chief officer must cause the copy to be destroyed immediately  
after becoming so satisfied.

(4) If:

- (a) an international production order was issued under clause 98;  
and
- (b) in compliance with the order, a prescribed communications  
provider makes a copy of stored communications available to  
the Organisation (whether directly or indirectly via the  
Australian Designated Authority); and
- (c) the copy is in the Organisation's possession; and
- (d) the Director-General of Security is satisfied that the copy is  
not likely to be required for a purpose referred to in clause  
153 or 158;

the Director-General of Security must cause the copy to be destroyed immediately after becoming so satisfied.

## **Part 10—Oversight by the Commonwealth Ombudsman**

### **141 Simplified outline of this Part**

- The Ombudsman may inspect records of a relevant agency to determine the extent of compliance with this Schedule by the relevant agency and its officers.
- The Ombudsman may inspect records of the Australian Designated Authority to determine the extent of compliance with this Schedule by the Australian Designated Authority.
- The Ombudsman must give the Minister an annual report about the results of those inspections.

### **142 Inspection of records—relevant agency**

- (1) The Ombudsman may inspect records of a relevant agency to determine the extent of compliance with this Schedule by the relevant agency and its officers.
- (2) For the purpose of an inspection under this clause, the Ombudsman:
  - (a) after notifying the chief officer of the relevant agency, may enter at any reasonable time premises occupied by the relevant agency; and
  - (b) is entitled to have full and free access at all reasonable times to all records of the relevant agency that are relevant to the inspection; and
  - (c) despite any other law, is entitled to make copies of, and to take extracts from, records of the relevant agency; and
  - (d) may require a member of staff of the relevant agency to give the Ombudsman any information that the Ombudsman considers necessary, being information:

- (i) that is in the member's possession, or to which the member has access; and
  - (ii) that is relevant to the inspection.
- (3) Before inspecting records of a relevant agency under this clause, the Ombudsman must give reasonable notice to the chief officer of the relevant agency of when the inspection will occur.
- (4) The chief officer must ensure that members of staff of the relevant agency give the Ombudsman any assistance the Ombudsman reasonably requires to enable the Ombudsman to perform functions under this clause.

### **143 Inspection of records—Australian Designated Authority**

- (1) The Ombudsman may inspect records of the Australian Designated Authority to determine the extent of compliance with this Schedule by the Australian Designated Authority.
- (2) For the purpose of an inspection under this clause, the Ombudsman:
  - (a) after notifying the Australian Designated Authority, may enter at any reasonable time premises occupied by the Attorney-General's Department; and
  - (b) is entitled to have full and free access at all reasonable times to all records of the Australian Designated Authority that are relevant to the inspection; and
  - (c) despite any other law, is entitled to make copies of, and to take extracts from, records of the Australian Designated Authority; and
  - (d) may require a member of staff of the Attorney-General's Department to give the Ombudsman any information that the Ombudsman considers necessary, being information:
    - (i) that is in the member's possession, or to which the member has access; and
    - (ii) that is relevant to the inspection.
- (3) Before inspecting records of the Australian Designated Authority under this clause, the Ombudsman must give reasonable notice to the Australian Designated Authority of when the inspection will occur.

- (4) The Australian Designated Authority must ensure that members of staff of the Attorney-General's Department give the Ombudsman any assistance the Ombudsman reasonably requires to enable the Ombudsman to perform functions under this clause.

#### **144 Power to obtain relevant information**

##### *Relevant agency*

- (1) If the Ombudsman has reasonable grounds to believe that an officer of a particular relevant agency is able to give information relevant to an inspection under this Part of the relevant agency's records, the Ombudsman may:
- (a) if the Ombudsman knows the officer's identity—by written notice given to the officer, require the officer to do one or both of the following:
    - (i) give the information to the Ombudsman, by writing signed by the officer, at a specified place and within a specified period;
    - (ii) attend before a specified inspecting officer to answer questions relevant to the inspection; or
  - (b) if the Ombudsman does not know the officer's identity—require the chief officer of the relevant agency, or a person nominated by the chief officer, to attend before a specified inspecting officer to answer questions relevant to the inspection.

##### *Australian Designated Authority*

- (2) If the Ombudsman has reasonable grounds to believe that a member of staff of the Attorney-General's Department is able to give information relevant to an inspection under this Part of the Australian Designated Authority's records, the Ombudsman may:
- (a) if the Ombudsman knows the member's identity—by written notice given to the member, require the member to do one or both of the following:
    - (i) give the information to the Ombudsman, by writing signed by the member, at a specified place and within a specified period;

- (ii) attend before a specified inspecting officer to answer questions relevant to the inspection; or
- (b) if the Ombudsman does not know the member's identity—require the Australian Designated Authority, or a person nominated by the Australian Designated Authority, to attend before a specified inspecting officer to answer questions relevant to the inspection.

*Specification of place and period etc.*

- (3) A requirement under subclause (1) or (2) to attend before an inspecting officer must specify:
  - (a) a place for the attendance; and
  - (b) a period within which, or a time and day when, the attendance is to occur.

The place, and the period or the time and day, must be reasonable having regard to the circumstances in which the requirement is made.

*Offence*

- (4) A person commits an offence if:
  - (a) the person is subject to a requirement under subclause (1) or (2); and
  - (b) the person omits to do an act; and
  - (c) the omission breaches the requirement.

Penalty for an offence against this subclause:      Imprisonment for 6 months.

#### **145 Ombudsman to be given information and access despite other laws**

- (1) Despite any other law, a person is not excused from giving information, answering a question, or giving access to a document, as and when required under this Part, on the ground that giving the information, answering the question, or giving access to the document, as the case may be:
  - (a) would contravene a law; or
  - (b) would be contrary to the public interest; or

- (c) might tend to incriminate the person or make the person liable to a penalty.
- (2) However:
  - (a) the information, the answer, or the fact that the person has given access to the document, as the case may be; or
  - (b) any information or thing (including a document) obtained as a direct or indirect consequence of giving the information, answering the question or giving access to the document;is not admissible in evidence against the person except in a proceeding by way of a prosecution for:
  - (c) an offence against clause 152; or
  - (d) an offence against Part 7.4 or 7.7 of the *Criminal Code*.
- (3) Nothing in clause 152, or in any other law, prevents an officer of a relevant agency from:
  - (a) giving information to an inspecting officer (whether orally or in writing and whether or not in answer to a question); or
  - (b) giving access to a record of the relevant agency to an inspecting officer;for the purposes of an inspection under this Part of the relevant agency's records.
- (4) Nothing in clause 152, or in any other law, prevents an officer of a relevant agency from making a record of information, or causing a record of information to be made, for the purposes of giving the information to a person as permitted by subclause (3).
- (5) Nothing in clause 152, or in any other law, prevents a member of staff of the Attorney-General's Department from:
  - (a) giving information to an inspecting officer (whether orally or in writing and whether or not in answer to a question); or
  - (b) giving access to a record of the Australian Designated Authority to an inspecting officer;for the purposes of an inspection under this Part of the Australian Designated Authority's records.
- (6) Nothing in clause 152, or in any other law, prevents a member of staff of the Attorney-General's Department from making a record of information, or causing a record of information to be made, for

the purposes of giving the information to a person as permitted by subclause (5).

#### **146 Application of Ombudsman Act**

- (1) Section 11A of the *Ombudsman Act 1976* does not apply in relation to the exercise or proposed exercise of a power, or the performance or the proposed performance of a function, of the Ombudsman under this Part.
- (2) A reference in section 19 of the *Ombudsman Act 1976* to the Ombudsman's operations does not include a reference to anything that an inspecting officer has done or omitted to do under this Part.
- (3) Subject to clause 145, subsections 35(2), (3), (4) and (8) of the *Ombudsman Act 1976* apply for the purposes of this Part and so apply as if:
  - (a) a reference in those subsections to an officer were a reference to an inspecting officer; and
  - (b) a reference in those subsections to information did not include a reference to protected information; and
  - (c) a reference in those subsections to that Act were a reference to this Part; and
  - (d) paragraph 35(3)(b) of that Act were omitted; and
  - (e) section 35A of that Act had not been enacted.

