# Crimes Legislation Amendment (Serious and Organised Crime) Act 2010

# No. 3, 2010

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

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

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**No. 3, 2010**

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

[*Assented to 19 February 2010*]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Crimes Legislation Amendment (Serious and Organised Crime) Act 2010*.

## 2 Commencement

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

| **Commencement information** | | |
|---|---|---|
| **Column 1** | **Column 2** | **Column 3** |
| **Provision(s)** | **Commencement** | **Date/Details** |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | 19 February 2010 |
| 2. Schedule 1 | The day on which this Act receives the Royal Assent. | 19 February 2010 |
| 3. Schedule 2, Parts 1 to 4 | The day after this Act receives the Royal Assent. | 20 February 2010 |
| 4. Schedule 2, Part 5 | On the day after the end of the period of 3 months beginning on the day on which this Act receives the Royal Assent. | 19 May 2010 |
| 5. Schedule 2, Parts 6 and 7 | The day after this Act receives the Royal Assent. | 20 February 2010 |
| 6. Schedule 3 | The day on which this Act receives the Royal Assent. | 19 February 2010 |
| 7. Schedule 4, Part 1 | The day after this Act receives the Royal Assent. | 20 February 2010 |
| 8. Schedule 4, Parts 2 and 3 | The day on which this Act receives the Royal Assent. | 19 February 2010 |

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

# Schedule 1—Unexplained wealth

## Part 1—Main amendments

### *Proceeds of Crime Act 2002*

#### 1 After paragraph 5(b)

Insert:

(ba) to deprive persons of *unexplained wealth amounts that the person cannot satisfy a court were not derived from certain offences; and

#### 2 Paragraph 5(d)

Omit "and literary proceeds", substitute ", literary proceeds and unexplained wealth amounts".

#### 3 Paragraph 5(e)

Omit "and literary proceeds", substitute ", literary proceeds and unexplained wealth amounts".

#### 4 At the end of section 7

Add:

; and (f) unexplained wealth orders requiring payment of unexplained wealth amounts (see Part 2-6).

#### 5 After section 20

Insert:

#### 20A Restraining orders—unexplained wealth

*When a restraining order must be made*

(1) A court with *proceeds jurisdiction may order that:

(a) property must not be disposed of or otherwise dealt with by any person; or

(b) property must not be disposed of or otherwise dealt with by any person except in the manner and circumstances specified in the order;

if:

(c) the *DPP applies for the order; and

(d) there are reasonable grounds to suspect that a person's *total wealth exceeds the value of the person's *wealth that was *lawfully acquired; and

(e) any affidavit requirements in subsection (3) for the application have been met; and

(f) the court is satisfied that the *authorised officer who made the affidavit holds the suspicion or suspicions stated in the affidavit on reasonable grounds; and

(g) there are reasonable grounds to suspect either or both of the following:

(i) that the person has committed an offence against a law of the Commonwealth, a *foreign indictable offence or a *State offence that has a federal aspect;

(ii) that the whole or any part of the person's wealth was derived from an offence against a law of the Commonwealth, a foreign indictable offence or a State offence that has a federal aspect.

*Property that a restraining order may cover*

(2) The order must specify, as property that must not be disposed of or otherwise dealt with, the property specified in the application for the order, to the extent that the court is satisfied that there are reasonable grounds to suspect that that property is any one or more of the following:

(a) all or specified property of the *suspect;

(b) all or specified *bankruptcy property of the suspect;

(c) all property of the suspect other than specified property;

(d) all bankruptcy property of the suspect other than specified bankruptcy property;

(e) specified property of another person (whether or not that other person's identity is known) that is subject to the *effective control of the suspect.

*Affidavit requirements*

(3) The application for the order must be supported by an affidavit of an *authorised officer stating:

(a) that the authorised officer suspects that the *total wealth of the *suspect exceeds the value of the suspect's *wealth that was *lawfully acquired; and

(b) if the application is to restrain property of a person other than the suspect but not to restrain *bankruptcy property of the *suspect—that the authorised officer suspects that the property is subject to the *effective control of the suspect; and

(c) that the authorised officer suspects either or both of the following:

(i) that the suspect has committed an offence against a law of the Commonwealth, a *foreign indictable offence or a *State offence that has a federal aspect;

(ii) that the whole or any part of the suspect's wealth was derived from an offence against a law of the Commonwealth, a foreign indictable offence or a State offence that has a federal aspect.

The affidavit must include the grounds on which the authorised officer holds those suspicions.

*Legal expenses*

(3A) Without limiting the manner and circumstances that may be specified in an order under paragraph (1)(b), the court may order that specified property may be disposed of or otherwise dealt with for the purposes of meeting a person's reasonable legal expenses arising from an application under this Act.

(3B) The court may make an order under subsection (3A) despite anything in section 24.

(3C) The court may require that a costs assessor certify that legal expenses have been properly incurred before permitting the payment of expenses from the disposal of any property covered by an order under subsection (3A) and may make any further or ancillary orders it considers appropriate.

*Refusal to make a restraining order*

(4) Despite subsection (1), the court may refuse to make a *restraining order if the court is satisfied that it is not in the public interest to make the order.

Note: A court can also refuse to make a restraining order if the Commonwealth refuses to give an undertaking: see section 21.

(4A) If the court refuses to make a *restraining order under subsection (1), it may make any order as to costs it considers appropriate, including costs on an indemnity basis.

*Risk of property being disposed of etc.*

(5) The court may make a *restraining order even if there is no risk of the property being disposed of or otherwise dealt with.

*Later acquisitions of property*

(6) The court may specify that a *restraining order covers property that is acquired by the *suspect after the court makes the order. Otherwise, no property that is acquired after a court makes a restraining order is covered by the order.

## 6 Subsection 29(1) (note)

Omit "31A", substitute "32".

Note: The heading to section 29 is altered by omitting "**a restraining order**" and substituting "**certain restraining orders**".

## 7 After section 29

Insert:

### 29A Court may exclude property from a restraining order made under section 20A

The court to which an application for a *restraining order under section 20A was made may, when the order is made or at a later time, exclude specified property from the order if:

(a) an application is made under section 30 or 31; and

(b) the court is satisfied that:

(i) the property is property of a person other than the *suspect; and

(ii) the property is not subject to the *effective control of the suspect.

Note: Section 32 may prevent the court from hearing the application until the DPP has had a reasonable opportunity to conduct an examination of the applicant.

## 8 Paragraph 35(1)(a)

After “29”, insert “or 29A”.

## 9 Subsection 39(1) (note)

After “Note”, insert “1”.

## 10 At the end of subsection 39(1) (after the note)

Add:

Note 2: If there is an unexplained wealth order that relates to a restraining order under section 20A, the court may also order the Official Trustee to pay an amount equal to the unexplained wealth amount out of property covered by the restraining order: see section 282A.

## 11 At the end of section 45

Add:

(7) To avoid doubt, this section does not apply to a *restraining order made under section 20A.

Note: The heading to section 45 is altered by inserting “**certain**” before “**restraining**”.

## 12 At the end of Division 6 of Part 2-1

Add:

### 45A Cessation of restraining orders relating to unexplained wealth

(1) A *restraining order made under section 20A ceases to be in force if, within 28 days after the order was made, no application for an *unexplained wealth order has been made in relation to the *suspect to whom the restraining order relates.

(2) A *restraining order made under section 20A ceases to be in force if:

(a) an application for an *unexplained wealth order is made in relation to the *suspect to whom the restraining order relates; and

(b) the application is made within 28 days after the making of the restraining order; and

(c) the court refuses to make the unexplained wealth order; and

(d) one of the following applies:

(i) the time for an appeal against the refusal has expired without an appeal being lodged;
(ii) an appeal against the refusal has lapsed;
(iii) an appeal against the refusal has been dismissed and finally disposed of.

(3) A *restraining order made under section 20A ceases to be in force if:
(a) an application for an *unexplained wealth order is made in relation to the *suspect to whom the restraining order relates; and
(b) the application is made within 28 days after the making of the restraining order; and
(c) the court makes the unexplained wealth order; and
(d) either:
(i) the unexplained wealth order is complied with; or
(ii) an appeal against the unexplained wealth order has been upheld and finally disposed of.

(4) If a *restraining order ceases under subsection (1) or (2), the court may, on application by a person with an *interest in the property covered by the restraining order, make any order as to costs it considers appropriate, including costs on an indemnity basis.

### 13 At the end of Chapter 2

Add:

## Part 2-6—Unexplained wealth orders

### 179A Simplified outline of this Part

This Part provides for the making of certain orders relating to unexplained wealth.

A preliminary unexplained wealth order requires a person to attend court for the purpose of enabling the court to decide whether to make an unexplained wealth order against the person.

An unexplained wealth order is an order requiring the person to pay an amount equal to so much of the person's total wealth as the person cannot satisfy the court is not derived from certain offences.

## Division 1—Making unexplained wealth orders

### 179B Making an order requiring a person to appear

(1) A court with *proceeds jurisdiction may make an order (a ***preliminary unexplained wealth order***) requiring a person to appear before the court for the purpose of enabling the court to decide whether or not to make an *unexplained wealth order in relation to the person if:

(a) the *DPP applies for an unexplained wealth order in relation to the person; and

(b) the court is satisfied that an *authorised officer has reasonable grounds to suspect that the person's *total wealth exceeds the value of the person's *wealth that was *lawfully acquired; and

(c) any affidavit requirements in subsection (2) for the application have been met.

*Affidavit requirements*

(2) An application for an *unexplained wealth order in relation to a person must be supported by an affidavit of an *authorised officer stating:

(a) the identity of the person; and

(b) that the authorised officer suspects that the person's *total wealth exceeds the value of the person's *wealth that was *lawfully acquired; and

(c) the following:

(i) the property the authorised officer knows or reasonably suspects was lawfully acquired by the person;

(ii) the property the authorised officer knows or reasonably suspects is owned by the person or is under the *effective control of the person.

The affidavit must include the grounds on which the authorised officer holds the suspicions referred to in paragraphs (b) and (c).

(3) The court must make the order under subsection (1) without notice having been given to any person if the *DPP requests the court to do so.

### 179C Application to revoke a preliminary unexplained wealth order

(1) If a court makes a *preliminary unexplained wealth order requiring a person to appear before the court, the person may apply to the court to revoke the order.

(2) The application must be made:
  (a) within 28 days after the person is notified of the *preliminary unexplained wealth order; or
  (b) if the person applies to the court, within that period of 28 days, for an extension of the time for applying for revocation—within such longer period, not exceeding 3 months, as the court allows.

(4) However, the *preliminary unexplained wealth order remains in force until the court revokes the order.

(5) The court may revoke the *preliminary unexplained wealth order on application under subsection (1) if satisfied that:
  (a) there are no grounds on which to make the order at the time of considering the application to revoke the order; or
  (b) it is in the public interest to do so; or
  (c) it is otherwise in the interests of justice to do so.

### 179CA Notice and procedure on application to revoke preliminary unexplained wealth order

(1) This section applies if a person applies under section 179C for revocation of a *preliminary unexplained wealth order.

(2) The applicant may appear and adduce material at the hearing of the application.

(3) The applicant must give the *DPP:
  (a) written notice of the application; and
  (b) a copy of any affidavit supporting the application.

(4) The *DPP may appear and adduce additional material at the hearing of the application.

(5) The *DPP must give the applicant a copy of any affidavit it proposes to rely on to contest the application.

(6) The notice and copies of affidavits must be given under subsections (3) and (5) within a reasonable time before the hearing of the application.

### 179D Notice of revocation of a preliminary unexplained wealth order

If a *preliminary unexplained wealth order is revoked under section 179C, the *DPP must give written notice of the revocation to the applicant for the revocation.

### 179E Making an unexplained wealth order

(1) A court with *proceeds jurisdiction may make an order (an ***unexplained wealth order***) requiring a person to pay an amount to the Commonwealth if:
   (a) the court has made a *preliminary unexplained wealth order in relation to the person; and
   (b) the court is not satisfied that the whole or any part of the person's *wealth was not derived from one or more of the following:
      (i) an offence against a law of the Commonwealth;
      (ii) a *foreign indictable offence;
      (iii) a *State offence that has a federal aspect.

(2) The court must specify in the order that the person is liable to pay to the Commonwealth an amount (the person's ***unexplained wealth amount***) equal to the amount that, in the opinion of the court, is the difference between:
   (a) the person's *total wealth; and
   (b) the sum of the values of the property that the court is satisfied was not derived from one or more of the following:
      (i) an offence against a law of the Commonwealth;
      (ii) a *foreign indictable offence;
      (iii) a *State offence that has a federal aspect;

reduced by any amount deducted under section 179J (reducing unexplained wealth amounts to take account of forfeiture, pecuniary penalties etc.).

(3) In proceedings under this section, the burden of proving that a person's *wealth is not derived from one or more of the offences referred to in paragraph (1)(b) lies on the person.

(4) To avoid doubt, when considering whether to make an order under subsection (1), the court may have regard to information not included in the application.

(5) To avoid doubt, subsection (3) has effect despite section 317.

(6) Despite subsection (1), the court may refuse to make an order under that subsection if the court is satisfied that it is not in the public interest to make the order.

### 179EA Refusal to make an order for failure to give undertaking

(1) The court may refuse to make a *preliminary unexplained wealth order or an *unexplained wealth order if the Commonwealth refuses or fails to give the court an appropriate undertaking with respect to the payment of damages or costs, or both, for the making and operation of the order.

(2) The *DPP may give such an undertaking on behalf of the Commonwealth.

### 179EB Costs

If the court refuses to make a *preliminary unexplained wealth order or an *unexplained wealth order, it may make any order as to costs it considers appropriate, including costs on an indemnity basis.

### 179F Ancillary orders

(1) A court that makes an *unexplained wealth order, or any other court that could have made the unexplained wealth order, may make orders ancillary to the order, either when the order is made or at a later time.

(2) A court that makes a *preliminary unexplained wealth order, or any other court that could have made the order, may make orders ancillary to the order, either when the order is made or at a later time.

## Division 2—Unexplained wealth amounts

### 179G Determining unexplained wealth amounts

*Meaning of wealth*

(1) The property of a person that, taken together, constitutes the ***wealth*** of a person for the purposes of this Part is:
   (a) property owned by the person at any time;
   (b) property that has been under the *effective control of the person at any time;
   (c) property that the person has disposed of (whether by sale, gift or otherwise) or consumed at any time;

including property owned, effectively controlled, disposed of or consumed before the commencement of this Part.

*Meaning of total wealth*

(2) The ***total wealth*** of a person is the sum of all of the values of the property that constitutes the person's wealth.

*Value of property*

(3) The value of any property that has been disposed of or consumed, or that is for any other reason no longer available, is the greater of:
   (a) the value of the property at the time it was acquired; and
   (b) the value of the property immediately before it was disposed of, consumed or stopped being available.