#### **147 Exchange of information between Ombudsman and State/Territory inspecting authorities**

- (1) If the Ombudsman has obtained under this Part information relating to an authority of a State or Territory, the Ombudsman may give the information to another authority of that State or Territory (an *inspecting authority*) that:
  - (a) has powers under the law of that State or Territory; and
  - (b) has the function of making inspections of a similar kind to those provided for in clause 142 when the inspecting authority is exercising those powers.
- (2) However, the Ombudsman may give the information only if the Ombudsman is satisfied that giving the information is necessary to

enable the inspecting authority to perform its functions in relation to the first-mentioned authority of the State or Territory.

- (3) An inspecting authority may give the Ombudsman information relevant to the performance of the Ombudsman's functions under this Part.

#### **148 Delegation by Ombudsman**

- (1) The Ombudsman may, by writing, delegate:
- (a) to an APS employee responsible to the Ombudsman; or
  - (b) to a person having similar oversight functions to the Ombudsman under the law of a State or Territory or to an employee responsible to that person;
- all or any of the Ombudsman's powers under this Part other than a power to report to the Minister.
- (2) A delegate must, upon request by a person affected by the exercise of any power delegated to the delegate, produce the instrument of delegation, or a copy of the instrument, for inspection by the person.

#### **149 Ombudsman not to be sued**

The Ombudsman, an inspecting officer, or a person acting under an inspecting officer's direction or authority, is not liable to an action, suit or proceeding for or in relation to an act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of a function or power conferred by this Part.

#### **150 Reports**

- (1) The Ombudsman must report to the Minister, in writing, about the results of:
- (a) inspections under clause 142 of the records of relevant agencies during a financial year; and
  - (b) inspections under clause 143 of the records of the Australian Designated Authority during a financial year.

- (2) The report under subclause (1) must be given to the Minister as soon as practicable after the end of the financial year.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives it.
- (4) The Ombudsman may report to the Minister in writing at any time about the results of an inspection under this Part and must do so if so requested by the Minister.
- (5) If, as a result of an inspection under this Part of the records of a relevant agency, the Ombudsman is of the opinion that an officer of the relevant agency has contravened a provision of this Schedule, the Ombudsman may include in the Ombudsman's report on the inspection a report on the contravention.
- (6) If, as a result of an inspection under this Part of the records of the Australian Designated Authority, the Ombudsman is of the opinion that a member of staff of the Attorney-General's Department has contravened a provision of this Schedule, the Ombudsman may include in the Ombudsman's report on the inspection a report on the contravention.
- (7) The Ombudsman must:
  - (a) give the chief officer of a relevant agency a copy of so much of a report under subclause (1) or (4) as relates to the relevant agency; and
  - (b) give the Australian Designated Authority a copy of so much of a report under subclause (1) or (4) as relates to the Australian Designated Authority.
- (8) A report under this clause must not include information which, if made public, could reasonably be expected to:
  - (a) endanger a person's safety; or
  - (b) prejudice an investigation or prosecution; or
  - (c) compromise any relevant agency's operational activities or methodologies.

## Part 11—Disclosure of protected information

### 151 Simplified outline of this Part

- Protected information must not be used, recorded or disclosed, unless an exception applies.
- Protected information must not be admitted in evidence, unless an exception applies.

### 152 Prohibition on use, recording or disclosure of protected information or its admission in evidence

- (1) A person commits an offence if:
- (a) the person uses, records or discloses information; and
  - (b) the information is protected information; and
  - (c) the use, recording or disclosure of the information is not permitted by this Part.

Penalty: Imprisonment for 2 years.

- (2) Subject to this Part, protected information must not be admitted in evidence in any proceedings in Australia.

### 153 Exceptions—general

- (1) Protected information may be used, recorded or disclosed, or may be admitted in evidence, for any of the following purposes:
- (a) the investigation of a serious category 1 offence or a serious category 2 offence or the making of a report on the outcome of such an investigation;
  - (b) the making of a decision whether or not to bring a prosecution for a serious category 1 offence or a serious category 2 offence (other than an offence referred to in paragraph (r));
  - (c) a proceeding by way of a prosecution for a serious category 1 offence or a serious category 2 offence (other than an offence referred to in paragraph (r));

- (d) a proceeding by way of a bail application if the application relates to a proceeding by way of a prosecution for a serious category 1 offence or a serious category 2 offence;
- (e) a proceeding by way of review of a decision to refuse such a bail application;
- (f) a proceeding by way of a review of a decision to grant such a bail application;
- (g) the investigation of a contravention of a civil penalty provision in this Schedule or the making of a report on the outcome of such an investigation;
- (h) the performance of the functions, or the exercise of the powers, of the Organisation;
- (i) the performance of a function or duty, or the exercise of a power, by a person, court or other body under, or in relation to a matter arising under, Division 104 of the *Criminal Code* (control orders);
- (j) a preventative detention order law;
- (k) the performance of a function or duty, or the exercise of a power, by a person, court or other body under, or in relation to a matter arising under, Division 105A of the *Criminal Code* (continuing detention orders);
- (l) a proceeding by way of an application for a civil penalty order in relation to a contravention of a civil penalty provision in this Schedule;
- (m) the making of reports, and the keeping of records, under Part 9 of this Schedule;
- (n) the making of reports referred to in subsection 94(1) of the *Australian Security Intelligence Organisation Act 1979*, so far as they include statements covered by subsection 94(2BBA) of that Act;
- (o) an inspection by the Ombudsman under clause 142 or 143;
- (p) the performance of a function or duty, or the exercise of a power, by an IGIS official;
- (q) the performance of a function or duty, or the exercise of a power, by an Ombudsman official;
- (r) an investigation under the *Privacy Act 1988* or any other law of the Commonwealth concerning the privacy of personal information and also any subsequent investigation or

- prosecution of a serious category 1 offence, or a serious category 2 offence, arising directly from that first-mentioned investigation;
- (s) the administration or execution of this Schedule;
  - (t) any legal proceedings arising out of or otherwise related to this Schedule or any report of any such proceedings;
  - (u) a proceeding for the taking of evidence pursuant to section 43 of the *Extradition Act 1988*, in so far as the proceeding relates to a serious category 1 offence;
  - (v) a proceeding under section 13 of the *Mutual Assistance in Criminal Matters Act 1987* in relation to a criminal matter (within the meaning of that Act) that concerns an offence, against the laws of the foreign country that made the request resulting in the proceeding, that is punishable by imprisonment for life or for a period, or maximum period, of at least 3 years;
  - (w) a proceeding under Division 5 of Part 4 of the *International Criminal Court Act 2002*;
  - (x) a proceeding before the International Criminal Court sitting in Australia under Part 5 of the *International Criminal Court Act 2002*;
  - (y) a proceeding under Division 1 of Part 4 of the *International War Crimes Tribunals Act 1995*;
  - (z) a designated international agreement.
- (2) For the purposes of subclause (1), **this Schedule** includes the *Regulatory Powers (Standard Provisions) Act 2014*, so far as that Act relates to this Schedule.

*Disclosure to Public Interest Monitor of Victoria or Queensland*

- (3) If:
- (a) a person (the **applicant**) applies, or proposes to apply, under clause 22, on behalf of an interception agency of Victoria or Queensland for an international production order under clause 30; and
  - (b) a law of that State authorises or requires the applicant:
    - (i) to notify a PIM of that State of the application or proposed application; or

- (ii) to notify a PIM of that State of any information that relates to the application or proposed application; or
  - (iii) to give a PIM of that State any document that relates to the application or proposed application;
- making the notification, or giving the document, to a PIM of that State is taken to be necessary for the purposes of the administration or execution of this Schedule.

(4) If:

- (a) a person (the **applicant**) applies, or proposes to apply, under clause 52, on behalf of a control order IPO agency of Victoria or Queensland for an international production order under clause 60; and
- (b) a law of that State authorises or requires the applicant:
  - (i) to notify a PIM of that State of the application or proposed application; or
  - (ii) to notify a PIM of that State of any information that relates to the application or proposed application; or
  - (iii) to give a PIM of that State any document that relates to the application or proposed application;making the notification, or giving the document, to a PIM of that State is taken to be necessary for the purposes of the administration or execution of this Schedule.

*International assistance*

- (5) If the Attorney-General has authorised the provision of protected information to a foreign country under subsection 13A(1) of the *Mutual Assistance in Criminal Matters Act 1987*, the information may be disclosed to:
  - (a) that foreign country; or
  - (b) the Secretary of the Attorney-General's Department for the purpose of providing the information to that foreign country.
- (6) If the Attorney-General has authorised the provision of protected information to the International Criminal Court under section 69A of the *International Criminal Court Act 2002*, the information may be disclosed to:
  - (a) that Court; or

- (b) the Secretary of the Attorney-General's Department for the purpose of providing the information to that Court.
- (7) If the Attorney-General has authorised the provision of protected information to a War Crimes Tribunal under section 25A of the *International War Crimes Tribunals Act 1995*, the information may be disclosed to:
  - (a) that Tribunal; or
  - (b) the Secretary of the Attorney-General's Department for the purpose of providing the information to that Tribunal.

#### **154 Exception—disclosure to the Minister**

Protected information may be disclosed to the Minister for the purposes of the performance of the functions, or the exercise of the powers, of the Minister.

#### **155 Exception—disclosure to the Attorney-General**

Protected information may be disclosed to the Attorney-General for the purposes of the performance of the functions, or the exercise of the powers, of the Attorney-General.

#### **156 Exception—statistical information**

A prescribed communications provider may disclose the total number of international production orders given to the provider during a period of at least 6 months.

- Note: This clause authorises the disclosure of aggregate statistical information. That information cannot be broken down:
- (a) by agency; or
  - (b) in any other way.

#### **157 Exceptions—international production orders relating to interception**

- (1) Protected information that:
  - (a) was obtained in accordance with an international production order issued under clause 30, 60 or 89; or

(b) relates to an international production order issued under clause 30, 60 or 89;

may be used, recorded or disclosed, or may be admitted in evidence, for any of the following purposes:

- (c) a proceeding for the confiscation or forfeiture of property in connection with the commission of a serious category 1 offence;
- (d) a proceeding under the *Spam Act 2003*;
- (e) a proceeding under, or a proceeding relating to a matter arising under, the main unexplained wealth provisions;
- (f) a proceeding under, or a proceeding relating to a matter arising under, the unexplained wealth legislation of a participating State, the Australian Capital Territory or the Northern Territory;
- (g) a proceeding under, or a proceeding relating to a matter arising under, an organised crime control law;
- (h) a proceeding for the extradition of a person from a State or Territory to another State or Territory, in so far as the proceeding relates to a serious category 1 offence;
- (i) a proceeding by way of a coroner's inquest if, in the opinion of the coroner, the event that is the subject of the inquest may have resulted from the commission of a serious category 1 offence;
- (j) a police disciplinary proceeding;
- (k) a proceeding in so far as it relates to:
  - (i) a decision by the Commissioner of Police to terminate the employment of an AFP employee or the appointment of a special member of the Australian Federal Police; or
  - (ii) a decision by the Commissioner of a Police Force of a State to terminate the appointment of an officer or member of staff of that Police Force;
- (l) a proceeding in so far as it is, or relates to, disciplinary or legal action (within the meaning of section 6S) that is in relation to an eligible staff member (within the meaning of that section) of the Australian Federal Police or the ACC;
- (m) any other proceeding (not being a proceeding by way of a prosecution for an offence) in so far as it relates to alleged

- misbehaviour, or alleged improper conduct, of an officer of the Commonwealth or of a State;
- (n) a proceeding for the recovery of an amount due to a network entity or transmission service provider in connection with the supply of a transmission service;
  - (o) a proceeding of an eligible Commonwealth authority;
  - (p) a proceeding of the Independent Commission Against Corruption;
  - (q) a proceeding of the Inspector of the Independent Commission Against Corruption;
  - (r) a proceeding in relation to an application under subsection 34B(1) of the ACC Act in respect of contempt of the ACC;
  - (s) a proceeding of the IBAC;
  - (t) a proceeding of the Victorian Inspectorate;
  - (u) a proceeding of the Corruption and Crime Commission;
  - (v) a proceeding of the Parliamentary Inspector of the Corruption and Crime Commission;
  - (w) a proceeding of the Law Enforcement Conduct Commission;
  - (x) a proceeding of the Inspector of the Law Enforcement Conduct Commission;
  - (y) a proceeding of the Crime and Corruption Commission;
  - (z) a proceeding of the Independent Commissioner Against Corruption;
  - (za) an eligible purpose of the ACC;
  - (zb) an eligible purpose of the Australian Federal Police;
  - (zc) an eligible purpose of the Australian Commission for Law Enforcement Integrity;
  - (zd) an eligible purpose of a Commonwealth Royal Commission that is an eligible Commonwealth authority;
  - (ze) an eligible purpose of the Police Force of a State;
  - (zf) an eligible purpose of an eligible authority of a State;
  - (zg) an eligible purpose of the Independent Commission Against Corruption;
  - (zh) an eligible purpose of the Inspector of the Independent Commission Against Corruption;

- (zi) an eligible purpose of the Inspector of the Law Enforcement Conduct Commission;
- (zj) an eligible purpose of the Law Enforcement Conduct Commission;
- (zk) an eligible purpose of the IBAC;
- (zl) an eligible purpose of the Victorian Inspectorate;
- (zm) an eligible purpose of the Corruption and Crime Commission;
- (zn) an eligible purpose of the Crime and Corruption Commission;
- (zo) an eligible purpose of the Parliamentary Inspector of the Corruption and Crime Commission;
- (zp) an eligible purpose of the Independent Commissioner Against Corruption.

*Eligible purpose*

- (2) For the purposes of this clause:
  - (a) each of the following is an ***eligible purpose*** of the ACC:
    - (i) a special ACC operation/investigation;
    - (ii) a report to the Board of the ACC on the outcome of such an operation or investigation;
    - (iii) an investigation of, or an inquiry into, alleged misbehaviour, or alleged improper conduct, of a member of the staff referred to in subsection 47(1) of the ACC Act;
    - (iv) a report on such an investigation or inquiry;
    - (v) the making by a person of a decision, following such an investigation or inquiry, in relation to the employment of such a staff member (including a decision to terminate the staff member's employment);
    - (vi) a review (whether by way of appeal or otherwise) of such a decision; and
  - (b) each of the following is an ***eligible purpose*** of the Australian Federal Police:
    - (i) an investigation of, or an inquiry into, alleged misbehaviour, or alleged improper conduct, of an officer of the Commonwealth, being an investigation or inquiry

- under a law of the Commonwealth or by a person in the person's capacity as an officer of the Commonwealth;
- (ii) a report on such an investigation or inquiry;
- (iii) the making by a person of a decision under the *Australian Federal Police Act 1979* in relation to the engagement of an AFP employee, the retirement of an AFP employee or the termination of the employment of an AFP employee or in relation to the appointment or the termination of the appointment of a special member of the Australian Federal Police;
- (iv) a review (whether by way of appeal or otherwise) of such a decision;
- (v) the tendering to the Governor-General of advice to terminate, because of misbehaviour or improper conduct, the appointment of an officer of the Commonwealth;
- (vi) deliberations of the Executive Council in connection with advice to the Governor-General to terminate, because of misbehaviour or improper conduct, the appointment of an officer of the Commonwealth; and
- (c) each of the following is an **eligible purpose** of the Australian Commission for Law Enforcement Integrity:
  - (i) a corruption investigation (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*);
  - (ii) a report on such an investigation; and
- (d) each of the following is an **eligible purpose** of a Commonwealth Royal Commission that is an eligible Commonwealth authority:
  - (i) an investigation that the Commonwealth Royal Commission is conducting in the course of the inquiry it is commissioned to undertake;
  - (ii) a report on such an investigation; and
- (e) each of the following is an **eligible purpose** of the Police Force of a State:
  - (i) an investigation of, or an inquiry into, alleged misbehaviour, or alleged improper conduct, of an officer of that State, being an investigation or inquiry under a