(4) The value of any other property is the greater of:
   (a) the value of the property at the time it was acquired; and
   (b) the value of the property on the day that the application for the *unexplained wealth order was made.

### 179H Effect of property vesting in an insolvency trustee

In assessing the value of property of a person, property is taken to continue to be the *person's property if it vests in any of the following:

(a) in relation to a bankruptcy—the trustee of the estate of the bankrupt;

(b) in relation to a composition or scheme of arrangement under Division 6 of Part IV of the *Bankruptcy Act 1966*—the trustee of the composition or scheme of arrangement;

(c) in relation to a personal insolvency agreement under Part X of the *Bankruptcy Act 1966*—the trustee of the agreement;

(d) in relation to the estate of a deceased person in respect of which an order has been made under Part XI of the *Bankruptcy Act 1966*—the trustee of the estate.

### 179J Reducing unexplained wealth amounts to take account of forfeiture, pecuniary penalties etc.

In determining the *unexplained wealth amount specified in an *unexplained wealth order in relation to a person, the court must deduct an amount equal to the following:

(a) the value, at the time of making the order, of any property of the person forfeited under:

(i) a *forfeiture order; or

(ii) an *interstate forfeiture order; or

(iii) a *foreign forfeiture order;

(b) the sum of any amounts payable by the person under:

(i) a *pecuniary penalty order; or

(ii) a *literary proceeds order; or

(iii) an order under section 243B of the *Customs Act 1901*; or

(iv) an *interstate pecuniary penalty order; or

(v) a *foreign pecuniary penalty order.

### 179K Varying unexplained wealth orders to increase amounts

(1) The court may, on the application of the *DPP, vary an *unexplained wealth order against a person by increasing the

*unexplained wealth amount if subsection (2) or (3) applies. The amount of the increase is as specified in subsection (2) or (3).

(2) The *unexplained wealth amount may be increased if:
  (a) the value of property of the person forfeited under a *forfeiture order, an *interstate forfeiture order or a *foreign forfeiture order was deducted from the unexplained wealth amount under paragraph 179J(a); and
  (b) an appeal against the forfeiture, or against the order, is allowed.

The amount of the increase is equal to the value of the property.

(3) The *unexplained wealth amount may be increased if:
  (a) an amount payable under a *pecuniary penalty order, a *literary proceeds order, an order under section 243B of the *Customs Act 1901*, an *interstate pecuniary penalty order or a *foreign pecuniary penalty order was deducted from the *unexplained wealth amount under paragraph 179J(b); and
  (b) an appeal against the amount payable, or against the order, is allowed.

The amount of the increase is equal to the amount that was payable.

(4) The *DPP's application may deal with more than one increase to the same *unexplained wealth amount.

## 179L Relieving certain dependants from hardship

(1) The court making an *unexplained wealth order in relation to a person must make another order directing the Commonwealth, once the unexplained wealth order is satisfied, to pay a specified amount to a *dependant of the person if the court is satisfied that:
  (a) the unexplained wealth order would cause hardship to the dependant; and
  (b) the specified amount would relieve that hardship; and
  (c) if the dependant is aged at least 18 years—the dependant had no knowledge of the person's conduct that is the subject of the unexplained wealth order.

(2) The specified amount must not exceed the person's *unexplained wealth amount.

(3) An order under this section may relate to more than one of the person's *dependants.

## Division 3—How unexplained wealth orders are obtained

### 179M DPP may apply for an unexplained wealth order

The *DPP may apply for an *unexplained wealth order.

### 179N Notice of application

(1) This section sets out the notice requirements if the *DPP has made an application for an *unexplained wealth order.

(2) If a court with *proceeds jurisdiction makes a *preliminary unexplained wealth order in relation to the person, the *DPP must, within 7 days of the making of the order:
  (a) give written notice of the order to the person who would be subject to the *unexplained wealth order if it were made; and
  (b) provide to the person a copy of the application for the unexplained wealth order, and the affidavit referred to in subsection 179B(2).

(3) The *DPP must also give a copy of any other affidavit supporting the application to the person who would be subject to the *unexplained wealth order if it were made.

(4) The copies must be given under subsection (3) within a reasonable time before the hearing in relation to whether the order is to be made.

### 179P Additional application for an unexplained wealth order

(1) The *DPP cannot, unless the court gives leave, apply for an *unexplained wealth order against a person if:
  (a) an application has previously been made for an unexplained wealth order in relation to the person; and
  (b) the application has been finally determined on the merits.

(2) The court must not give leave unless it is satisfied that:
  (a) the *wealth to which the new application relates was identified only after the first application was determined; or

(b) necessary evidence became available only after the first application was determined; or

(c) it is in the interests of justice to give the leave.

### 179Q Procedure on application and other notice requirements

(1) The person who would be subject to an *unexplained wealth order if it were made may appear and adduce evidence at the hearing in relation to whether the order is to be made.

(2) The person must give the *DPP written notice of any grounds on which he or she proposes to contest the making of the order.

(3) The *DPP may appear and adduce evidence at the hearing in relation to whether an *unexplained wealth order is to be made.

## Division 4—Enforcement of unexplained wealth orders

### 179R Enforcement of an unexplained wealth order

(1) An amount payable by a person to the Commonwealth under an *unexplained wealth order is a civil debt due by the person to the Commonwealth.

(2) An *unexplained wealth order against a person may be enforced as if it were an order made in civil proceedings instituted by the Commonwealth against the person to recover a debt due by the person to the Commonwealth.

(3) The debt arising from the order is taken to be a judgment debt.

(4) If an *unexplained wealth order is made against a person after the person's death, this section has effect as if the person had died on the day after the order was made.

### 179S Property subject to a person's effective control

(1) If:

(a) a person is subject to an *unexplained wealth order; and

(b) the *DPP applies to the court for an order under this section; and

(c) the court is satisfied that particular property is subject to the *effective control of the person;

the court may make an order declaring that the whole, or a specified part, of that property is available to satisfy the unexplained wealth order.

(2) The order under subsection (1) may be enforced against the property as if the property were the *person's property.

(3) A *restraining order may be made in respect of the property as if:
  (a) the property were the *person's property; and
  (b) there were reasonable grounds to suspect that:
    (i) the person had committed an offence against a law of the Commonwealth, a *foreign indictable offence or a *State offence that has a federal aspect;
    (ii) the whole or any part of the person's wealth was derived from an offence against a law of the Commonwealth, a foreign indictable offence or a State offence that has a federal aspect.

(4) If the *DPP applies for an order under subsection (1) relating to particular property, the DPP must give written notice of the application to:
  (a) the person who is subject to the *unexplained wealth order; and
  (b) any person whom the DPP has reason to believe may have an *interest in the property.

(5) The person who is subject to the *unexplained wealth order, and any person who claims an *interest in the property, may appear and adduce evidence at the hearing of the application.

### 179SA Legal expenses

(1) If the court considers that it is appropriate to do so, it may order that the whole, or a specified part, of specified property covered by an order under subsection 179S(1) is not available to satisfy the *unexplained wealth order and may instead be disposed of or otherwise dealt with for the purposes of meeting a person's reasonable legal expenses arising from an application under this Act.

(2) The court may require that a costs assessor certify that legal expenses have been properly incurred before permitting the

payment of expenses from the disposal of any property covered by an order under subsection (1) and may make any further or ancillary orders it considers appropriate.

### 179T Amounts exceeding the court's jurisdiction

(1) If:

(a) a court makes an *unexplained wealth order of a particular amount; and

(b) the court does not have jurisdiction with respect to the recovery of debts of an amount equal to that amount;

the registrar of the court must issue a certificate containing the particulars specified in the regulations.

(2) The certificate may be registered, in accordance with the regulations, in a court having jurisdiction with respect to the recovery of debts of an amount equal to the amount of the relevant order.

(3) Upon registration in a court, the certificate is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

## Division 5—Oversight

### 179U Parliamentary supervision

(1) The operation of this Part and section 20A is subject to the oversight of the Parliamentary Joint Committee on the Australian Crime Commission (the ***Committee***).

(2) The Committee may require the Australian Crime Commission, the Australian Federal Police, the *DPP or any other federal agency or authority that is the recipient of any material disclosed as the result of the operation of this Part to appear before it from time to time to give evidence.

## 14 After paragraph 202(5)(e)

Insert:

(ea) a document relevant to identifying, locating or quantifying the property of a person, if it is reasonable to suspect that the

total value of the person's *wealth exceeds the value of the person's wealth that was *lawfully acquired;

(eb) a document relevant to identifying or locating any document necessary for the transfer of property of such a person;

## 15 Paragraph 202(5)(f)

Omit "or (e)", substitute "(e), (ea) or (eb)".

## 16 After section 282

Insert:

### 282A Direction by a court to the Official Trustee in relation to unexplained wealth orders

(1) A court may, if subsection (2), (3) or (4) applies, direct the *Official Trustee to pay the Commonwealth, out of property that is subject to a *restraining order under section 20A, an amount equal to the *unexplained wealth amount made under an *unexplained wealth order in relation to a person.

(2) The court that makes the *unexplained wealth order may include such a direction in the order if the *restraining order:

(a) has already been made against the person; and

(b) relates to property that constitutes part of the person's *total wealth.

(3) The court that makes the *restraining order may include such a direction in the order if:

(a) the *unexplained wealth order has been made against the person; and

(b) the restraining order is subsequently made:

(i) against the person under section 20A; or

(ii) against property of another person in relation to which an order is in force under section 179S in relation to the unexplained wealth order.

(4) The court that made the *unexplained wealth order or the *restraining order may, on application by the *DPP, make the direction if:

(a) the unexplained wealth order has been made against the person; and

(b) the restraining order has been made:

(i) against the person under section 20A; or

(ii) against property of another person in relation to which an order is in force under section 179S in relation to the unexplained wealth order.

Note: The heading to section 282 is altered by adding at the end "**in relation to certain restraining orders**".

## 17 Subsections 283(1) and 284(1)

After "282", insert "or 282A".

## 18 Subsection 284(2)

Omit "or *literary proceeds amount", substitute ", *literary proceeds amount or *unexplained wealth amount".

## 19 Paragraph 284(2)(a)

Omit "or literary proceeds amount", substitute ", literary proceeds amount or unexplained wealth amount".

## 20 Subsection 285(1)

After "282", insert "or 282A".

## 21 Subsection 285(2)(a)

Omit "or *literary proceeds order", substitute ", *literary proceeds order or *unexplained wealth order".

## 22 Subsection 285(2)(b)

Omit "or literary proceeds order", substitute ", literary proceeds order or unexplained wealth order".

## 23 At the end of section 286

Add:

(3) If the *Official Trustee credits, under this Division, money to the *Confiscated Assets Account as required by section 296 in satisfaction of a person's liability under an *unexplained wealth order, the person's liability under the unexplained wealth order is, to the extent of the credit, discharged.

## 24 After paragraph 296(3)(f)

Insert:

(fa) the amount referred to in subsection 179R(1);

## 25 Paragraph 322(1)(c)

Omit all the words from and including "or 168" to and including "proceeds", substitute ", 168 or 179S to satisfy a *pecuniary penalty order, a *literary proceeds order or an *unexplained wealth".

## 26 Subsection 322(1)

Omit "or 168" (second occurring), substitute ", 168 or 179S".

## 27 After subsection 322(4)

Insert:

(4A) Despite subsections (2) and (3), in the case of an *unexplained wealth order, or an order under section 179S that relates to an unexplained wealth order, the person may appeal against the targeted order in the same manner as if:

(a) the person had been convicted of one of the following:

(i) an offence against a law of the Commonwealth;

(ii) a *foreign indictable offence;

(iii) a *State offence that has a federal aspect; and

(b) the targeted order were, or were part of, the sentence imposed on the person in respect of the offence.

## 28 Subsection 335(1)

After "order" (first occurring), insert ", other than a *preliminary unexplained wealth order or an *unexplained wealth order,".

## 29 At the end of section 335

Add:

*Preliminary unexplained wealth orders and unexplained wealth orders*

(7) The courts that have ***proceeds jurisdiction*** for a *preliminary unexplained wealth order or an *unexplained wealth order are those of any State or Territory with jurisdiction to deal with criminal matters on indictment.

## 30 Section 336

Omit "or *literary proceeds", substitute ", *literary proceeds or *wealth".

## 31 Section 336

Omit "or literary proceeds", substitute ", literary proceeds or wealth".

## 32 After section 336

Insert:

### 336A Meaning of property or wealth being *lawfully acquired*

For the purposes of this Act, property or *wealth is ***lawfully acquired*** only if:

(a) the property or wealth was lawfully acquired; and

(b) the consideration given for the property or wealth was lawfully acquired.

## 33 Section 338 (definition of *confiscation order*)

Omit "or a *literary proceeds order", substitute ", a *literary proceeds order or an *unexplained wealth order".

## 34 Section 338

Insert:

***lawfully acquired*** has a meaning affected by section 336A.

## 35 Section 338

Insert:

***preliminary unexplained wealth order***, in relation to a person, means an order under section 179B requiring the person to appear before a court.

## 36 Section 338 (definition of *restraining order*)

Omit "or 20", substitute "20 or 20A".

## 37 Section 338

Insert:

***State offence that has a federal aspect*** has the same meaning as in the *Crimes Act 1914*.

Note: Section 3AA of the *Crimes Act 1914* sets out when a State offence has a federal aspect.

## 38 Section 338 (definition of *suspect*)

Insert:

***suspect*** means:

(a) in relation to a *restraining order (other than a restraining order made under section 20A) or a *confiscation order (other than an *unexplained wealth order)—the person who:

(i) has been convicted of; or

(ii) has been *charged with, or is proposed to be charged with; or

(iii) if the order is a restraining order—is suspected of having committed; or

(iv) if the order is a confiscation order—committed;

the offence or offences to which the order relates; or

(b) in relation to a restraining order made under section 20A or an unexplained wealth order—the person whose *total wealth is suspected of exceeding the value of *wealth that was *lawfully acquired.

## 39 Section 338

Insert:

***total wealth***, of a person, has the meaning given by subsection 179G(2).

## 40 Section 338

Insert:

***unexplained wealth amount***, of a person, has the meaning given by subsection 179E(2).

## 41 Section 338

Insert:

***unexplained wealth order*** means an order made under subsection 179E(1) that is in force.

## 42 Section 338

Insert:

***wealth***, of a person, has the meaning given by subsection 179G(1).

## Part 2—Related amendments

### *Bankruptcy Act 1966*

#### 43 Subsection 5(1) (at the end of the definition of *pecuniary penalty order*)

Add:

; or (c) an unexplained wealth order within the meaning of the *Proceeds of Crime Act 2002*.

### *Crimes Act 1914*

#### 44 Subparagraph 3(2)(a)(ii)

Omit "or a literary proceeds order", substitute ", a literary proceeds order or an unexplained wealth order".