- law of that State or by a person in the person's capacity as an officer of that State;
- (ii) a report on such an investigation or inquiry;
  - (iii) the making by a person of a decision in relation to the appointment, re-appointment, term of appointment, retirement or termination of appointment of an officer or member of staff of that Police Force;
  - (iv) a review (whether by way of appeal or otherwise) of such a decision;
  - (v) the tendering to the Governor of that State of advice to terminate, because of misbehaviour or improper conduct, the appointment of an officer of that State;
  - (vi) deliberations of the Executive Council of that State in connection with advice to the Governor of that State to terminate, because of misbehaviour or improper conduct, the appointment of an officer of that State; and
- (f) each of the following is an ***eligible purpose*** of an eligible authority of a State:
- (i) an inspection of the authority's records that is made under a requirement of the law of that State, being a requirement of the kind referred to in paragraph 35(1)(h);
  - (ii) a report on such an inspection; and
- (g) each of the following is an ***eligible purpose*** of the Independent Commission Against Corruption:
- (i) an investigation under the Independent Commission Against Corruption Act into whether corrupt conduct (within the meaning of that Act) may have occurred, may be occurring or may be about to occur;
  - (ii) a report on such an investigation; and
- (h) each of the following is an ***eligible purpose*** of the Inspector of the Independent Commission Against Corruption:
- (i) dealing with (by reports and recommendations) complaints of abuse of power, impropriety or other forms of misconduct (within the meaning of the Independent Commission Against Corruption Act) on the part of the Independent Commission Against Corruption or officers of that Commission;

- (ii) dealing with (by reports and recommendations) conduct amounting to maladministration (within the meaning of the Independent Commission Against Corruption Act) by the Independent Commission Against Corruption or officers of that Commission; and
- (i) each of the following is an **eligible purpose** of the Inspector of the Law Enforcement Conduct Commission:
  - (i) dealing with (by reports and recommendations) conduct amounting to agency maladministration (within the meaning of subsection 5(6A)) on the part of the Commission (whether or not the subject of a complaint);
  - (ii) dealing with (by reports and recommendations) conduct amounting to officer misconduct (within the meaning of section 122 of the *Law Enforcement Conduct Commission Act 2016* (NSW)) or officer maladministration (within the meaning of that section) on the part of officers (within the meaning of that Act) of the Commission (whether or not the subject of a complaint); and
- (j) each of the following is an **eligible purpose** of the Law Enforcement Conduct Commission:
  - (i) an investigation under Part 6 of the *Law Enforcement Conduct Commission Act 2016* (NSW) in respect of conduct to which subsection 5(7) of this Act applies;
  - (ii) a report on an investigation covered by subparagraph (i);
  - (iii) the tendering to the Governor of New South Wales of advice to terminate, because of misbehaviour or improper conduct, the appointment of the Commissioner of the New South Wales Police Force;
  - (iv) deliberations of the Executive Council of New South Wales in connection with advice to the Governor of that State to terminate, because of misbehaviour or improper conduct, the appointment of the Commissioner of the New South Wales Police Force; and
- (k) each of the following is an **eligible purpose** of the IBAC:
  - (i) an investigation under the IBAC Act of corrupt conduct (within the meaning of that Act);

- (ii) an investigation under the IBAC Act of police personnel conduct (within the meaning of that Act); and
- (l) each of the following is an ***eligible purpose*** of the Victorian Inspectorate:
  - (i) an investigation under the Victorian Inspectorate Act;
  - (ii) a report or recommendation on such an investigation; and
- (m) each of the following is an ***eligible purpose*** of the Corruption and Crime Commission:
  - (i) an investigation under the Corruption and Crime Commission Act into whether misconduct (within the meaning of that Act) has or may have occurred, is or may be occurring, is or may be about to occur, or is likely to occur;
  - (ii) a report on such an investigation; and
- (n) each of the following is an ***eligible purpose*** of the Crime and Corruption Commission:
  - (i) an investigation under the Crime and Corruption Act into whether corruption (within the meaning of that Act) may have occurred, may be occurring or may be about to occur;
  - (ii) a report on such an investigation; and
- (o) each of the following is an ***eligible purpose*** of the Parliamentary Inspector of the Corruption and Crime Commission:
  - (i) dealing with a matter of misconduct (within the meaning of the Corruption and Crime Commission Act) on the part of the Corruption and Crime Commission;
  - (ii) dealing with a matter of misconduct (within the meaning of the Corruption and Crime Commission Act) on the part of an officer of the Corruption and Crime Commission;
  - (iii) dealing with a matter of misconduct (within the meaning of the Corruption and Crime Commission Act) on the part of an officer of the Parliamentary Inspector of the Corruption and Crime Commission; and
- (p) each of the following is an ***eligible purpose*** of the Independent Commissioner Against Corruption:

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

**158 Exceptions—international production orders relating to stored communications**

Protected information that:

- (a) was obtained in accordance with an international production order issued under clause 39, 69 or 98; or
- (b) relates to an international production order issued under clause 39, 69 or 98;

may be used, recorded or disclosed, or may be admitted in evidence, for any of the following purposes:

- (c) a proceeding for the confiscation or forfeiture of property in connection with the commission of a serious category 1 offence;
- (d) a proceeding for the extradition of a person from a State or Territory to another State or Territory, in so far as the proceeding relates to a serious category 1 offence;
- (e) a proceeding by way of a coroner's inquest if, in the opinion of the coroner, the event that is the subject of the inquest may have resulted from the commission of a serious category 1 offence;
- (f) a proceeding for recovery of a pecuniary penalty for a contravention that would, if proved, render the person committing the contravention liable to:
  - (i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 60 penalty units if the contravention is committed by an individual; or
  - (ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 300 penalty units;
- (g) a proceeding under the *Spam Act 2003*;
- (h) a police disciplinary proceeding.

## **159 Exceptions—telecommunications data**

- (1) Protected information that:
  - (a) consists of telecommunications data obtained in accordance with an international production order; or
  - (b) relates to such an international production order;may be used, recorded or disclosed, or may be admitted in evidence, for any of the following purposes:
  - (c) the enforcement of the criminal law;
  - (d) the enforcement of a law imposing a pecuniary penalty;
  - (e) the protection of the public revenue.
- (2) If the Australian Federal Police, or a Police Force of a State has been notified that a person is missing, protected information that consists of telecommunications data obtained in accordance with an international production order may be disclosed if:
  - (a) the disclosure is reasonably necessary for the purposes of finding the missing person; or
  - (b) the information is disclosed to the person who notified the Australian Federal Police, or a Police Force of a State, of the missing person and:
    - (i) the missing person consented to the disclosure; or
    - (ii) the missing person is unable to consent, and the disclosure is reasonably necessary to prevent a threat to the missing person's health, life or safety; or
    - (iii) the missing person is dead.

## **Part 12—Evidentiary certificates**

### **160 Simplified outline of this Part**

- A manager of a prescribed communications provider may issue an evidentiary certificate setting out facts with respect to acts or things done by the provider in order to comply with an international production order.

- A manager of a prescribed communications provider may issue an evidentiary certificate setting out facts with respect to acts or things done by the provider in order to voluntarily provide information in connection with an international production order.
- A certifying officer of a relevant agency may issue an evidentiary certificate setting out facts with respect to the receipt by the agency of information that was made available to the agency in accordance with an international production order.
- A certifying person may issue an evidentiary certificate setting out facts with respect to the receipt by the Organisation of information that was made available to the Organisation in accordance with an international production order.
- If an international production order requires information to be made available to a relevant agency or the Organisation indirectly via the Australian Designated Authority, the Australian Designated Authority may issue an evidentiary certificate setting out facts with respect to:
  - (a) the receipt by the Australian Designated Authority of the information; or
  - (b) anything done by the Australian Designated Authority for the purposes of ensuring that the information was passed on to the agency or the Organisation.

**161 Evidentiary certificates—compliance with international production orders by prescribed communications providers**

- (1) If:
- (a) an international production order is directed to a prescribed communications provider; and
  - (b) the provider is not an individual;
- a manager of the provider may issue a written certificate signed by the manager setting out such facts as the manager considers

relevant with respect to acts or things done by the provider in order to comply with the international production order.

- (2) If:
- (a) an international production order is directed to a prescribed communications provider; and
  - (b) the provider is an individual;
- the provider may issue a written certificate signed by the provider setting out such facts as the provider considers relevant with respect to acts or things done by the provider in order to comply with the international production order.
- (3) A document purporting to be a certificate issued under subclause (1) or (2):
- (a) is to be received in evidence in a proceeding in Australia without further proof; and
  - (b) in a proceeding in Australia, is conclusive evidence of the matters stated in the document.

## **162 Evidentiary certificates—voluntary provision of associated information by prescribed communications providers**

### *Interception*

- (1) If:
- (a) an international production order is directed to a prescribed communications provider; and
  - (b) the provider is not an individual; and
  - (c) either:
    - (i) the order requires the provider to intercept communications carried by one or more individual transmission services, and make those intercepted communications available to a relevant agency or the Organisation; or
    - (ii) the order requires the provider to intercept messages sent or received, voice calls made or received, or video calls made or received, using one or more individual message/call application services, and make those intercepted messages, voice calls or video calls available to a relevant agency or the Organisation;

a manager of the provider may do either or both of the following:

- (d) issue a written certificate signed by the manager setting out such facts as the manager considers relevant with respect to acts or things done by the provider in order to voluntarily give the relevant agency or the Organisation (as the case may be) in connection with the international production order, information relating to:
  - (i) those individual transmission services or individual message/call application services (as the case may be); or
  - (ii) a person who uses, or is likely to use, those individual transmission services or individual message/call application services (as the case may be);
- (e) issue a written certificate signed by the manager setting out such facts as the manager considers would assist in explaining:
  - (i) the operation of those individual transmission services or individual message/call application services (as the case may be); or
  - (ii) the way in which the intercepted communications, intercepted messages, intercepted voice calls or intercepted video calls (as the case may be) were made available by the provider to the relevant agency or the Organisation (as the case may be).

(2) If:

- (a) an international production order is directed to a prescribed communications provider; and
- (b) the provider is an individual; and
- (c) either:
  - (i) the order requires the provider to intercept communications carried by one or more individual transmission services, and make those intercepted communications available to a relevant agency or the Organisation; or
  - (ii) the order requires the provider to intercept messages sent or received, voice calls made or received, or video calls made or received, using one or more individual message/call application services, and make those

- intercepted messages, voice calls or video calls  
available to a relevant agency or the Organisation;  
the provider may do either or both of the following:
- (d) issue a written certificate signed by the provider setting out such facts as the provider considers relevant with respect to acts or things done by the provider in order to voluntarily give the relevant agency or the Organisation (as the case may be) in connection with the international production order, information relating to:
    - (i) those individual transmission services or individual message/call application services (as the case may be); or
    - (ii) a person who uses, or is likely to use, those individual transmission services or individual message/call application services (as the case may be);
  - (e) issue a written certificate signed by the provider setting out such facts as the provider considers would assist in explaining:
    - (i) the operation of those individual transmission services or individual message/call application services (as the case may be); or
    - (ii) the way in which the intercepted communications, intercepted messages, intercepted voice calls or intercepted video calls (as the case may be) were made available by the provider to the relevant agency or the Organisation (as the case may be).

*Stored communications*

- (3) If:
  - (a) an international production order is directed to a prescribed communications provider; and
  - (b) the provider is not an individual; and
  - (c) the order requires the provider to:
    - (i) make a copy of stored communications; and
    - (ii) make the copy available to a relevant agency or the Organisation; and
  - (d) the stored communications consist of:

- (i) communications that a person has made using a transmission service; or
- (ii) messages that a person has sent or received using a message/call application service; or
- (iii) recordings of voice calls that a person has made or received using a message/call application service; or
- (iv) recordings of video calls that a person has made or received using a message/call application service; or
- (v) material that a person has uploaded for storage or back-up by a storage/back-up service; or
- (vi) material that a person has posted to a general electronic content service;

a manager of the provider may do either or both of the following:

- (e) issue a written certificate signed by the manager setting out such facts as the manager considers relevant with respect to acts or things done by the provider in order to voluntarily give the relevant agency or the Organisation (as the case may be) in connection with the international production order, information relating to:
  - (i) those individual transmission services, those individual message/call application services, that storage/back-up service or that general electronic content service (as the case may be); or
  - (ii) the person;
- (f) issue a written certificate signed by the manager setting out such facts as the manager considers would assist in explaining:
  - (i) the operation of those individual transmission services, those individual message/call application services, that storage/back-up service or that general electronic content service (as the case may be); or
  - (ii) the way in which the copy of the stored communications was made available by the provider to the relevant agency or the Organisation (as the case may be).

(4) If:

- (a) an international production order is directed to a prescribed communications provider; and
  - (b) the provider is an individual; and
-

- (c) the order requires the provider to:
    - (i) make a copy of stored communications; and
    - (ii) make the copy available to a relevant agency or the Organisation; and
  - (d) the stored communications consist of:
    - (i) communications that a person has made using a transmission service; or
    - (ii) messages that a person has sent or received using a message/call application service; or
    - (iii) recordings of voice calls that a person has made or received using a message/call application service; or
    - (iv) recordings of video calls that a person has made or received using a message/call application service; or
    - (v) material that a person has uploaded for storage or back-up by a storage/back-up service; or
    - (vi) material that a person has posted to a general electronic content service;
- the provider may do either or both of the following:
- (e) issue a written certificate signed by the provider setting out such facts as the provider considers relevant with respect to acts or things done by the provider in order to voluntarily give the relevant agency or the Organisation (as the case may be) in connection with the international production order, information relating to:
    - (i) those individual transmission services, those individual message/call application services, that storage/back-up service or that general electronic content service (as the case may be); or
    - (ii) the person;
  - (f) issue a written certificate signed by the provider setting out such facts as the provider considers would assist in explaining:
    - (i) the operation of those individual transmission services, those individual message/call application services, that storage/back-up service or that general electronic content service (as the case may be); or

- (ii) the way in which the copy of the stored communications was made available by the provider to the relevant agency or the Organisation (as the case may be).

*Telecommunications data*

(5) If:

- (a) an international production order is directed to a prescribed communications provider; and
- (b) the provider is not an individual; and
- (c) the order requires the provider to disclose to a relevant agency, or to the Organisation, telecommunications data that relates to:
  - (i) communications carried by an individual transmission service; or
  - (ii) an individual transmission service; or
  - (iii) messages sent or received using an individual message/call application service; or
  - (iv) voice calls made or received using an individual message/call application service; or
  - (v) video calls made or received using an individual message/call application service; or
  - (vi) an individual message/call application service; or
  - (vii) material that has been uploaded by an end-user for storage or back-up by a storage/back-up service; or
  - (viii) material that has been posted on a general electronic content service;

a manager of the provider may do either or both of the following:

- (d) issue a written certificate signed by the manager setting out such facts as the manager considers relevant with respect to acts or things done by the provider in order to voluntarily give the relevant agency or the Organisation (as the case may be) in connection with the international production order, information relating to those individual transmission services, those individual message/call application services, that storage/back-up service or that general electronic content service (as the case may be);