# Schedule 2—Other amendments relating to proceeds of crime

## Part 1—Freezing orders

### Division 1—Main amendments

### *Proceeds of Crime Act 2002*

#### 1 Section 7

Omit “5”, substitute “a number of”.

#### 2 Before paragraph 7(a)

Insert:

(aa) freezing orders limiting withdrawals from accounts with financial institutions before courts decide applications for restraining orders to cover the accounts (see Part 2-1A); and

#### 3 Before Part 2-1

Insert:

## Part 2-1A—Freezing orders

#### 15A Simplified outline of this Part

A freezing order can be made against an account with a financial institution if:

(a) there are grounds to suspect the account balance reflects proceeds or an instrument of certain offences; and

(b) a magistrate is satisfied that, unless the order is made, there is a risk that the balance of the account will be reduced so that a person will not be

deprived of all or some of the proceeds or instrument.

## Division 1—Making freezing orders

### 15B Making freezing orders

(1) A magistrate must order that a *financial institution not allow a withdrawal from an *account with the institution, except in the manner and circumstances specified in the order, if:

(a) an *authorised officer described in paragraph (a), (aa), (b) or (c) of the definition of ***authorised officer*** in section 338 applies for the order in accordance with Division 2; and

(b) there are reasonable grounds to suspect that the balance of the account:

(i) is *proceeds of an *indictable offence, a *foreign indictable offence or an *indictable offence of Commonwealth concern (whether or not the identity of the person who committed the offence is known); or

(ii) is wholly or partly an *instrument of a *serious offence; and

(c) the magistrate is satisfied that, unless an order is made under this section, there is a risk that the balance of the account will be reduced so that a person will not be deprived of all or some of such proceeds or such an instrument.

Note 1: Paragraphs (a), (aa), (b) and (c) of the definition of ***authorised officer*** in section 338 cover certain AFP members, certain members of the Australian Commission for Law Enforcement Integrity, certain members of the Australian Crime Commission and certain officers of Customs.

Note 2: The balance of the account may be proceeds of an offence even though the balance is only partly derived from the offence: see section 329.

(2) An order made under subsection (1) covers the balance of the *account from time to time.

*Order need not be based on commission of particular offence*

(3) The reasonable grounds referred to in paragraph (1)(b), and the satisfaction referred to in paragraph (1)(c), need not be based on a finding as to the commission of a particular offence.

## Division 2—How freezing orders are obtained

### 15C Affidavit supporting application made in person

If an *authorised officer applies in person to a magistrate for a *freezing order relating to an *account with a *financial institution, the application must be supported by an affidavit of an authorised officer described in paragraph (a), (aa), (b) or (c) of the definition of ***authorised officer*** in section 338:

(a) setting out sufficient information to identify the account (for example, the account number); and

(b) identifying the financial institution; and

(c) setting out the grounds to suspect that the balance of the account:

(i) is *proceeds of an *indictable offence, a *foreign indictable offence or an *indictable offence of Commonwealth concern; or

(ii) is wholly or partly an *instrument of a *serious offence; and

(d) setting out the grounds on which a person could be satisfied that, unless the order is made, there is a risk that the balance of the account will be reduced so that a person will not be deprived of all or some of such proceeds or of such an instrument.

Note: Paragraphs (a), (aa), (b) and (c) of the definition of ***authorised officer*** in section 338 cover certain AFP members, certain members of the Australian Commission for Law Enforcement Integrity, certain members of the Australian Crime Commission and certain officers of Customs.

### 15D Applying for freezing orders by telephone or other electronic means

(1) An *authorised officer described in paragraph (a), (aa), (b) or (c) of the definition of ***authorised officer*** in section 338 may apply to a magistrate for a *freezing order by telephone, fax or other electronic means:

(a) in an urgent case; or

(b) if the delay that would occur if an application were made in person would frustrate the effectiveness of the order.

Note: Paragraphs (a), (aa), (b) and (c) of the definition of ***authorised officer*** in section 338 cover certain AFP members, certain members of the Australian Commission for Law Enforcement Integrity, certain members of the Australian Crime Commission and certain officers of Customs.

(2) An application under subsection (1):
  (a) must include all information that would be required in an ordinary application for a *freezing order and supporting affidavit; and
  (b) if necessary, may be made before the affidavit is sworn.

(3) The magistrate may require:
  (a) communication by voice to the extent that it is practicable in the circumstances; and
  (b) any further information.

## 15E Making order by telephone etc.

(1) The magistrate may complete and sign the same form of *freezing order that would be made under section 15B if satisfied that:
  (a) a freezing order should be issued urgently; or
  (b) the delay that would occur if an application were made in person would frustrate the effectiveness of the order.

(2) If the magistrate makes the *freezing order, he or she must inform the applicant, by telephone, fax or other electronic means, of the terms of the order and the day on which and the time at which it was signed.

(3) The applicant must then:
  (a) complete a form of *freezing order in terms substantially corresponding to those given by the magistrate; and
  (b) state on the form:
    (i) the name of the magistrate; and
    (ii) the day on which the order was signed; and
    (iii) the time at which the order was signed.

(4) The applicant must give the magistrate the form of *freezing order completed by the applicant by the end of:
  (a) the second *working day after the magistrate makes the order; or

(b) the first working day after the magistrate makes the order, if it is served on the *financial institution concerned before the first working day after the magistrate makes the order.

(5) If, before the magistrate made the *freezing order, the applicant did not give the magistrate an affidavit supporting the application and meeting the description in section 15C, the applicant must do so by the time by which the applicant must give the magistrate the form of freezing order completed by the applicant.

(6) If the applicant does not comply with subsection (5), the *freezing order is taken never to have had effect.

(7) The magistrate must attach the form of *freezing order completed by the magistrate to the documents provided under subsection (4) and (if relevant) subsection (5).

## 15F Unsigned freezing orders in court proceedings

If:

(a) it is material, in any proceedings, for a court to be satisfied that a *freezing order applied for under section 15D was duly made; and

(b) the form of freezing order signed by the magistrate is not produced in evidence;

the court must assume that the order was not duly made unless the contrary is proved.

## 15G Offence for making false statements in applications

A person commits an offence if:

(a) the person makes a statement (whether orally, in a document or in any other way); and

(b) the statement:

(i) is false or misleading; or

(ii) omits any matter or thing without which the statement is misleading; and

(c) the statement is made in, or in connection with, an application for a *freezing order.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

## 15H Offences relating to orders made under section 15E

*Offence for stating incorrect names in telephone orders*

(1) A person commits an offence if:
  (a) the person states a name of a magistrate in a document; and
  (b) the document purports to be a form of *freezing order under section 15E; and
  (c) the name is not the name of the magistrate who made the order.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Offence for unauthorised form of order*

(2) A person commits an offence if:
  (a) the person states a matter in a form of *freezing order under section 15E; and
  (b) the matter departs in a material particular from the order made by the magistrate.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Offence for service of unauthorised form of order*

(3) A person commits an offence if:
  (a) the person presents a document to a person; and
  (b) the document purports to be a form of *freezing order under section 15E; and
  (c) the document:
    (i) has not been approved by a magistrate under that section; or
    (ii) departs in a material particular from the terms given by the magistrate under that section.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

*Offence for giving form of order different from that served*

(4) A person commits an offence if:
  (a) the person gives a magistrate a form of *freezing order under section 15E relating to a *financial institution; and

(b) the person does so after presenting to the financial institution a document purporting to be a form of the freezing order; and

(c) the form given to the magistrate is not in the same form as the document presented to the financial institution.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

## Division 3—Giving effect to freezing orders

### 15J Service of freezing order etc. on financial institution and account-holder

(1) If a magistrate makes a *freezing order relating to an *account with a *financial institution, the applicant for the order must cause the things described in subsection (2) to be given to:

(a) the financial institution; and

(b) each person in whose name the account is held.

(2) The things are as follows:

(a) a copy of the order (or of a form of the order under section 15E);

(b) a written statement of the name and contact details of the *enforcement agency mentioned in the paragraph of the definition of ***authorised officer*** in section 338 that describes the applicant.

Note: If the copy of the order is given to the financial institution after the end of the first working day after the order is made, the order does not come into force: see subsection 15N(1).

### 15K Freezing order does not prevent withdrawal to enable financial institution to meet its liabilities

A *freezing order relating to an *account with a *financial institution does not prevent the institution from allowing a withdrawal from the account to enable the institution to meet a liability imposed on the institution by or under a written law of the Commonwealth, a State or a Territory.

### 15L Offence for contravening freezing orders

A *financial institution commits an offence if:

(a) the institution allows a withdrawal from an *account with the institution; and
(b) there is a *freezing order relating to the account; and
(c) allowing the withdrawal contravenes the order.

Penalty: Imprisonment for 5 years or 300 penalty units or both.

### 15M Protection from suits etc. for those complying with orders

No action, suit or proceeding lies against:
(a) a *financial institution; or
(b) an *officer or *agent of the institution acting in the course of that person's employment or agency;

in relation to any action taken by the institution or person in complying with a *freezing order or in the mistaken belief that action was required under a freezing order.

Note: This section does not affect any action that may lie against anyone else for the making or operation of a freezing order.

## Division 4—Duration of freezing orders

### 15N When a freezing order is in force

(1) A *freezing order relating to an *account with a *financial institution comes into force when a copy of the order (or of a form of the order under section 15E) is given to the institution. However, the order does not come into force if the copy is given to the institution after the end of the first *working day after the order is made.

(2) The *freezing order remains in force until:
(a) the end of the period specified in the order (as affected by section 15P if relevant) from when the copy of the order was given to the institution; or
(b) if, before the end of that period, a court makes a decision on an application for a *restraining order to cover the *account—the time the court makes that decision.

(3) The *freezing order, as originally made, must not specify a period of more than 3 *working days.

## 15P Order extending a freezing order

(1) A magistrate may make an order extending the period specified in a *freezing order made in relation to an *account with a *financial institution if:

(a) an *authorised officer described in paragraph (a), (aa), (b) or (c) of the definition of ***authorised officer*** in section 338 applies for the extension; and

(b) the magistrate is satisfied that an application has been made to a court (but not decided by the court) for a *restraining order to cover the account (whether or not the restraining order is also to cover other property).

(2) The extension may be for:

(a) a specified number of *working days; or

(b) the period ending when the court decides the application for the *restraining order.

(3) The extension does not have effect unless a copy of the order for the extension is given to the *financial institution before the time the *freezing order would cease to be in force apart from the extension.

(4) The following provisions apply in relation to an order extending a *freezing order in a way corresponding to the way in which they apply in relation to a freezing order:

(a) Division 2 (except paragraphs 15C(c) and (d));

(b) section 15J (except the note to that section).

(5) Division 2 applies because of subsection (4) as if:

(a) section 15C also required that an affidavit supporting an application:

(i) identify the *freezing order; and

(ii) state that an application has been made for a *restraining order to cover the *account; and

(b) the reference in subsection 15E(1) to section 15B were a reference to subsection (1) of this section.

## Division 5—Varying scope of freezing orders

### 15Q Magistrate may vary freezing order to allow withdrawal to meet reasonable expenses

(1) A magistrate may vary a *freezing order relating to an *account with a *financial institution so that the institution may allow a withdrawal from the account to meet one or more of the following relating to a person in whose name the account is held:

(a) the reasonable living expenses of the person;

(b) the reasonable living expenses of any of the *dependants of the person;

(c) the reasonable business expenses of the person;

(d) a specified debt incurred in good faith by the person.

(2) The magistrate may vary the *freezing order only if:

(a) a person in whose name the *account is held has applied for the variation; and

(b) the person has notified the *DPP in writing of the application and the grounds for the application; and

(c) the magistrate is satisfied that the expense or debt does not, or will not, relate to legal costs that the person has incurred, or will incur, in connection with:

(i) proceedings under this Act; or

(ii) proceedings for an offence against a law of the Commonwealth, a State or a Territory; and

(d) the magistrate is satisfied that the person cannot meet the expense or debt out of property that is not covered by:

(i) a freezing order; or

(ii) a *restraining order; or

(iii) an *interstate restraining order; or

(iv) a *foreign restraining order that is registered under the *Mutual Assistance Act.

(3) The variation does not take effect until written notice of it is given to the *financial institution.

## Division 6—Revoking freezing orders

### 15R Application to revoke a freezing order

(1) A person may apply to a magistrate to revoke a *freezing order.

(2) The applicant for the revocation must give written notice of the application and the grounds on which the revocation is sought to the *enforcement agency mentioned in the paragraph of the definition of ***authorised officer*** in section 338 that describes the *authorised officer who applied for the *freezing order.

(3) One or more of the following may adduce additional material to the magistrate relating to the application to revoke the *freezing order:

(a) the *authorised officer who applied for the freezing order;

(b) the authorised officer whose affidavit supported the application for the freezing order;

(c) another authorised officer described in the paragraph of the definition of ***authorised officer*** in section 338 that describes the authorised officer mentioned in paragraph (a) or (b) of this subsection.

(4) The magistrate may revoke the *freezing order if satisfied that it is in the interests of justice to do so.

### 15S Notice of revocation of a freezing order

(1) If a *freezing order relating to an *account with a *financial institution is revoked under section 15R, an *authorised officer (the ***notifying officer***) described in the paragraph of the definition of ***authorised officer*** in section 338 that describes the authorised officer who applied for the freezing order must cause written notice of the revocation to be given to:

(a) the financial institution; and

(b) each person in whose name the account is held.

(2) However, the notifying officer need not give notice to the applicant for the revocation.

(3) Subsection (1) does not require more than one *authorised officer to cause notice of the revocation to be given.

### 4 Paragraph 337A(1)(a)

After “for a”, insert “*freezing order,”.

### 5 Paragraph 337A(2)(a)

After “for a”, insert “*freezing order or”.

### 6 Section 338

Insert:

> ***freezing order*** means an order under section 15B, with any variations under section 15Q.

### 7 Section 338

Insert:

> ***working day*** means a day that is not a Saturday, Sunday, public holiday or bank holiday in the place concerned.

### 8 Application

Part 2-1A of the *Proceeds of Crime Act 2002* applies in relation to an account if there are reasonable grounds to suspect that the balance of the account:

(a) is proceeds of an indictable offence, a foreign indictable offence or an indictable offence of Commonwealth concern; or

(b) is wholly or partly an instrument of a serious offence;

whether the conduct constituting the offence occurs before, on or after the commencement of that Part.

## Division 2—Related amendments

## *Crimes Act 1914*

### 9 Subsection 21E(4) (paragraph (a) of the definition of *confiscation proceedings*)

After “for”, insert “freezing orders,”.

## *Family Law Act 1975*

### 10 Subsection 4(1) (before paragraph (a) of the definition of *proceeds of crime order*)

Insert:

(aa) a freezing order under the *Proceeds of Crime Act 2002*; or

# Part 2—Removal of 6-year time limit

## *Proceeds of Crime Act 2002*

### 11 Paragraph 18(1)(d)

Repeal the paragraph, substitute:

(d) there are reasonable grounds to suspect that a person has committed a *serious offence; and

### 12 Paragraph 18(3)(a)

Repeal the paragraph, substitute:

(a) that the authorised officer suspects that the *suspect committed the offence; and

### 13 At the end of subparagraph 19(1)(d)(ii)

Add "and".