- (e) issue a written certificate signed by the manager setting out such facts as the manager considers would assist in explaining:
  - (i) the operation of those individual transmission services, those individual message/call application services, that storage/back-up service or that general electronic content service (as the case may be); or
  - (ii) the way in which the telecommunications data was disclosed by the provider to the relevant agency or the Organisation (as the case may be).
- (6) If:
  - (a) an international production order is directed to a prescribed communications provider; and
  - (b) the provider is an individual; and
  - (c) the order requires the provider to disclose to a relevant agency, or to the Organisation, telecommunications data that relates to:
    - (i) communications carried by an individual transmission service; or
    - (ii) an individual transmission service; or
    - (iii) messages sent or received using an individual message/call application service; or
    - (iv) voice calls made or received using an individual message/call application service; or
    - (v) video calls made or received using an individual message/call application service; or
    - (vi) an individual message/call application service; or
    - (vii) material that has been uploaded by an end-user for storage or back-up by a storage/back-up service; or
    - (viii) material that has been posted on a general electronic content service;the provider may do either or both of the following:
  - (d) issue a written certificate signed by the provider setting out such facts as the provider considers relevant with respect to acts or things done by the provider in order to voluntarily give the relevant agency or the Organisation (as the case may be) in connection with the international production order,

information relating to those individual transmission services, those individual message/call application services, that storage/back-up service or that general electronic content service (as the case may be);

- (e) issue a written certificate signed by the provider setting out such facts as the provider considers would assist in explaining:
  - (i) the operation of those individual transmission services, those individual message/call application services, that storage/back-up service or that general electronic content service (as the case may be); or
  - (ii) the way in which the telecommunications data was disclosed by the provider to the relevant agency or the Organisation (as the case may be).

*Evidentiary effect*

- (7) A document purporting to be a certificate issued under subclause (1), (2), (3), (4), (5) or (6) in connection with an international production order:
  - (a) is to be received in evidence in a proceeding in Australia without further proof; and
  - (b) in a proceeding in Australia, is prima facie evidence of the matters stated in the document;so long as information obtained in accordance with the order is admissible in those proceedings.

**163 Evidentiary certificates—interception**

- (1) A certifying officer of an interception agency may issue a written certificate signed by the officer setting out such facts as the officer considers relevant with respect to:
  - (a) the receipt by the agency of:
    - (i) intercepted communications; or
    - (ii) intercepted messages; or
    - (iii) intercepted voice calls; or
    - (iv) intercepted video calls;that were made available to the agency in accordance with an international production order issued under clause 30; or

- (b) the receipt by the agency of telecommunications data that was disclosed to the agency in accordance with an international production order issued under clause 30.
- (2) A certifying officer of a control order IPO agency may issue a written certificate signed by the officer setting out such facts as the officer considers relevant with respect to:
  - (a) the receipt by the agency of:
    - (i) intercepted communications; or
    - (ii) intercepted messages; or
    - (iii) intercepted voice calls; or
    - (iv) intercepted video calls;that were made available to the agency in accordance with an international production order issued under clause 60; or
  - (b) the receipt by the agency of telecommunications data that was disclosed to the agency in accordance with an international production order issued under clause 60.
- (3) A certifying person may issue a written certificate signed by the person setting out such facts as the person considers relevant with respect to:
  - (a) the receipt by the Organisation of:
    - (i) intercepted communications; or
    - (ii) intercepted messages; or
    - (iii) intercepted voice calls; or
    - (iv) intercepted video calls;that were made available to the Organisation in accordance with an international production order issued under clause 89; or
  - (b) the receipt by the Organisation of telecommunications data that was disclosed to the Organisation in accordance with an international production order issued under clause 89.
- (4) A document purporting to be a certificate issued under subclause (1), (2) or (3):
  - (a) is to be received in evidence in a proceeding in Australia without further proof; and
  - (b) in a proceeding in Australia, is prima facie evidence of the matters stated in the document.

## 164 Evidentiary certificates—stored communications

- (1) A certifying officer of a criminal law-enforcement agency may issue a written certificate signed by the officer setting out such facts as the officer considers relevant with respect to:
  - (a) the receipt by the agency of a copy of stored communications that were made available to the agency in accordance with an international production order issued under clause 39; or
  - (b) the receipt by the agency of telecommunications data that was disclosed to the agency in accordance with an international production order issued under clause 39.
- (2) A certifying officer of a control order IPO agency may issue a written certificate signed by the officer setting out such facts as the officer considers relevant with respect to:
  - (a) the receipt by the agency of a copy of stored communications that were made available to the agency in accordance with an international production order issued under clause 69; or
  - (b) the receipt by the agency of telecommunications data that was disclosed to the agency in accordance with an international production order issued under clause 69.
- (3) A certifying person may issue a written certificate signed by the person setting out such facts as the person considers relevant with respect to:
  - (a) the receipt by the Organisation of a copy of stored communications that were made available to the Organisation in accordance with an international production order issued under clause 98; or
  - (b) the receipt by the Organisation of telecommunications data that was disclosed to the Organisation in accordance with an international production order issued under clause 98.
- (4) A document purporting to be a certificate issued under subclause (1), (2) or (3):
  - (a) is to be received in evidence in a proceeding in Australia without further proof; and
  - (b) in a proceeding in Australia, is prima facie evidence of the matters stated in the document.

### **165 Evidentiary certificates—telecommunications data**

- (1) A certifying officer of an enforcement agency may issue a written certificate signed by the officer setting out such facts as the officer considers relevant with respect to the receipt by the agency of telecommunications data that was disclosed to the agency in accordance with an international production order issued under clause 48.
- (2) A certifying officer of a control order IPO agency may issue a written certificate signed by the officer setting out such facts as the officer considers relevant with respect to the receipt by the agency of telecommunications data that was disclosed to the agency in accordance with an international production order issued under clause 78.
- (3) A certifying person may issue a written certificate signed by the person setting out such facts as the person considers relevant with respect to the receipt by the Organisation of telecommunications data that was disclosed to the Organisation in accordance with an international production order issued under clause 107.
- (4) A document purporting to be a certificate issued under subclause (1), (2) or (3):
  - (a) is to be received in evidence in a proceeding in Australia without further proof; and
  - (b) in a proceeding in Australia, is prima facie evidence of the matters stated in the document.

### **166 Evidentiary certificates—Australian Designated Authority**

- (1) The Australian Designated Authority may issue a written certificate signed by the Australian Designated Authority setting out such facts as the Australian Designated Authority considers relevant with respect to:
  - (a) giving an international production order to a prescribed communications provider; or
  - (b) giving an instrument of revocation of an international production order to a prescribed communications provider; or
  - (c) giving an instrument of cancellation to a prescribed communications provider.

- (2) If an international production order requires a prescribed communications provider to make intercepted communications, intercepted messages, intercepted voice calls or intercepted video calls available to:
- (a) an interception agency; or
  - (b) a control order IPO agency; or
  - (c) the Organisation;
- indirectly via the Australian Designated Authority, the Australian Designated Authority may issue a written certificate signed by the Australian Designated Authority setting out such facts as the Australian Designated Authority considers relevant with respect to:
- (d) the receipt by the Australian Designated Authority of the intercepted communications, intercepted messages, intercepted voice calls or intercepted video calls; or
  - (e) anything done by the Australian Designated Authority for the purposes of ensuring that the intercepted communications, intercepted messages, intercepted voice calls or intercepted video calls were passed on to the agency or Organisation, as the case requires.
- (3) If an international production order requires a prescribed communications provider to make a copy of stored communications available to:
- (a) a criminal law-enforcement agency; or
  - (b) a control order IPO agency; or
  - (c) the Organisation;
- indirectly via the Australian Designated Authority, the Australian Designated Authority may issue a written certificate signed by the Australian Designated Authority setting out such facts as the Australian Designated Authority considers relevant with respect to:
- (d) the receipt by the Australian Designated Authority of the copy; or
  - (e) anything done by the Australian Designated Authority for the purposes of ensuring that the copy was passed on to the agency or Organisation, as the case requires.
- (4) If an international production order requires a prescribed communications provider to disclose telecommunications data to:
- (a) a relevant agency; or

- (b) the Organisation;  
indirectly via the Australian Designated Authority, the Australian Designated Authority may issue a written certificate signed by the Australian Designated Authority setting out such facts as the Australian Designated Authority considers relevant with respect to:
  - (c) the receipt by the Australian Designated Authority of the telecommunications data; or
  - (d) anything done by the Australian Designated Authority for the purposes of ensuring that the telecommunications data was passed on to the agency or Organisation, as the case requires.
- (5) A document purporting to be a certificate issued under subclause (1), (2), (3) or (4):
  - (a) is to be received in evidence in a proceeding in Australia without further proof; and
  - (b) in a proceeding in Australia, is prima facie evidence of the matters stated in the document.

## **Part 13—Incoming orders and requests**

### **167 Simplified outline of this Part**

- If there is a designated international agreement between Australia and one or more foreign countries, and a competent authority of such a foreign country issues an order, or makes a request, covered by the agreement, an act or thing done in compliance with such an order or request is exempt from:
  - (a) the provisions of this Act that prohibit intercepting communications and accessing stored communications; and
  - (b) the provisions of this Act that prohibit disclosure of information; and
  - (c) the provisions of the *Telecommunications Act 1997* that prohibit the disclosure of information.

**168 Incoming orders and requests—exemptions from various prohibitions**

If:

- (a) there is a designated international agreement between Australia and one or more foreign countries; and
- (b) the agreement deals with (among other things):
  - (i) the issue of orders (however described); or
  - (ii) the making of requests (however described);by a competent authority (however described) of such a foreign country;

then:

- (c) subsections 7(1) and 108(1) do not apply to or in relation to:
  - (i) an act or thing done in compliance with such an order or request; or
  - (ii) the issue of such an order or the making of such a request; and
- (d) subsections 63(1) and 133(1) do not apply to or in relation to:
  - (i) an act or thing done in compliance with such an order or request; or
  - (ii) information obtained in accordance with such an order or request; and
- (e) sections 276, 277 and 278 of the *Telecommunications Act 1997* do not apply to or in relation to:
  - (i) an act or thing done in compliance with such an order or request; or
  - (ii) information obtained in accordance with such an order or request.

Note 1: In a prosecution for an offence against subsection 7(1) or 108(1), a defendant bears an evidential burden in relation to the matter in paragraph (c): see subsection 13.3(3) of the *Criminal Code*.

Note 2: In a prosecution for an offence against subsection 63(1) or 133(1), a defendant bears an evidential burden in relation to the matter in paragraph (d): see subsection 13.3(3) of the *Criminal Code*.

Note 3: In a prosecution for an offence against section 276, 277 or 278 of the *Telecommunications Act 1997*, a defendant bears an evidential burden in relation to the matter in paragraph (e): see subsection 13.3(3) of the *Criminal Code*.

### **169 Interaction with the *Privacy Act 1988***

For the purposes of the *Privacy Act 1988*, if:

- (a) there is a designated international agreement between Australia and one or more foreign countries; and
- (b) the agreement deals with (among other things):
  - (i) the issue of orders (however described); or
  - (ii) the making of requests (however described);by a competent authority (however described) of such a foreign country;

the disclosure of information in compliance with any such order or request, to the extent that the information contains personal information, is taken to be a disclosure that is authorised by this Act.

## **Part 14—Miscellaneous**

### **170 Simplified outline of this Part**

- This Part deals with miscellaneous matters, such as:
  - (a) electronic service of documents; and
  - (b) certified copies of international production orders; and
  - (c) delegations.

### **171 Electronic service of documents**

- (1) If:
  - (a) any of the following is required by this Schedule to be given to a person by the Australian Designated Authority:
    - (i) an international production order;
    - (ii) a certified copy of an international production order;
    - (iii) an instrument of revocation of an international production order;
    - (iv) an instrument of cancellation of an international production order; and

- (b) the person has nominated an electronic address for service in a document given by the person to the Australian Designated Authority;
- the order, copy or instrument is taken to have been given to the person if it is sent to the nominated electronic address for service.
- (2) If:
  - (a) any of the following is required by this Schedule to be given to the Australian Designated Authority by a person, a relevant agency or the Organisation:
    - (i) an international production order;
    - (ii) a certified copy of an international production order;
    - (iii) an instrument of revocation of an international production order;
    - (iv) an instrument of cancellation of an international production order; and
  - (b) the Australian Designated Authority has nominated an electronic address for service in a document given by the Australian Designated Authority to the person, the relevant agency or the Organisation, as the case may be;
- the order, copy or instrument is taken to have been given to the Australian Designated Authority if it is sent to the nominated electronic address for service.

## **172 International production order issued in response to a telephone application—action required**

### *Scope*

- (1) This clause applies if a person (the **issuing person**) issues an international production order in response to a telephone application made by a person (the **applicant**) on behalf of:
  - (a) a relevant agency; or
  - (b) the Organisation.

### *Required action*

- (2) Within one day after the day on which the international production order is issued, the applicant must:

- (a) cause each person who gave information to the issuing person in connection with the application to swear or affirm an affidavit setting out the information so given by the person; and
- (b) give to the issuing person:
  - (i) the affidavit or affidavits; and
  - (ii) if, as a result of an authorisation that was in force under clause 23, 34, 43, 53, 64 or 73 when the application was made, the applicant was authorised to make the application by telephone—a copy of the authorisation.

*Cancellation if required action not taken*

- (3) If the issuing person is satisfied that subclause (2) has not been complied with in relation to the order, the issuing person may cancel the order.
- (4) A cancellation under subclause (3) is to be set out in a written instrument.
- (5) If the international production order is cancelled by the issuing person under subclause (3):
  - (a) the issuing person must:
    - (i) give the instrument of cancellation to the Australian Designated Authority; and
    - (ii) do so as soon as practicable after the order is cancelled; and
  - (b) if the telephone application was made on behalf of a relevant agency—the Australian Designated Authority must:
    - (i) inform the chief officer of the relevant agency of the cancellation; and
    - (ii) do so as soon as practicable after the instrument of cancellation is given to the Australian Designated Authority; and
  - (c) if the telephone application was made on behalf of the Organisation—the Australian Designated Authority must:
    - (i) inform the Organisation of the cancellation; and
    - (ii) do so as soon as practicable after the instrument of cancellation is given to the Australian Designated Authority.

- (6) If:
- (a) the Australian Designated Authority gave the international production order to the prescribed communications provider to whom the order is directed; and
  - (b) the order was subsequently cancelled under subclause (3);
- the Australian Designated Authority must:
- (c) give the instrument of cancellation to the prescribed communications provider; and
  - (d) do so as soon as practicable after the instrument of cancellation is given to the Australian Designated Authority.
- (7) A cancellation under subclause (3) takes effect:
- (a) if the instrument of cancellation is required to be given to the prescribed communications provider concerned—when the instrument is given; or
  - (b) otherwise—when the cancellation is made.
- (8) If:
- (a) an international production order is cancelled under this clause; and
  - (b) when the cancellation takes effect, the Australian Designated Authority has not made a decision about the order under clause 111 or 112 (as the case may be);
- clause 111 or 112 (as the case may be) ceases to apply to the order when the cancellation takes effect.

### **173 Duty of nominated AAT Security Division member**

It is the duty of a nominated AAT Security Division member to ensure, so far as the member is able to do so, that, in or in connection with the performance of a function, or the exercise of a power, conferred on the member by this Schedule, information is not communicated or made available to a person contrary to the requirements of security (within the ordinary meaning of that expression).

**174 Certified copy of international production order—interception agency**

- (1) A document certified in writing by a certifying officer of an interception agency to be a true copy of an international production order issued under clause 30 is to be received in evidence in a proceeding mentioned in clause 153 or 157 as if it were the original international production order.
- (2) The document is to be known as a *certified copy* of the original international production order.

**175 Certified copy of international production order—criminal law-enforcement agency**

- (1) A document certified in writing by a certifying officer of a criminal law-enforcement agency to be a true copy of an international production order issued under clause 39 is to be received in evidence in a proceeding mentioned in clause 153 or 158 as if it were the original international production order.
- (2) The document is to be known as a *certified copy* of the original international production order.