### 14 Paragraph 19(1)(d)

Omit "and, if the offence is not a terrorism offence, that the offence was committed within the 6 years preceding the application, or since the application was made; and".

### 15 Application of amendments of sections 18 and 19

The amendments of sections 18 and 19 of the *Proceeds of Crime Act 2002* made by this Part apply in relation to applications made on or after the commencement of the amendments for a restraining order, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

### 16 Paragraph 47(1)(c)

Repeal the paragraph, substitute:

(c) the court is satisfied that a person whose conduct or suspected conduct formed the basis of the restraining order engaged in conduct constituting one or more *serious offences.

### 17 Paragraph 49(1)(d)

Repeal the paragraph.

## 18 Application of amendments of sections 47 and 49

The amendments of sections 47 and 49 of the *Proceeds of Crime Act 2002* made by this Part apply in relation to applications made on or after the commencement of the amendments for a forfeiture order, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

## 19 Subsection 84(1)

Omit “(1)”.

## 20 Subsection 84(2)

Repeal the subsection.

## 21 Subsection 85(1)

Omit “84(1)(a)”, substitute “84(a)”.

## 22 Subsection 85(2)

Omit “84(1)(b)”, substitute “84(b)”.

## 23 Subsection 110(1)

Omit “(1)”.

## 24 Subsection 110(2)

Repeal the subsection.

## 25 Subsection 111(1)

Omit “110(1)(a)”, substitute “110(a)”.

## 26 Subsection 111(2)

Omit “110(1)(b)”, substitute “110(b)”.

## 27 Subparagraph 116(1)(b)(ii)

Omit “subject to subsection (2),”.

## 28 Subsection 116(2)

Repeal the subsection.

## 29 Application of amendments of section 116

The amendments of section 116 of the *Proceeds of Crime Act 2002* made by this Part apply in relation to applications made on or after the commencement of the amendments for a pecuniary penalty order, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

## 30 Section 149

Repeal the section, substitute:

### 149 Court may confirm pecuniary penalty order

The court may confirm the *pecuniary penalty order if the court is satisfied that, when the *DPP applied for the order, the court could have made the order without relying on the person's conviction that was *quashed.

## 31 Application of new section 149

Section 149 of the *Proceeds of Crime Act 2002* as amended by this Part applies in relation to pecuniary penalty orders applied for after the commencement of that section, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

## 32 Subparagraphs 202(5)(a)(ii) and (iii)

Repeal the subparagraphs, substitute:

(ii) whom there are reasonable grounds to suspect of having engaged in conduct constituting a *serious offence;

## 33 Subparagraphs 202(5)(c)(ii) and (iii)

Repeal the subparagraphs, substitute:

(ii) proceeds of a serious offence, or an instrument of a serious offence, that a person is reasonably suspected of having committed;

## 34 Subsection 202(6)

Omit "or (iii)".

## 35 Application of amendments of section 202

The amendments of section 202 of the *Proceeds of Crime Act 2002* made by this Part apply in relation to production orders applied for on or after the commencement of the amendments, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

## 36 Section 338 (paragraph (g) of the definition of *serious offence*)

After "*Criminal Code*", insert "or former section 5, 7, 7A or 86 of the *Crimes Act 1914*".

# Part 3—Confiscation scheme and instruments of serious offences

## *Proceeds of Crime Act 2002*

### 37 Subparagraph 18(2)(d)(ii)

Omit "*terrorism", substitute "*serious".

### 38 Subparagraph 18(3)(b)(iii)

Omit "terrorism", substitute "*serious".

### 39 Subparagraph 19(1)(d)(ii)

Omit "terrorism", substitute "*serious".

### 40 Subparagraph 19(1)(e)(ii)

Omit "terrorism", substitute "serious".

### 41 Paragraph 19(2)(b)

Omit "*terrorism", substitute "*serious".

### 42 Application of amendments of sections 18 and 19

The amendments of sections 18 and 19 of the *Proceeds of Crime Act 2002* made by this Part apply in relation to applications made on or after the commencement of the amendments for a restraining order, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

### 43 Subparagraph 29(2)(c)(ii)

Omit "a *terrorism", substitute "a serious".

### 44 Subparagraph 29(2)(c)(ii)

Omit "any terrorism", substitute "any serious".

### 45 Subparagraph 29(2)(d)(ii)

Omit "a *terrorism", substitute "a serious".

## 46 Subparagraph 29(2)(d)(ii)

Omit “any terrorism”, substitute “any serious”.

## 47 Paragraph 45(6)(ca)

Omit “*terrorism”, substitute “*serious”.

## 48 Application of amendments of sections 29 and 45

The amendments of sections 29 and 45 of the *Proceeds of Crime Act 2002* made by this Part apply in relation to restraining orders made as a result of an application made on or after the commencement of the amendments, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

## 49 At the end of section 47

Add:

*Refusal to make a forfeiture order*

(4) Despite subsection (1), the court may refuse to make an order under that subsection relating to property that the court is satisfied:

(a) is an *instrument of a *serious offence other than a *terrorism offence; and

(b) is not *proceeds of an offence;

if the court is satisfied that it is not in the public interest to make the order.

## 50 Application of new subsection 47(4)

Subsection 47(4) of the *Proceeds of Crime Act 2002* applies in relation to the making of an order on or after the commencement of that subsection, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

## 51 Subparagraph 49(1)(c)(iv)

Omit “*terrorism”, substitute “*serious”.

## 52 Application of amendment of subparagraph 49(1)(c)(iv)

The amendment of subparagraph 49(1)(c)(iv) of the *Proceeds of Crime Act 2002* made by this Part applies in relation to applications made on or after the commencement of the amendment for a forfeiture order, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

## 53 At the end of section 49

Add:

*Refusal to make a forfeiture order*

(4) Despite subsection (1), the court may refuse to make an order under that subsection relating to property that the court is satisfied:

(a) is an *instrument of a *serious offence other than a *terrorism offence; and

(b) is not *proceeds of an offence;

if the court is satisfied that it is not in the public interest to make the order.

## 54 Application of new subsection 49(4)

Subsection 49(4) of the *Proceeds of Crime Act 2002* applies in relation to the making of an order on or after the commencement of that subsection, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

## 55 Subparagraph 73(1)(c)(ii)

Omit “a *terrorism”, substitute “a *serious”.

## 56 Subparagraph 73(1)(c)(ii)

Omit “any terrorism”, substitute “any serious”.

## 57 Subparagraph 73(1)(d)(iii)

Omit “terrorism” (wherever occurring), substitute “serious”.

## 58 Subparagraph 85(2)(a)(ii)

Omit “*terrorism”, substitute “*serious”.

## 59 Subparagraph 85(2)(b)(ii)

Omit “terrorism”, substitute “serious”.

## 60 Application of amendments of sections 73 and 85

The amendments of sections 73 and 85 of the *Proceeds of Crime Act 2002* made by this Part apply in relation to forfeiture orders applied for on or after the commencement of the amendments, whether the conduct constituting the offence concerned occurred or occurs before, on or after that commencement.

## 61 Subparagraph 111(2)(a)(ii)

Omit "*terrorism", substitute "*serious".

## 62 Subparagraph 111(2)(b)(ii)

Omit "terrorism", substitute "serious".

## 63 Application of amendments of section 111

The amendments of section 111 of the *Proceeds of Crime Act 2002* made by this Part apply in relation to the quashing, on or after the commencement of the amendments, of a conviction of an offence, whether the conviction occurred before, on or after that commencement.

# Part 4—Disclosure of information

## *Proceeds of Crime Act 2002*

### 64 Section 8

Before “Chapter 3”, insert “(1)”.

### 65 At the end of section 8

Add:

(2) Chapter 3 also authorises the disclosure, to certain authorities for certain purposes, of information obtained under that Chapter or certain other provisions (see Part 3-6).

### 66 At the end of subsection 223(4)

Add:

; (e) a person who is or forms part of an authority with one or more functions under this Act for the purpose of facilitating the authority’s performance of its functions under this Act;

(f) a person who is or forms part of an authority of the Commonwealth, or of a State, Territory or foreign country, that has a function of investigating or prosecuting crimes against a law of the Commonwealth, State, Territory or country for the purpose of assisting in the prevention, investigation or prosecution of a crime against that law;

(g) a person in the Australian Taxation Office for the purpose of protecting public revenue.

### 67 At the end of Chapter 3

Add:

# Part 3-6—Disclosure of information

### 266A Disclosure

(1) This section applies if a person obtains information:

(a) as a direct result of:

(i) the person being given a sworn statement under an order made under paragraph 39(1)(d); or

(ii) the exercise of a power (by the person or someone else), or performance (by the person) of a function, under Part 3-1, 3-2, 3-3, 3-4 or 3-5; or

(b) as a result of a disclosure, or a series of disclosures, under this section.

(2) The person may disclose the information to an authority described in an item of the following table for a purpose described in that item if the person believes on reasonable grounds that the disclosure will serve that purpose:

**Recipients and purposes of disclosure**

| Item | Authority to which disclosure may be made | Purpose for which disclosure may be made |
|---|---|---|
| 1 | Authority with one or more functions under this Act | Facilitating the authority's performance of its functions under this Act |
| 2 | Authority of the Commonwealth, or of a State or Territory, that has a function of investigating or prosecuting offences against a law of the Commonwealth, State or Territory | Assisting in the prevention, investigation or prosecution of an offence against that law that is punishable on conviction by imprisonment for at least 3 years or for life |
| 2A | Authority of a foreign country that has a function of investigating or prosecuting offences against a law of the country | Assisting in the prevention, investigation or prosecution of an offence against that law constituted by conduct that, if it occurred in Australia, would constitute an offence against a law of the Commonwealth, or of a State or Territory, punishable on conviction by imprisonment for at least 3 years or for life |
| 3 | Australian Taxation Office | Protecting public revenue |

*Limits on use of information disclosed*

(3) In civil or *criminal proceedings against a person who gave an answer or produced a document in an *examination, none of the

following that is disclosed under this section is admissible in evidence against the person:

(a) the answer or document;

(b) information contained in the answer or document.

(4) Subsection (3) does not apply in:

(a) *criminal proceedings for giving false or misleading information; or

(b) proceedings on an application under this Act; or

(c) proceedings ancillary to an application under this Act; or

(d) proceedings for enforcement of a *confiscation order; or

(e) civil proceedings for or in respect of a right or liability the document confers or imposes.

Note: Subsections (3) and (4) reflect section 198.

(5) In a *criminal proceeding against a person who produced or made available a document under a *production order, none of the following that is disclosed under this section is admissible in evidence against the person:

(a) the document;

(b) information contained in the document.

(6) Subsection (5) does not apply in a proceeding under, or arising out of, section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) in relation to producing the document or making it available.

Note: Subsections (5) and (6) reflect subsection 206(2).

(7) To avoid doubt, this section does not affect the admissibility in evidence of any information, document or thing obtained as an indirect consequence of a disclosure under this section.

*Relationship with subsection 228(2)*

(8) To avoid doubt:

(a) this section does not limit subsection 228(2) (about a *search warrant authorising the *executing officer to make things seized under the warrant available to officers of other *enforcement agencies); and

(b) subsection 228(2) does not limit this section.

# Part 5—Legal aid costs

## *Proceeds of Crime Act 2002*

### 68 Section 292

Repeal the section.

### 69 Subsections 293(1), (2) and (3)

Repeal the subsections, substitute:

(1) This section applies if:

(a) a *legal aid commission incurred (before, on or after the commencement of this subsection) legal costs for:

(i) representing a person whose property was, at the time of the representation, covered by a *restraining order in proceedings under this Act; or

(ii) representing a person, who was a *suspect at the time of the representation and whose property was at that time covered by a restraining order, in proceedings for defending any criminal charge against the person; and

(b) the commission has given (before, on or after the commencement of this subsection) the *Official Trustee a bill for the costs; and

(c) the Official Trustee is satisfied that the bill is true and correct.

(2) The *Official Trustee must pay the legal costs (according to the bill) to the *legal aid commission out of the *Confiscated Assets Account, subject to subsection (2A).

(2A) If the *Official Trustee is satisfied that:

(a) the balance of the *Confiscated Assets Account is insufficient to pay the legal costs; and

(b) property of the person is covered by the *restraining order;

the Official Trustee must pay the legal costs (according to the bill) to the *legal aid commission out of that property covered by the order, to the extent possible.

(3) If the *Official Trustee pays an amount to the *legal aid commission under this section and property of the person is covered by a *restraining order, the person must pay the Commonwealth an amount equal to the lesser of the following (or either of them if they are the same):

(a) the amount paid to the legal aid commission;

(b) the value of the person's property covered by the restraining order.

Note: The heading to section 293 is replaced by the heading "**Payments to legal aid commissions for representing suspects and other persons**".

## 70 Division 1 of Part 4-4

Repeal the Division.

## 71 Application of amendments of Chapter 4

The amendments of Chapter 4 of the *Proceeds of Crime Act 2002* made by this Part apply in relation to costs that:

(a) were incurred by legal aid commissions before, on or after the commencement of the amendments; and

(b) if they were incurred before that commencement, had not been paid to the commissions before that commencement.

# Part 6—Technical amendments

## *Proceeds of Crime Act 2002*

### 72 Subsection 37(1) (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 73 Subsection 37(2) (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 74 Section 40 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 75 Section 71 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 76 Section 195 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 77 Subsection 196(1) (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 78 Section 199 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 79 Section 200 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 80 Subsection 201(1) (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 81 Section 209 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 82 Subsection 210(1) (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 83 Subsection 210(2) (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 84 Subsection 211(1) (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 85 Section 212 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 86 Section 216 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 87 Section 217 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 88 Section 218 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 89 Section 222 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 90 Subsection 223(1) (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 91 Subsection 223(2) (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 92 Subsection 223(3) (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 93 Section 224 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 94 Section 232 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 95 Section 233 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 96 Section 234 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 97 Section 235 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 98 Subsection 246(3) (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 99 Section 266 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 100 Subsection 272(1) (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 101 Subsection 272(2) (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 102 Section 273 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 103 Subsection 274(1)

Omit “(1) A person”, substitute “A person”.

### 104 Subsection 274(1) (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

### 105 Section 275 (penalty)

Omit “Maximum penalty:”, substitute “Penalty:”.

# Part 7—Other amendments

## *Proceeds of Crime Act 2002*

### 106 Subsection 42(5)

Repeal the subsection, substitute:

(5) The court may revoke the *restraining order if satisfied that:

(a) there are no grounds on which to make the order at the time of considering the application to revoke the order; or

(b) it is otherwise in the interests of justice to do so.