**176 Certified copy of international production order—enforcement agency**

- (1) A document certified in writing by a certifying officer of an enforcement agency to be a true copy of an international production order issued under clause 48 is to be received in evidence in:
  - (a) a proceeding mentioned in clause 153; or
  - (b) a proceeding for a purpose mentioned in clause 159;as if it were the original international production order.
- (2) The document is to be known as a *certified copy* of the original international production order.

**177 Certified copy of international production order—control order  
IPO agency**

*Interception*

- (1) A document certified in writing by a certifying officer of a control order IPO agency to be a true copy of an international production order issued under clause 60 is to be received in evidence in:
  - (a) a proceeding by way of a prosecution for an offence against:
    - (i) Part 5.3 of the *Criminal Code*; or
    - (ii) Part 5.5 of the *Criminal Code*; or
  - (b) a proceeding mentioned in clause 153; or
  - (c) a proceeding mentioned in clause 157;as if it were the original international production order.
- (2) The document is to be known as a ***certified copy*** of the original international production order.

*Stored communications*

- (3) A document certified in writing by a certifying officer of a control order IPO agency to be a true copy of an international production order issued under clause 69 is to be received in evidence in:
  - (a) a proceeding by way of a prosecution for an offence against:
    - (i) Part 5.3 of the *Criminal Code*; or
    - (ii) Part 5.5 of the *Criminal Code*; or
  - (b) a proceeding mentioned in clause 153; or
  - (c) a proceeding mentioned in clause 158;as if it were the original international production order.
- (4) The document is to be known as a ***certified copy*** of the original international production order.

*Telecommunications data*

- (5) A document certified in writing by a certifying officer of a control order IPO agency to be a true copy of an international production order issued under clause 78 is to be received in evidence in:
  - (a) a proceeding by way of a prosecution for an offence against:
    - (i) Part 5.3 of the *Criminal Code*; or

- (ii) Part 5.5 of the *Criminal Code*; or
  - (b) a proceeding mentioned in clause 153; or
  - (c) a proceeding for a purpose mentioned in clause 159;  
as if it were the original international production order.
- (6) The document is to be known as a ***certified copy*** of the original international production order.

## **178 Certified copy of international production order—the Organisation**

### *Interception*

- (1) A document certified in writing by a certifying person to be a true copy of an international production order issued under clause 89 is to be received in evidence in a proceeding mentioned in clause 153 or 157 as if it were the original international production order.
- (2) The document is to be known as a ***certified copy*** of the original international production order.

### *Stored communications*

- (3) A document certified in writing by a certifying person to be a true copy of an international production order issued under clause 98 is to be received in evidence in a proceeding mentioned in clause 153 or 158 as if it were the original international production order.
- (4) The document is to be known as a ***certified copy*** of the original international production order.

### *Telecommunications data*

- (5) A document certified in writing by a certifying person to be a true copy of an international production order issued under clause 107 is to be received in evidence in:
  - (a) a proceeding mentioned in clause 153; or
  - (b) a proceeding for a purpose mentioned in clause 159;  
as if it were the original international production order.

- (6) The document is to be known as a ***certified copy*** of the original international production order.

**179 Delegation by the Australian Designated Authority**

- (1) The Australian Designated Authority may, by writing, delegate any or all of the Australian Designated Authority's functions or powers under this Schedule to:
- (a) an SES employee, or acting SES employee, in the Attorney-General's Department; or
  - (b) an APS employee who holds, or is acting in, an Executive Level 1 or 2 position in the Attorney-General's Department.

Note: The expressions ***SES employee, acting SES employee*** and ***APS employee*** are defined in section 2B of the *Acts Interpretation Act 1901*.

- (2) In performing functions, or exercising powers, under a delegation under subclause (1), the delegate must comply with any directions of the Australian Designated Authority.

**180 Minor defects in connection with international production order**

- (1) If:
- (a) information is purportedly obtained in accordance with an international production order; and
  - (b) there is a defect or irregularity in relation to the international production order; and
  - (c) apart from that defect or irregularity, the information would have been obtained in accordance with the international production order;
- the information is taken to have been obtained in accordance with the international production order.
- (2) For the purposes of subclause (1), a ***defect or irregularity*** in relation to an international production order means a defect or irregularity:
- (a) that is not a substantial defect or irregularity; and
  - (b) that is:
    - (i) in, or in connection with the issue of, a document purporting to be the international production order; or

- (ii) in connection with compliance with the international production order; or
- (iii) in connection with purported compliance with a document purporting to be the international production order.

### **181 Protection of persons—control order declared to be void**

- (1) If:
  - (a) an international production order was issued under Part 3 of this Schedule on the basis that an interim control order was in force; and
  - (b) a court subsequently declares the interim control order to be void;a criminal proceeding does not lie against a person in respect of anything done in good faith by the person in purported compliance with the international production order.
- (2) Subclause (1) does not apply to a thing done at a particular time if, at that time, the person knew, or ought reasonably to have known, of the declaration.

### **182 Specification of international agreements**

- (1) If:
  - (a) there is an agreement between Australia and one or more foreign countries; and
  - (b) the name of the agreement is specified in:
    - (i) regulations made for the purposes of this Schedule; or
    - (ii) an application made under this Schedule; or
    - (iii) an international production order; or
    - (iv) any other instrument made under this Schedule;a reference in the regulations, application, order or other instrument (as the case may be) to the agreement is a reference to the agreement as amended and in force for Australia from time to time.
- (2) For the purposes of subclause (1), disregard an amendment of an agreement unless:

- (a) a copy of the English text of the amendment is set out in regulations made for the purposes of paragraph 3(1)(d) or (3)(d); and
- (b) the amendment has entered into force for Australia.

**183 Operation of the *Mutual Assistance in Criminal Matters Act 1987* not limited**

This Schedule is not intended to limit the operation of the *Mutual Assistance in Criminal Matters Act 1987*.

**184 Other functions or powers not limited**

This Schedule is not intended to limit the functions or powers of:

- (a) a relevant agency; or
  - (b) the Organisation; or
  - (c) any other body or person;
- to request or obtain assistance or information from:
- (d) a prescribed communications provider; or
  - (e) any other body or person.

## **Part 2—Application provisions**

### **44 Application—declaration of eligible Judges**

The amendment of subsection 6D(3) of the *Telecommunications (Interception and Access) Act 1979* made by this Schedule applies in relation to a declaration made after the commencement of this item.

**Schedule 1** Amendments

**Part 3** Amendment contingent on the commencement of the Federal Circuit and Family Court of Australia Act 2021

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**Part 3—Amendment contingent on the  
commencement of the Federal Circuit and  
Family Court of Australia Act 2021**

***Telecommunications (Interception and Access) Act 1979***

**45 Subclause 126(3) of Schedule 1**

Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia”.

## **Part 4—Minor amendments**

### ***Surveillance Devices Act 2004***

#### **46 Subsection 42(6)**

Omit “Attorney-General”, substitute “Minister”.

### ***Telecommunications (Interception and Access) Act 1979***

#### **47 Subsection 6DA(1)**

Omit “or 3-3”.

#### **48 Subsection 6DA(4)**

Omit “or 3-3,”.

#### **49 Transitional—nomination of AAT member**

##### *Scope*

- (1) This item applies if a nomination of a person under subsection 6DA(1) of the *Telecommunications (Interception and Access) Act 1979* to issue warrants under Part 2-5 or 3-3 of that Act was in force immediately before the commencement of this item.

##### *Redundant references to Part 3-3 of the Telecommunications (Interception and Access) Act 1979*

- (2) The nomination has effect as if each reference in the nomination to Part 3-3 of the *Telecommunications (Interception and Access) Act 1979* were omitted.

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*[Minister's second reading speech made in—  
House of Representatives on 5 March 2020  
Senate on 24 June 2021]*

*(25/20)*

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228      *Telecommunications Legislation Amendment (International Production  
Orders) Act 2021*      No. 78, 2021