### 107 Application and transitional

(1) The amendment of section 42 of the *Proceeds of Crime Act 2002* made by this Part applies in relation to the revocation of a restraining order on or after commencement, whether the application for that revocation was made before, on or after commencement.

(2) If an application under section 42 of the *Proceeds of Crime Act 2002* for the revocation of a restraining order has been made but not determined as at commencement:

(a) the applicant may vary the application to take account of paragraph 42(5)(b) of the *Proceeds of Crime Act 2002* as in force at commencement; and

(b) if the application is varied under paragraph (a) of this subitem—the applicant must give a copy of the application as varied, and written notice of any additional grounds that he or she proposes to rely on in seeking that revocation, to the DPP and the Official Trustee; and

(c) the DPP may adduce additional material to the court relating to those additional grounds.

(3) In this item:

***commencement*** means the commencement of this item.

# Schedule 3—Amendments relating to controlled operations, assumed identities and witness identity protection

## Part 1—Main amendments

### *Crimes Act 1914*

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

Repeal the definition.

**2 Subsection 3(1) (definition of *ACLEI authorising officer)***

Repeal the definition.

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

Repeal the definition.

**4 Subsection 3(1) (definition of *appropriate authorising officer*)**

Repeal the definition.

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

Repeal the definition.

**6 Subsection 3(1) (definition of *controlled operation*)**

Repeal the definition.

**7 Subsection 3(1) (definition of *major controlled operation*)**

Repeal the definition.

**8 Subsection 3(1) (definition of *nominated Tribunal member*)**

Repeal the definition.

**9 Subsection 3(1) (definition of *person targeted*)**

Repeal the definition.

### 10 Parts IAB and IAC

Repeal the Parts, substitute:

# Part IAB—Controlled operations

## Division 1—Preliminary

### 15G Objects of Part

The main objects of this Part are:

(a) to provide for the authorisation, conduct and monitoring of controlled operations; and

(b) to exempt from criminal liability, and to indemnify from civil liability:

(i) law enforcement officers who, in the course of a controlled operation authorised under this Part, take an active part in, or are otherwise involved in, the commission of a Commonwealth offence or an offence against a law of a State or Territory or conduct that may result in a civil liability; and

(ii) certain other persons who, in accordance with the instructions of a law enforcement officer and in the course of a controlled operation authorised under this Part, take an active part in, or are otherwise involved in, the commission of a Commonwealth offence or an offence against a law of a State or Territory or conduct that may result in a civil liability.

### 15GA Relationship to other laws and matters

(1) Subject to subsection (2) and section 15HZ, this Part is not intended to limit a discretion that a court has:

(a) to admit or exclude evidence in any proceedings; or

(b) to stay criminal proceedings in the interests of justice.

(2) In determining whether evidence should be admitted or excluded in any proceedings, the fact that the evidence was obtained as a result of a person engaging in criminal activity is to be disregarded if:

(a) both:

(i) the person was a participant in a controlled operation authorised under this Part acting in the course of the controlled operation; and

(ii) the criminal activity was controlled conduct; or

(b) both:

(i) the person was a participant in an operation authorised under a corresponding State controlled operations law acting in the course of that operation; and

(ii) the criminal activity was conduct constituting an offence for which a person would, but for section 15HH, be criminally responsible.

## 15GB Concurrent operation of State and Territory laws

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

## 15GC Definitions

In this Part:

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

***ACLEI authorising officer*** has the meaning given by subsection 15GF(5).

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

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

(a) if the authority to conduct the controlled operation was granted by an AFP authorising officer—any AFP authorising officer;

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

(c) if the authority to conduct the controlled operation was granted by an ACLEI authorising officer—any ACLEI authorising officer.

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

(a) if the authority to conduct the controlled operation was granted by an AFP authorising officer—the Australian Federal Police;

(b) if the authority to conduct the controlled operation was granted by an ACC authorising officer—the ACC;

(c) if the authority to conduct the controlled operation was granted by an ACLEI authorising officer—the Australian Commission for Law Enforcement Integrity.

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

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

***chief officer*** means the following:

(a) in relation to the Australian Federal Police—the Commissioner;

(b) in relation to the police force of a State or Territory—the Commissioner of Police in that police force or the person holding equivalent rank;

(c) in relation to Customs—the Chief Executive Officer of Customs;

(d) in relation to the ACC—the Chief Executive Officer of the ACC;

(e) in relation to the Australian Commission for Law Enforcement Integrity—the Integrity Commissioner.

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

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

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

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

***corresponding State controlled operations law*** means:

(a) a law of a State or Territory; or
(b) a provision or provisions of a law of a State or Territory;

prescribed by the regulations for the purposes of this definition.

***exercise*** a function includes perform a duty.

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

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

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

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

***function*** includes a power, authority or duty.

***law enforcement agency*** means any of the following:
(a) the Australian Federal Police;
(b) the police force of a State or Territory;
(c) Customs;
(d) the ACC;
(e) the Australian Commission for Law Enforcement Integrity.

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

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

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

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

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

(a) it is intended to obtain evidence; or

(b) evidence is being, or has been, obtained.

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

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

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

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

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

***urgent variation application***:

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

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

***urgent variation of authority***:

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

(b) in relation to a variation made by a nominated Tribunal member—has the meaning given by paragraph 15GW(1)(b).

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

(1) A ***controlled operation*** is an operation that:

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

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

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

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

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

*Meaning of* ***serious Commonwealth offence***

(1) For the purposes of this Part, ***serious Commonwealth offence*** means a Commonwealth offence that:
(a) involves a matter mentioned in subsection (2); and
(b) is punishable on conviction by imprisonment for a period of 3 years or more.

(2) The matters are as follows:
(a) theft;
(b) fraud;
(c) tax evasion;
(d) currency violations;
(e) controlled substances;
(f) illegal gambling;
(g) obtaining financial benefit by vice engaged in by others;

(h) extortion;
(i) money laundering;
(j) perverting the course of justice;
(k) bribery or corruption of, or by, an officer of the Commonwealth, of a State or of a Territory;
(l) bankruptcy and company violations;
(m) harbouring of criminals;
(n) forgery (including forging of passports);
(o) armament dealings;
(p) illegal importation or exportation of fauna into or out of Australia;
(q) espionage, sabotage or threats to national security;
(r) misuse of a computer or electronic communications;
(s) people smuggling;
(t) slavery;
(u) piracy;
(v) the organisation, financing or perpetration of sexual servitude or child sex tourism;
(w) dealings in child pornography or material depicting child abuse;
(x) importation of prohibited imports;
(y) exportation of prohibited exports;
(z) violence;
(za) firearms;
(zb) a matter that is of the same general nature as a matter mentioned in one of the preceding paragraphs;
(zc) a matter that is prescribed by the regulations for the purposes of this paragraph.

(3) Without limiting subsections (1) and (2), an offence against section 474.19, 474.20, 474.22, 474.23, 474.26 or 474.27, or Part 5.3, of the *Criminal Code* is a ***serious Commonwealth offence*** for the purposes of this Part.

*Meaning of* ***serious State offence that has a federal aspect***

(4) For the purposes of this Part, ***serious State offence that has a federal aspect*** means a State offence that has a federal aspect and

that would be a serious Commonwealth offence if it were a Commonwealth offence.

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

## 15GF Meaning of *authorising officer* etc.

(1) Any of the following is an ***authorising officer*** for a controlled operation:

(a) if the operation is a major controlled operation and the investigation of the offence to which the controlled operation relates is within the functions of the Australian Federal Police—the Commissioner or a Deputy Commissioner;

(b) if the operation is not a major controlled operation, but the investigation of the offence to which the controlled operation relates is within the functions of the Australian Federal Police—any AFP authorising officer;

(c) if the investigation of the offence to which the controlled operation relates is within the functions of the ACC—any ACC authorising officer;

(d) if the controlled operation relates to the investigation of a corruption issue (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*)—any ACLEI authorising officer.

(2) The following are ***AFP authorising officers***:

(a) the Commissioner;

(b) a Deputy Commissioner;

(c) a senior executive AFP employee who is a member of the Australian Federal Police and who is authorised in writing by the Commissioner for the purposes of this paragraph.

(3) The following are ***ACC authorising officers***:

(a) the Chief Executive Officer of the ACC;

(b) a member of the staff of the ACC who is an SES employee and who is authorised in writing by the Chief Executive Officer of the ACC for the purposes of this paragraph.

(4) The following are ***ACLEI authorising officers***:

(a) the Integrity Commissioner;

(b) the Assistant Integrity Commissioner;

(c) a member of the staff of the ACLEI who is an SES employee and is authorised in writing by the Integrity Commissioner for the purposes of this paragraph.

### 15GG Minister may nominate AAT members

(1) The Minister may, by writing, nominate a person who holds one of the following appointments to the Administrative Appeals Tribunal to deal with applications under subsection 15GU(1) (which deals with extending authorities for controlled operations beyond 3 months):

(a) Deputy President;

(b) full-time senior member;

(c) part-time senior member;

(d) member.

(2) Despite subsection (1), the Minister 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:

(a) the nominated Tribunal member ceases to hold an appointment described in subsection (1); or

(b) the Minister, by writing, withdraws the nomination.

(4) A nominated Tribunal member has, in relation to the performance or exercise of a function or power conferred on a nominated Tribunal member by this Act, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

# Division 2—Authorisation of controlled operations

## Subdivision A—Authorities to conduct controlled operations

### 15GH Applications for authorities to conduct controlled operations

(1) An Australian law enforcement officer of a law enforcement agency may apply to an authorising officer for an authority to conduct a controlled operation on behalf of the law enforcement agency.

(2) An application for an authority may be made:
  (a) by means of a written document signed by the applicant (such an application is a ***formal application***); or
  (b) if the applicant has reason to believe that the delay caused by making a formal application may affect the success of the controlled operation—orally in person, or by telephone or any other means of communication (such an application is an ***urgent application***).

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

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

(4) An application (whether formal or urgent) must:
  (a) provide sufficient information to enable the authorising officer to decide whether or not to grant the application; and
  (b) state whether or not the proposed controlled operation, or any other controlled operation with respect to the same criminal activity, has been the subject of an earlier application (whether formal or urgent) for an authority or variation of an authority and, if so, whether or not the authority was given or the variation granted; and
  (c) state the proposed period of effect of the authority, which must not exceed:
    (i) in the case of a formal application—3 months; and
    (ii) in the case of an urgent application—7 days.

(5) An authorising officer may require an applicant to provide such additional information concerning the proposed controlled operation as is necessary for the proper consideration of the application.

(6) As soon as practicable after making an urgent application that was not made in writing, the applicant must make a written record of the application and give a copy of it to the authorising officer to whom the application was made.

## 15GI Determination of applications

(1) An authorising officer may, after considering an application for an authority to conduct a controlled operation, and any additional information provided under subsection 15GH(5):
   (a) authorise the controlled operation by granting the authority, either unconditionally or subject to conditions; or
   (b) refuse the application.

(2) An authorising officer must not grant an authority to conduct a controlled operation unless the authorising officer is satisfied on reasonable grounds:
   (a) that a serious Commonwealth offence or a serious State offence that has a federal aspect has been, is being or is likely to be, committed; and
   (b) that the nature and extent of the suspected criminal activity are such as to justify the conduct of a controlled operation; and
   (c) that any unlawful conduct involved in conducting the controlled operation will be limited to the maximum extent consistent with conducting an effective controlled operation; and
   (d) that the operation will be conducted in a way that ensures that, to the maximum extent possible, any illicit goods involved in the controlled operation will be under the control of an Australian law enforcement officer at the end of the controlled operation; and
   (e) that the proposed controlled conduct will be capable of being accounted for in a way that will enable the reporting requirements of Division 4 to be complied with; and

(f) that the controlled operation will not be conducted in such a way that a person is likely to be induced to commit a Commonwealth offence or an offence against a law of a State or Territory that the person would not otherwise have intended to commit; and

(g) that any conduct involved in the controlled operation will not:

(i) seriously endanger the health or safety of any person; or

(ii) cause the death of, or serious injury to, any person; or

(iii) involve the commission of a sexual offence against any person; or

(iv) result in significant loss of, or serious damage to, property (other than illicit goods); and

(h) that any role assigned to a civilian participant in the operation is not one that could be adequately performed by a law enforcement officer.

(3) To avoid doubt, an authorising officer may authorise a particular controlled operation only if he or she is an authorising officer for the controlled operation within the meaning of section 15GF.

(4) An authority granted under this section is not a legislative instrument.

## 15GJ Manner of granting authority

(1) An authority to conduct a controlled operation may be granted:

(a) in the case of a formal application (other than a formal application referred to in subparagraph (b)(ii))—by means of a written document, signed by the authorising officer (such an authority is a ***formal authority***); or

(b) in the case of:

(i) an urgent application; or

(ii) a formal application, if the authorising officer is satisfied that the delay caused by granting a formal authority may affect the success of the controlled operation;

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

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

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

## 15GK Form of authority

(1) A formal authority must:

(a) state the name and rank or position of the person granting the authority; and

(b) identify the principal law enforcement officer for the controlled operation and, if the principal law enforcement officer is not the applicant for the authority, the name of the applicant; and

(c) state that the application was a formal application; and

(d) identify the nature of the criminal activity (including the suspected serious Commonwealth offences and serious State offences that have a federal aspect) in respect of which the controlled conduct is to be engaged in; and

(e) state the identity of the persons authorised to engage in controlled conduct for the purposes of the controlled operation; and

(f) specify:

(i) with respect to the law enforcement participants, the nature of the controlled conduct that those participants may engage in; and

(ii) with respect to the civilian participants, the particular controlled conduct (if any) that each such participant may engage in; and

(g) identify (to the extent known) the person or persons targeted; and

(h) specify the period of effect of the authority, being a period not exceeding 3 months; and

(i) specify any conditions to which the conduct of the controlled operation is subject; and

(j) state the date and time when the authority is granted; and

(k) identify the following details (to the extent to which they are known and are relevant):

(i) the nature and quantity of any illicit goods that will be involved in the controlled operation;

(ii) the foreign countries through which those goods are likely to pass in the course of the controlled operation;

(iii) the place or places at which those goods are likely to be dealt with by Customs;

(iv) if subparagraph (iii) does not apply—the place or places where those goods are likely to enter into Australia;

(v) the time or times when, and the day or days on which, those goods are likely to be dealt with by Customs.

(2) An urgent authority must:

(a) state the name and rank or position of the person who granted the authority; and

(b) identify the principal law enforcement officer for the controlled operation and, if the principal law enforcement officer is not the applicant for the authority, the name of the applicant; and

(c) state whether the application was a formal application or an urgent application; and

(d) identify the nature of the criminal activity (including the suspected serious Commonwealth offences and serious State offences that have a federal aspect) in respect of which the controlled conduct is to be engaged in; and

(e) state the identity of the persons authorised to engage in controlled conduct for the purposes of the controlled operation; and

(f) specify:

(i) with respect to the law enforcement participants, the nature of the controlled conduct that those participants may engage in; and

(ii) with respect to the civilian participants, the particular controlled conduct (if any) that each such participant may engage in; and

(g) identify (to the extent known) the person or persons targeted; and

(h) specify the period of effect of the authority, being a period not exceeding 7 days beginning on the day on which the authority was granted; and

(i) specify any conditions to which the conduct of the operation is subject; and

(j) state the date and time when the authority was granted.

(3) A person is sufficiently identified for the purposes of paragraph (1)(e) or (2)(e) if the person is identified:

(a) by an assumed name under which the person is operating; or

(b) by a code name or code number;

as long as the chief officer of the authorising agency for the controlled operation can match the assumed name, code name or code number to the person's identity.

(4) An authority must not identify persons for the purposes of paragraph (1)(e) or (2)(e) by identifying a class of persons.

### 15GL Written record of urgent authority must be issued

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

### 15GM Change of principal law enforcement officer

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

(a) the authorising officer may, by instrument in writing, nominate another person as the principal law enforcement officer for the controlled operation; and

(b) with effect from the execution of the instrument or such later time as is specified in the instrument, that other person becomes the principal law enforcement officer for the controlled operation.

### 15GN Commencement and duration of authorities

(1) An authority to conduct a controlled operation comes into force, and the controlled operation is taken to commence, at the time the authority is granted under section 15GI.

(2) To avoid doubt, an urgent authority is granted when the authorising officer tells the applicant that the urgent authority is granted.

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

(3) An authority (whether formal or urgent) has effect for the period of effect specified in it under paragraph 15GK(1)(h) or (2)(h) unless:
  (a) it is cancelled before the end of the period of effect; or
  (b) in the case of a formal authority—the period of effect is extended under Subdivision B or C.

## Subdivision B—Variation of authorities by appropriate authorising officers

### 15GO Variation of authority by appropriate authorising officer

(1) An appropriate authorising officer may vary an authority:
  (a) at any time on the authorising officer's own initiative; or
  (b) on application under subsection 15GP(1).

(2) A variation may:
  (a) extend the period of effect of the authority (subject to subsections (3) and (4)); or
  (b) authorise additional persons to engage in controlled conduct for the purposes of the controlled operation and specify:
    (i) with respect to additional law enforcement participants—the nature of the controlled conduct that those participants may engage in; and
    (ii) with respect to additional civilian participants—the particular controlled conduct (if any) that each such participant may engage in; or
  (c) provide that specified persons are no longer authorised to engage in controlled conduct for the purposes of the controlled operation; or
  (d) authorise participants in the controlled operation to engage in additional or alternative controlled conduct.

(3) A variation cannot be made that has the effect of extending the period of effect of an urgent authority.

(4) A formal authority must not be varied in such a way that the period of effect of the authority will, after the variation is made, exceed 3 months (including any previous extensions).

(5) An authority must not be varied unless the authorising officer is satisfied on reasonable grounds that the variation will not authorise a significant alteration of the nature of the controlled operation concerned.

(6) A variation is not a legislative instrument.

## 15GP Application to appropriate authorising officer

(1) The principal law enforcement officer for a controlled operation, or any other Australian law enforcement officer acting on behalf of the principal law enforcement officer, may apply under this section to an appropriate authorising officer for a variation of an authority in respect of a matter mentioned in subsection 15GO(2).

(2) An application cannot be made under subsection (1) for a variation that would extend the period of effect of a formal authority in such a way that the period of effect of the authority will, after the variation is made, exceed 3 months (including any previous extensions).

(3) An application for the variation may be made:
   (a) by means of a written document that is signed by the applicant (such an application is a ***formal variation application***); or
   (b) if the applicant has reason to believe that the delay caused by making a formal variation application may affect the success of the controlled operation to which the authority relates—orally in person, or by telephone or any other means of communication (such an application is an ***urgent variation application***).

(4) More than one application for a variation under this section may be made in respect of the same authority. However, if an urgent variation of authority was granted as a result of an application under this section, the next application must be a formal variation application.

(5) The application (whether a formal variation application or an urgent variation application) must state whether or not the controlled operation has been the subject of an earlier urgent variation application under this section and, if so:
  (a) whether the urgent variation application was the last application under this section for a variation; and
  (b) whether or not the variation was granted.

(6) If the variation would extend the period of effect of a formal authority, the application (whether a formal variation application or an urgent variation application) must state the proposed period of the extension, which must not exceed:
  (a) in the case of a formal variation application—the period that would result in the period of effect of the authority exceeding 3 months (including any previous extensions); and
  (b) in the case of an urgent variation application—the lesser of:
    (i) 7 days; and
    (ii) a period that would result in the period of effect of the authority exceeding 3 months (including any previous extensions).

(7) The authorising officer to whom the application is made may require the applicant to provide such information concerning the proposed variation as is necessary for the authorising officer's proper consideration of the application.

(8) As soon as practicable after making an urgent variation application that was not made in writing, the applicant must make a written record of the application and give a copy of it to the authorising officer to whom the application was made.

## 15GQ Requirements for variation of authority

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

(2) An appropriate authorising officer must not vary an authority, whether on application or on the authorising officer's own

initiative, unless the authorising officer is satisfied on reasonable grounds:

(a) that a serious Commonwealth offence or a serious State offence that has a federal aspect has been, is being or is likely to be, committed; and

(b) that the nature and extent of the suspected criminal activity are such as to justify the variation; and

(c) that any unlawful conduct involved in conducting the controlled operation will be limited to the maximum extent consistent with conducting an effective controlled operation; and

(d) that the operation will be conducted in a way that ensures that, to the maximum extent possible, any illicit goods involved in the controlled operation will be under the control of an Australian law enforcement officer at the end of the controlled operation; and

(e) that the proposed controlled conduct will be capable of being accounted for in a way that will enable the reporting requirements of Division 4 to be complied with; and

(f) that the controlled operation will not be conducted in such a way that a person is likely to be induced to commit a Commonwealth offence or an offence against a law of a State or Territory that the person would not otherwise have intended to commit; and

(g) that any conduct involved in the controlled operation will not:

(i) seriously endanger the health or safety of any person; or

(ii) cause the death of, or serious injury to, any person; or

(iii) involve the commission of a sexual offence against any person; or

(iv) result in significant loss of, or serious damage to, property (other than illicit goods); and

(h) that any role assigned to a civilian participant in the operation is not one that could be adequately performed by a law enforcement officer.

## 15GR Manner of varying authority

(1) An authority may be varied by an appropriate authorising officer (whether on application or on the authorising officer's own initiative) only:

(a) in the case of a variation on the authorising officer's own initiative or on a formal variation application (other than a variation referred to in subparagraph (b)(ii))—by means of a written document, signed by the authorising officer (such a variation is a ***formal variation of authority***); or

(b) in the case of a variation on:

(i) an urgent variation application; or

(ii) the authorising officer's own initiative or a formal variation application, if the authorising officer is satisfied that the delay caused by granting a formal variation of authority may affect the success of the controlled operation;

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

(2) The authorising officer must, as soon as practicable, prepare and give a written document that complies with section 15GS to the applicant or, if the variation was on the initiative of the authorising officer, to the principal law enforcement officer for the controlled operation.

## 15GS Form of variation of authority

(1) A variation of an authority by an appropriate authorising officer (whether formal or urgent) must:

(a) identify the controlled operation to which the authority relates; and

(b) state the name and rank or position of the person varying the authority; and

(c) if the authority was varied on an application made under section 15GP, state:

(i) the name of the applicant; and

(ii) whether the application was a formal variation application or an urgent variation application; and

(d) state the date and time when the variation of authority is or was granted; and

(e) describe the variation having regard to the matters referred to in subsection 15GO(2); and

(f) if the variation extends the period of effect of a formal authority—state the period of the extension.

(2) For the purposes of paragraph (1)(f), the period of the extension must not exceed:

(a) in the case of a formal variation of authority—the period that would result in the period of effect of the authority exceeding 3 months (including any previous extensions); and

(b) in the case of an urgent variation of authority—the lesser of:

(i) 7 days; and

(ii) a period that would result in the period of effect of the authority exceeding 3 months (including any previous extensions).

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

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

(1) A nominated Tribunal member may vary a formal authority on application under subsection 15GU(1).

(2) Subject to subsection (3), a variation may extend the period of effect of the authority.

(3) For the purposes of subsection (2), the period of the extension must not exceed the lesser of:

(a) 3 months; and

(b) a period that would result in the period of effect of the authority exceeding 24 months (including any previous extensions under this Subdivision or Subdivision B).

(4) A nominated Tribunal member may only vary a formal authority during the period of 2 weeks before the end of the period of effect of the authority.

## 15GU Application to nominated Tribunal member

(1) The principal law enforcement officer for a controlled operation for which there is a formal authority, or any other Australian law enforcement officer acting on behalf of the principal law enforcement officer, may apply to a nominated Tribunal member for a variation of the authority that would extend its period of effect:

(a) if the period of effect of the authority is 3 months or more (including any previous extensions); or

(b) in such a way that the period of effect of the authority will, after the variation is made, be 3 months or more (including any previous extensions).

(2) An application cannot be made under subsection (1) for a variation that would extend the period of effect of a formal authority in such a way that the period of effect of the authority will, after the variation is made, exceed 24 months (including any previous extensions under this Subdivision or Subdivision B).

(3) An application for the variation may be made:

(a) by means of a written document that is signed by the applicant (such an application is a ***formal variation application***); or

(b) if the applicant has reason to believe that the delay caused by making a formal application for the variation may affect the success of the controlled operation to which the authority relates—orally in person, or by telephone or any other means of communication (such an application is an ***urgent variation application***).

(4) More than one application for a variation under this section may be made in respect of the same authority. However, if an urgent variation of authority was granted as a result of an application under this section, the next application must be a formal variation application.

(5) An application for a variation (whether a formal variation application or an urgent variation application) must state:

(a) whether or not the controlled operation has been the subject of an earlier urgent variation application under this section and, if so:

(i) whether the urgent variation application was the last application under this section for a variation; and

(ii) whether or not the variation was granted; and

(b) the proposed period of the extension, which must be such as to comply with subsection (2) and must not exceed:

(i) in the case of a formal variation application—3 months; and

(ii) in the case of an urgent variation application—7 days.

(6) The nominated Tribunal member may require the applicant to provide such information concerning the proposed variation as is necessary for the nominated Tribunal member's proper consideration of the application.

(7) As soon as practicable after making an urgent variation application that was not made in writing, the applicant must make a written record of the application and give a copy of it to the nominated Tribunal member to whom the application was made.

## 15GV Determination of application

(1) After considering an application for a variation of a formal authority, and any additional information provided under subsection 15GU(6), the nominated Tribunal member concerned:

(a) may vary the authority in accordance with the application, either unconditionally or subject to conditions; or

(b) may refuse the application.

(2) The nominated Tribunal member must not grant the variation unless the nominated Tribunal member is satisfied on reasonable grounds:

(a) that a serious Commonwealth offence or a serious State offence that has a federal aspect has been, is being or is likely to be, committed; and

(b) that the nature and extent of the suspected criminal activity are such as to justify the variation; and

(c) that any unlawful conduct involved in conducting the controlled operation will be limited to the maximum extent consistent with conducting an effective controlled operation; and

(d) that the operation will be conducted in a way that ensures that, to the maximum extent possible, any illicit goods involved in the controlled operation will be under the control of an Australian law enforcement officer at the end of the controlled operation; and

(e) that the proposed controlled conduct will be capable of being accounted for in a way that will enable the reporting requirements of Division 4 to be complied with; and

(f) that the controlled operation will not be conducted in such a way that a person is likely to be induced to commit a Commonwealth offence or an offence against a law of a State or Territory that the person would not otherwise have intended to commit; and

(g) that any conduct involved in the controlled operation will not:

(i) seriously endanger the health or safety of any person; or

(ii) cause the death of, or serious injury to, any person; or

(iii) involve the commission of a sexual offence against any person; or

(iv) result in significant loss of, or serious damage to, property (other than illicit goods); and

(h) that any role assigned to a civilian participant in the operation is not one that could be adequately performed by a law enforcement officer.

(3) A variation is not a legislative instrument.

## 15GW Manner of varying formal authority

(1) A formal authority may be varied by a nominated Tribunal member only:

(a) in the case of a formal variation application (other than a formal variation application referred to in subparagraph (b)(ii))—by means of a written document, signed by the nominated Tribunal member (such a variation is a ***formal variation of authority***); or

(b) in the case of:

(i) an urgent variation application; or

(ii) a formal variation application, if the nominated Tribunal member is satisfied that the delay caused by granting a

formal variation of authority may affect the success of the controlled operation;

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

(2) The nominated Tribunal member must, as soon as practicable, prepare and give a written document that complies with section 15GX to the applicant.

### 15GX Form of variation of formal authority

(1) A variation of a formal authority by a nominated Tribunal member (whether formal or urgent) must:
  (a) identify the controlled operation to which the authority relates; and
  (b) state the name and position of the person varying the authority; and
  (c) state the name of the applicant; and
  (d) state whether the application for the variation was a formal variation application or an urgent variation application; and
  (e) state the date and time when the variation of authority is or was granted; and
  (f) state the period of the extension.

(2) The period of the extension:
  (a) must not exceed the period that would result in the period of effect of the authority exceeding 24 months (including any previous extensions under this Subdivision or Subdivision B); and
  (b) must not exceed:
    (i) in the case of a formal variation of authority—3 months; and
    (ii) in the case of an urgent variation of authority—7 days.

## Subdivision D—Other matters

### 15GY Cancellation of authorities

(1) An appropriate authorising officer may, by order in writing given to the principal law enforcement officer for a controlled operation,

cancel the authority to conduct the controlled operation at any time and for any reason.

(2) Without limiting subsection (1), an appropriate authorising officer may cancel an authority at any time at the request of the principal law enforcement officer for the controlled operation concerned.

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

## 15GZ Effect of authorities

(1) Subject to subsection (2), an authority:
   (a) authorises each law enforcement participant in the controlled operation to which the authority relates who is identified in the authority to engage in the controlled conduct specified in the authority in respect of that participant; and
   (b) authorises each civilian participant (if any) in the controlled operation to which the authority relates who is identified in the authority to engage in the particular controlled conduct (if any) specified in the authority in respect of that participant.

(2) A person identified in an authority as being authorised to engage in controlled conduct for the purposes of the controlled operation is authorised to do so for the period of effect of the authority, unless:
   (a) the authority specifies a shorter period during which the person is so authorised; or
   (b) the authority is varied to provide that the person is no longer so authorised; or
   (c) the authority is cancelled before the end of that period.

(3) The authority to engage in controlled conduct given to a participant cannot be delegated to any other person.

## 15H Defect in authority

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

# Division 3—Protection from criminal responsibility and related provisions

## Subdivision A—Controlled operations under this Part

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

(1) This section applies if:
  (a) a participant in a controlled operation engages in conduct in the course of, and for the purposes of, the controlled operation; and
  (b) engaging in that conduct is a Commonwealth offence or an offence against a law of a State or Territory.

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

### 15HB Indemnification of participants against civil liability

The Commonwealth must indemnify a participant in a controlled operation against any civil liability (including reasonable costs) the participant incurs because of conduct the participant engages in if:

(a) the participant engages in the conduct in the course of, and for the purposes of, the controlled operation in accordance with the authority to conduct the controlled operation; and

(b) the participant is identified in the authority as a person authorised to engage in controlled conduct for the purposes of the controlled operation; and

(c) the conduct does not involve the participant intentionally inducing a person to commit a Commonwealth offence or an offence under a law of a State or Territory that the person would not otherwise have intended to commit; and

(d) the conduct does not involve the participant engaging in any conduct that is likely to:

(i) cause the death of, or serious injury to, any person; or

(ii) involve the commission of a sexual offence against any person; and

(e) if the participant is a civilian participant in the operation—he or she acts in accordance with the instructions of a law enforcement officer; and

(f) the requirements (if any) specified in the regulations have been met.

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

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

(a) arrest or detention of individuals;

(b) searches of individuals;

(c) entry onto, or searches or inspection of, premises;

(d) searches, inspections or seizures of other property;

(e) forensic procedure;

(f) electronic surveillance devices or telecommunications interception;

(g) identification procedures;

(h) the acquisition or use of assumed identities;

(i) any other matter concerning powers of criminal investigation.

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

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

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

(3) For the purposes of this section, a person is reckless about the existence of the variation or cancellation of an authority if:
  (a) the person is aware of a substantial risk that the variation or cancellation has happened; and
  (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk that the authority has not been varied or cancelled.

## 15HE Protection from criminal responsibility for certain ancillary conduct

(1) This section applies if:
  (a) a person engages in conduct (the ***ancillary conduct***) that relates to controlled conduct (the ***related controlled conduct***) engaged in by another person; and
  (b) engaging in the ancillary conduct is an ancillary offence in relation to the offence constituted by the related controlled conduct.

(2) Despite any other law of the Commonwealth, a State or a Territory, the person who engaged in the ancillary conduct is not criminally responsible for the ancillary offence if, at the time the person engaged in the ancillary conduct, he or she believed the related

controlled conduct was being engaged in, or would be engaged in, by a participant in a controlled operation authorised under this Part.

(3) In this section:

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

(a) of conspiring to commit the offence constituted by the related controlled conduct; or

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

## 15HF Compensation for property loss or serious damage

(1) If a person suffers loss of or serious damage to property, or personal injury, in the course of, or as a direct result of a controlled operation authorised under this Part, the Commonwealth is liable to pay to the person compensation as agreed between the Commonwealth and the person or, in default of agreement, as determined by action against the Commonwealth in a court of competent jurisdiction.

(2) Subsection (1) does not apply if:

(a) the person suffered the loss, damage or injury in the course of, or as a direct result of, engaging in any criminal activity (other than criminal activity that is controlled conduct); or

(b) the person was a law enforcement participant at the time of suffering the loss, damage or injury.

## 15HG Notification requirements

(1) If:

(a) any loss of or serious damage to property occurs in the course of, or as a direct result of, a controlled operation (other than property of the law enforcement agency on behalf of which the operation is conducted or a participant in the operation); or

(b) any personal injury occurs in the course of, or as a direct result of, such an operation;

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

(2) If loss or serious damage to property is reported to the chief officer under subsection (1), the chief officer must take all reasonable steps to notify the owner of the property of the loss or damage.

(3) If a personal injury is reported to the chief officer under subsection (1), the chief officer must take all reasonable steps to notify the person that the injury occurred in the course of, or as a direct result of, the controlled operation.

(4) The chief officer is not required to give a notification under subsection (2) or (3) until the chief officer is satisfied that the notification would not:

(a) compromise or hinder the controlled operation or any related investigation; or

(b) compromise the identity of a participant in the controlled operation; or

(c) endanger the life or safety of any person; or

(d) prejudice any legal proceeding; or

(e) otherwise be contrary to the public interest.

(5) A chief officer may, by written instrument, delegate any of the chief officer's powers or functions under this section to:

(a) in relation to the Australian Federal Police—a Deputy Commissioner or a person of equivalent or higher rank; or

(b) in relation to Customs—a Deputy Chief Executive Officer of Customs or a person occupying an equivalent or higher position; or

(c) in relation to the ACC:

(i) an Executive Director or a person occupying an equivalent or higher position; or

(ii) a person occupying a position prescribed by the regulations; or

(d) in relation to ACLEI—the Assistant Integrity Commissioner; or

(e) in relation to the police force of a State or Territory—a Deputy Commissioner or a person of equivalent or higher rank.

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

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

(1) This section applies to a participant in an operation authorised under a corresponding State controlled operations law if:
  (a) the participant engages in conduct in the course of, and for the purposes of, the operation; and
  (b) engaging in that conduct is a Commonwealth offence.

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

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

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

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

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

### 15HJ Protection from criminal responsibility for certain ancillary conduct

(1) This section applies if:
(a) a person engages in conduct (the ***ancillary conduct***) that relates to conduct (the ***related conduct***) that:
(i) was engaged in by another person; and
(ii) constitutes an offence for which a person would, but for section 15HH, be criminally responsible; and
(b) engaging in the ancillary conduct is an ancillary offence (within the meaning of the *Criminal Code*) in relation to the offence constituted by the related conduct.

(2) Despite any law of the Commonwealth, the person who engaged in the ancillary conduct is not criminally responsible for the ancillary offence if, at the time the person engaged in the ancillary conduct, he or she believed the related conduct was being engaged in, or would be engaged in, by a participant in an operation authorised under a corresponding State controlled operations law.

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

## Division 4—Compliance and monitoring

### 15HK Unauthorised disclosure of information

(1) A person commits an offence if:
(a) the person discloses information; and

(b) the information relates to a controlled operation.

Penalty: Imprisonment for 2 years.

(2) Subsection (1) does not apply if the disclosure was:
(a) in connection with the administration or execution of this Part; or
(b) for the purposes of any legal proceedings arising out of or otherwise related to this Part or of any report of any such proceedings; or
(c) for the purposes of obtaining legal advice in relation to the controlled operation; or
(d) in accordance with any requirement imposed by law; or
(e) in connection with the performance of functions or duties, or the exercise of powers, of a law enforcement agency.

(3) Subsection (1) does not apply if:
(a) the person (the ***discloser***) discloses the information to the Ombudsman or the Integrity Commissioner; and
(b) the discloser informs the person to whom the disclosure is made of the discloser's identity before making the disclosure; and
(c) the information concerns misconduct in relation to a controlled operation; and
(d) the discloser considers that the information may assist a person referred to in paragraph (a) to perform the person's functions or duties; and
(e) the discloser makes the disclosure in good faith.

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

## 15HL Unauthorised disclosure of information—endangering safety, etc.

(1) A person commits an offence if:
(a) the person discloses information; and
(b) the information relates to a controlled operation; and
(c) either:

(i) the person intends to endanger the health or safety of any person or prejudice the effective conduct of a controlled operation; or

(ii) the disclosure of the information will endanger the health or safety of any person or prejudice the effective conduct of a controlled operation.

Penalty: Imprisonment for 10 years.

(2) Subsection (1) does not apply if the disclosure was:

(a) in connection with the administration or execution of this Part; or

(b) for the purposes of any legal proceedings arising out of or otherwise related to this Part or of any report of any such proceedings; or

(c) for the purposes of obtaining legal advice in relation to the controlled operation; or

(d) in accordance with any requirement imposed by law; or

(e) in connection with the performance of functions or duties, or the exercise of powers, of a law enforcement agency.

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

(a) the person (the ***discloser***) discloses the information to the Ombudsman or the Integrity Commissioner; and

(b) the discloser informs the person to whom the disclosure is made of the discloser's identity before making the disclosure; and

(c) the information concerns misconduct in relation to a controlled operation; and

(d) the discloser considers that the information may assist a person referred to in paragraph (a) to perform the person's functions or duties; and

(e) the discloser makes the disclosure in good faith.

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

(4) An offence against this section is an indictable offence.

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

(1) As soon as practicable after 30 June and 31 December in each year, the chief officer of each authorising agency must submit a report to the Ombudsman setting out the details required by subsection (2) in relation to controlled operations for which the agency was the authorising agency during the previous 6 months.

(2) The report must include the following details:

(a) the number of formal authorities that were granted or varied by an authorising officer of the agency during the period to which the report relates;

(b) the number of formal applications for the grant of formal authorities that were refused by an authorising officer of the agency during the period to which the report relates, the date of those applications and the date of the refusals;

(c) the number of formal variation applications and urgent variation applications for the variation of formal authorities that were refused by an authorising officer of the agency during the period to which the report relates, the date of those applications and the date of the refusals;

(d) the number of urgent authorities that were granted or varied by an authorising officer of the agency during the period to which the report relates;

(e) the number of formal applications and urgent applications for the granting of urgent authorities that were refused by an authorising officer of the agency during the period to which the report relates, the date of those applications and the date of the refusals;

(f) the number of formal variation applications and urgent variation applications for the variation of urgent authorities that were refused by an authorising officer of the agency during the period to which the report relates, the date of those applications and the date of the refusals;

(g) the number of formal authorities that were varied by a nominated Tribunal member during the period to which the report relates;

(h) the number of formal variation applications and urgent variation applications for the variation of formal authorities that were refused by a nominated Tribunal member during

the period to which the report relates, the date of those applications and the date of the refusals;

(i) for each authority that was in force at any time during the period to which the report relates:

(i) the date the controlled operation commenced; and

(ii) if the controlled operation ceased during that period—the date of cessation and the outcomes of the controlled operation; and

(iii) if subparagraph (ii) does not apply—the last day of the period of effect of the authority (including any extensions);

(j) for each authority that was varied by an authorising officer of the agency during the period to which the report relates—the date of the application for the variation and the date of the variation;

(k) for each authority in relation to which an application for variation was refused by an authorising officer of the agency during the period to which the report relates—the date of the application and the date of the refusal;

(l) for each authority that was varied by a nominated Tribunal member during the period to which the report relates—the date of the application for the variation and the date of the variation;

(m) for each authority in relation to which an application for variation was refused by a nominated Tribunal member during the period to which the report relates—the date of the application and the date of the refusal;

(n) the nature of the criminal activities against which the controlled operations were directed;

(o) the identity of each person targeted under controlled operations;

(p) the nature of the controlled conduct engaged in for the purposes of the controlled operations;

(q) if any of the controlled operations involved illicit goods, a statement (to the extent known) of:

(i) the nature and quantity of the illicit goods; and

(ii) the route through which the illicit goods passed in the course of the operations; and

(iii) all foreign countries through which the illicit goods passed in the course of the operation;

(r) details of any loss of or serious damage to property (other than property of the law enforcement agency on behalf of which the operation is conducted or a participant in the operation) occurring in the course of or as a direct result of the controlled operations;

(s) details of any personal injuries occurring in the course of or as a direct result of the operations;

(t) the number of authorities for controlled operations that were cancelled by an authorising officer of the agency or that expired during the period to which the report relates.

(2A) If the controlled operation involved illicit goods that are narcotic goods, the report is to:

(a) identify each law enforcement agency an officer of which had possession of the narcotic goods in the course of the controlled operation; and

(b) identify to the extent known any other person who had possession of the narcotic goods in the course of the controlled operation; and

(c) state whether the narcotic goods have been destroyed; and

(d) if the narcotic goods have not been destroyed—contain the information specified in subsection (2B) relating to the possession of the narcotic goods, or state that it is not known who has possession of them.

(2B) If the controlled operation involved narcotic goods that have not been destroyed, and the identity of the person who has possession of the narcotic goods is known, the report is to:

(a) if the person is a law enforcement officer—identify the law enforcement agency of which the person is an officer; or

(b) otherwise—identify the person.

(2C) If the chief officer of the authorising agency is of the view that disclosing the identity of a person may:

(a) endanger the safety of the person; or

(b) prejudice an investigation or prosecution;

then the person is sufficiently identified for the purposes of paragraphs (2A)(b) and (2B)(b) if the person is identified:

(c) by an assumed name under which the person is operating; or

(d) by a code name or code number;

as long as the chief officer can match the assumed name, code name or code number to the person's identity.

(3) The Ombudsman may require the chief officer of an authorising agency to give additional information covering any controlled operation to which a report relates.

(4) Nothing in paragraphs (2)(o) to (t) requires particulars of a controlled operation to be included in a report for a period of 6 months if the operation had not been completed during that period, but the particulars must instead be included in the report for the period of 6 months in which the operation is completed.

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

### 15HN Chief officers' annual reports to Minister and Ombudsman

(1) As soon as practicable after 30 June in each year, the chief officer of each authorising agency must submit a report to the Minister setting out the details required by subsections 15HM(2), (2A), (2B) and (2C) in relation to controlled operations for which the agency was the authorising agency during the previous 12 months.

(2) Each chief officer must advise the Minister of any information in a report that, in the chief officer's opinion, should be excluded from the report before the report is laid before the Parliament because:

(a) the information, if made public, could reasonably be expected to:

(i) endanger a person's safety; or

(ii) prejudice an investigation or prosecution; or

(iii) compromise any law enforcement agency's operational activities or methodologies; or

(b) making the information public would be contrary to the public interest for any other reason.

(3) The Minister must exclude information from a report if the Minister is satisfied on the advice of the chief officer of any of the grounds set out in subsection (2) and must then cause a copy of the

report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives it.

(4) A report must not disclose any information that identifies any person involved in an operation or that is likely to lead to such a person being identified.

(5) Nothing in this section requires particulars of a controlled operation to be included in a report for a year if the operation had not been completed as at 30 June in that year, but the particulars must instead be included in the report for the year in which the operation is completed.

(6) If a report relates, in whole or in part, to the work or activities of the ACC under a corresponding State controlled operations law, the Minister must, as soon as practicable after the report is laid before each House of the Parliament, send a copy of the report to the State or Territory Minister with responsibility for the corresponding State controlled operations law.

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

## 15HO Annual report by Ombudsman

(1) The Ombudsman must, as soon as practicable after 30 June in each year:
   (a) prepare a report of the work and activities under this Part of the Ombudsman for the preceding 12 months and give a copy of the report to the Minister and to the chief officer of the law enforcement agency to which the report relates; and
   (b) prepare a report of the work and activities of the Ombudsman for the preceding 12 months, being work or activities under a corresponding State controlled operations law, and give a copy of the report to the Minister and to the chief officer of the ACC.

(2) A report under this section must not include information which, if made public, could reasonably be expected to:
   (a) endanger a person's safety; or
   (b) prejudice an investigation or prosecution; or

(c) compromise any law enforcement agency's operational activities or methodologies.

(3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives it.

(4) A report must include, for each authorising agency concerned, comments on the comprehensiveness and adequacy of the reports which were provided to the Ombudsman by the chief officer of the authorising agency under sections 15HM and 15HN.

(5) A report must not disclose any information that identifies any person involved in an operation or that is likely to lead to such a person being identified.

(6) Nothing in this section requires particulars of a controlled operation to be included in a report for a year if the operation had not been completed as at 30 June in that year, but the particulars must instead be included in the report for the year in which the operation is completed.

(7) If a report relates, in whole or in part, to the work or activities of the ACC under a corresponding State controlled operations law, the Minister must, as soon as practicable after the report is laid before each House of the Parliament, send a copy of the report to the State or Territory Minister with responsibility for the corresponding State controlled operations law.

### 15HP Keeping documents connected with controlled operations

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

(a) each formal application made to an authorising officer of the agency;

(b) each written record of an urgent application made to such an authorising officer;

(c) each formal authority granted by such an authorising officer;

(d) each written record of an urgent authority issued under section 15GL;

(e) each formal variation application made to such an authorising officer or to a nominated Tribunal member;

(f) each written record of an urgent variation application made to such an authorising officer or to a nominated Tribunal member;

(g) each formal variation of authority by such an authorising officer or by a nominated Tribunal member;

(h) each written document given under subsection 15GR(2) in relation to a variation of an authority by such an authorising officer;

(i) each written document given under subsection 15GW(2) in relation to a variation of a formal authority by a nominated Tribunal member;

(j) each order cancelling an authority granted by such an authorising officer.

## 15HQ General register

(1) The chief officer of each authorising agency must cause a general register to be kept.

(2) The general register is to specify:

(a) for each application under this Part made to an authorising officer of the agency (including an application for a variation of an authority):

(i) the date of the application; and

(ii) whether the application was formal or urgent; and

(iii) whether the application was granted, refused or withdrawn; and

(iv) if the application was refused or withdrawn—the date and time of the refusal or withdrawal; and

(b) for each authority under this Part granted by an authorising officer of the agency:

(i) the date and time the authority was granted; and

(ii) whether the authority was formal or urgent; and

(iii) the name and rank or position of the person who granted the authority; and

(iv) each serious Commonwealth offence or serious State offence that has a federal aspect in respect of which controlled conduct under the authority was to be engaged in; and

(v) the period of effect of the authority; and

(vi) the identity of each person authorised to engage in controlled conduct for the purposes of the controlled operation; and

(vii) with respect to the law enforcement participants, the nature of the controlled conduct that those participants were authorised to engage in; and

(viii) with respect to the civilian participants, the particular controlled conduct (if any) that each such participant was authorised to engage in; and

(viiia) the nature of the controlled conduct that was engaged in by law enforcement participants and civilian participants (if any); and

(ix) if the authority was cancelled, the date and time of cancellation; and

(x) the date and time the controlled operation began, the date on which the operation ceased, and the outcomes of the operation; and

(xi) if the controlled operation involved illicit goods (to the extent known), the nature and quantity of the illicit goods and the route and all foreign countries through which the illicit goods passed in the course of the operation; and

(xii) details of any loss of or serious damage to property (other than property of the law enforcement agency on behalf of which the operation is conducted or a participant in the operation) occurring in the course of or as a direct result of the controlled operation; and

(xiii) details of any personal injuries occurring in the course of or as a direct result of the operation; and

(c) for each variation of an authority under this Part made by an authorising officer of the agency:

(i) the date and time the variation was made; and

(ii) whether the variation was formal or urgent; and

(iii) the name and rank or position of the person who made the variation.

(2A) If the controlled operation involved illicit goods that are narcotic goods, the general register is to:

(a) identify each law enforcement agency an officer of which had possession of the narcotic goods in the course of the controlled operation; and

(b) identify to the extent known any other person who had possession of the narcotic goods in the course of the controlled operation; and

(c) state whether the narcotic goods have been destroyed; and

(d) if the narcotic goods have not been destroyed—contain the information specified in subsection (2B) relating to the possession of the narcotic goods, or state that it is not known who has possession of them.

(2B) If the controlled operation involved narcotic goods that have not been destroyed, and the identity of the person who has possession of the narcotic goods is known, the general register is to:

(a) if the person is a law enforcement officer—identify the law enforcement agency of which the person is an officer; or

(b) otherwise—identify the person.

(2C) If the chief officer of the authorising agency is of the view that disclosing the identity of a person may:

(a) endanger the safety of the person; or

(b) prejudice an investigation or prosecution;

then the person is sufficiently identified for the purposes of paragraphs (2A)(b) and (2B)(b) if the person is identified:

(c) by an assumed name under which the person is operating; or

(d) by a code name or code number;

as long as the chief officer can match the assumed name, code name or code number to the person's identity.

(3) A register kept under this section is not a legislative instrument.

## 15HR Appointment of inspecting officers

(1) The Ombudsman may appoint members of the Ombudsman's staff to be inspecting officers for the purposes of this Part.

(2) An appointment under subsection (1) must be in writing.

## 15HS Inspection of records by the Ombudsman

(1) The Ombudsman must, from time to time and at least once every 12 months, inspect the records of each authorising agency to determine the extent of compliance with this Part by the agency and by law enforcement officers.

(2) The Ombudsman must also, from time to time and at least once every 12 months, inspect the records of the ACC to determine the extent of compliance with corresponding State controlled operations laws, in relation to any authorities (within the meaning of each such law):

(a) for which a law enforcement officer of the ACC applied; or

(b) that were granted to a law enforcement officer of the ACC;

unless the corresponding State controlled operations law provides for the inspection of records of the ACC to determine the extent of compliance with that law.

(3) For the purpose of an inspection under this section, the Ombudsman:

(a) may, after notifying the chief officer of the agency, enter at any reasonable time premises occupied by the agency; and

(b) is entitled to have full and free access at all reasonable times to all records of the agency that are relevant to the inspection; and

(c) may require a member of staff of the agency to give the Ombudsman any information that the Ombudsman considers necessary, being information that is in the member's possession, or to which the member has access, and that is relevant to the inspection; and

(d) may, despite any other law, make copies of, and take extracts from, records of the agency.

(4) The chief officer must ensure that members of staff of the agency give the Ombudsman any assistance the Ombudsman reasonably requires to enable the Ombudsman to perform functions under this section.

(5) Nothing in this section requires the Ombudsman to inspect records relating to operations that have not been completed at the time of the inspection.

## 15HT Power to obtain relevant information

(1) If the Ombudsman has reasonable grounds to believe that a law enforcement officer of a particular law enforcement agency (whether or not the agency is an authorising agency) is able to give information relevant to an inspection under this Division of an authorising agency's records, subsections (2) and (3) have effect.

(2) The Ombudsman may, by writing given to the law enforcement officer, require the officer to give the information to the Ombudsman:

(a) by writing signed by the officer; and

(b) at a specified place and within a specified period.

(3) The Ombudsman may, by writing given to the law enforcement officer, require the officer to attend:

(a) before a specified inspecting officer; and

(b) at a specified place; and

(c) within a specified period or at a specified time on a specified day;

to answer questions relevant to the inspection.

(4) If the Ombudsman:

(a) has reasonable grounds to believe that a law enforcement officer of a particular law enforcement agency (whether or not the agency is an authorising agency) is able to give information relevant to an inspection under this Division of an authorising agency's records; and

(b) does not know the officer's identity;

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

(c) before a specified inspecting officer; and

(d) at a specified place; and

(e) within a specified period or at a specified time on a specified day;

to answer questions relevant to the inspection.

(5) The place, and the period or the time and day, specified in a requirement under this section, must be reasonable having regard to the circumstances in which the requirement is made.

## 15HU Offence

A person commits an offence if:

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

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

Penalty: Imprisonment for 6 months.

## 15HV Ombudsman to be given information and access despite other laws

(1) Despite any other law, a person is not excused from giving information, answering a question, or giving access to a document, as and when required under this Division, on the ground that giving the information, answering the question, or giving access to the document, as the case may be:

(a) would contravene a law; or

(b) would be contrary to the public interest; or

(c) might tend to incriminate the person or make the person liable to a penalty; or

(d) would disclose one of the following:

(i) a legal advice given to a Minister, a Department or a prescribed authority;

(ii) a communication between an officer of a Department or of a prescribed authority and another person or body, being a communication protected against disclosure by legal professional privilege.

(2) However, if the person is a natural person:

(a) the information, the answer, or the fact that the person has given access to the document, as the case may be; and

(b) any information or thing (including a document) obtained as a direct or indirect consequence of giving the information, answering the question or giving access to the document;

is not admissible in evidence against the person except in a proceeding by way of a prosecution for an offence against section 15HK or 15HL of this Act or Part 7.4 or 7.7 of the *Criminal Code*.

(3) Nothing in section 15HK or 15HL or in any other law prevents an officer of an agency from:

(a) giving information to an inspecting officer (whether orally or in writing and whether or not in answer to a question); or

(b) giving access to a record of the agency to an inspecting officer;

for the purposes of an inspection under this Division of the agency's records.

(4) Nothing in section 15HK or 15HL or in any other law prevents an officer of an agency from making a record of information, or causing a record of information to be made, for the purposes of giving the information to a person as permitted by subsection (3).

(5) The fact that a person is not excused under subsection (1) from giving information, answering a question or giving access to a document does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that information, answer or document.

(6) In this section:

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

## 15HW Exchange of information between Ombudsman and State inspecting authorities

(1) In this section:

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

***State or Territory inspecting authority***, in relation to a State or Territory agency, means the authority that, under the law of the State or Territory concerned, has the function of making inspections of a similar kind to those provided for in section 15HS when the State or Territory agency is exercising powers under a corresponding State controlled operations law.

(2) The Ombudsman may give information that:

(a) relates to a State or Territory agency; and

(b) was obtained by the Ombudsman under this Division;

to the State or Territory inspecting authority in relation to the agency.

(3) The Ombudsman may only give information to an authority under subsection (2) if the Ombudsman is satisfied that the giving of the information is necessary to enable the authority to perform its functions in relation to the State or Territory agency.

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

### 15HX Delegation by Ombudsman

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

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

### 15HY Ombudsman not to be sued

The Ombudsman, an inspecting officer, or a person acting under an inspecting officer's direction or authority, is not liable to an action, suit or proceeding for or in relation to an act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of a function or power conferred by this Division.

## Division 5—Miscellaneous

### 15HZ Evidence of authorities

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

(a) is admissible in any legal proceedings; and

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

### 15J Chief Executive Officer of Customs to be notified of certain authorities

(1) This section applies if:
  (a) an authority is granted under section 15GI by an AFP authorising officer, an ACC authorising officer or an ACLEI authorising officer; and
  (b) the applicant for the authority believes that illicit goods involved in the conduct of the operation may be dealt with by Customs.

(2) The applicant must, as soon as practicable after the authority is granted, notify the Chief Executive Officer of Customs, or a person (the ***nominated person***) nominated by him or her for the purposes of this section, in writing of:
  (a) the applicant's name; and
  (b) the date on which the authority was granted; and
  (c) to the extent to which it is known:
    (i) the place or places at which the illicit goods will pass into the control of Customs; and
    (ii) the time or times when, and the day or days on which, the illicit goods are expected to pass into the control of Customs.

(3) A failure to comply with this section does not affect the validity of an authority.

# Part IAC—Assumed Identities

## Division 1—Preliminary

### 15K Definitions

In this Part:

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

***agency*** means one or more of the following:

(a) an issuing agency;

(b) an intelligence agency;

(c) a law enforcement agency.

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

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

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

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

***authorised person*** means:

(a) an authorised civilian; and

(b) an authorised intelligence officer; and

(c) an authorised law enforcement officer; and

(d) an authorised foreign officer.

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

***chief officer***:

(a) of an intelligence agency—means the following:

(i) in relation to the Australian Security Intelligence Organisation—the Director-General of Security;

(ii) in relation to the Australian Secret Intelligence Service—the Director-General of Australian Secret Intelligence Service; and

(b) of an issuing agency—means the chief executive officer (however described) of the agency; and

(c) of a law enforcement agency—means the following:

(i) in relation to the Australian Federal Police—the Commissioner of the Australian Federal Police;

(ii) in relation to Customs—the Chief Executive Officer of Customs;

(iii) in relation to the ACC—the Chief Executive Officer of the ACC;

(iv) in relation to the Australian Commission for Law Enforcement Integrity—the Integrity Commissioner;

(v) in relation to the Australian Taxation Office—the Commissioner of Taxation;

(vi) in relation to a Commonwealth agency specified in the regulations for the purposes of the definition of ***law enforcement agency—***the officer specified in the regulations as the chief officer of that agency.

***Commonwealth agency*** means:

(a) the Commonwealth; or

(b) an authority of the Commonwealth.

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

***conduct*** includes any act or omission.

***corresponding assumed identity law*** means:

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

(b) a provision or provisions of a law of a State or Territory;

prescribed by the regulations for the purposes of this definition.

***corresponding authority*** means:

(a) an authority under a corresponding assumed identity law to acquire or use an assumed identity; or

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

***doing*** a thing, includes failing to do the thing.

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

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

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

***intelligence agency*** means:

(a) the Australian Security Intelligence Organisation;
(b) the Australian Secret Intelligence Service.

***intelligence officer*** means:

(a) in relation to the Australian Security Intelligence Organisation—an officer of the Australian Security Intelligence Organisation; and
(b) in relation to the Australian Secret Intelligence Service—a staff member of the Australian Secret Intelligence Service;

and includes a person who is seconded to an intelligence agency.

***issuing agency*** means:

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

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

***law enforcement agency*** means the following agencies:

(a) the Australian Federal Police;
(b) Customs;
(c) the ACC;
(d) the Australian Commission for Law Enforcement Integrity;
(e) the Australian Taxation Office;
(f) any other Commonwealth agency specified in the regulations.

***law enforcement officer*** means:

(a) in relation to the Australian Federal Police—the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*); and

(b) in relation to Customs—an officer of Customs; and

(c) in relation to the ACC—a member of the staff of the ACC; and

(d) in relation to the Australian Commission for Law Enforcement Integrity—a member of the staff of the Australian Commission for Law Enforcement Integrity; and

(e) in relation to the Australian Taxation Office—a person engaged under the *Public Service Act 1999* and performing duties in the Australian Taxation Office; and

(f) in relation to a Commonwealth agency specified in the regulations for the purposes of the definition of ***law enforcement agency***—an officer specified in the regulations as an officer of the agency;

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

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

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

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

***originating agency***:

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

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

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

***receiving agency***:

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

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

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

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

## Division 2—Authority for Assumed Identity

### 15KA Application for authority to acquire or use assumed identity

(1) A law enforcement officer of a law enforcement agency may apply to the chief officer mentioned in subsection (2) for an authority for the officer or any other person to do either or both of the following:

(a) acquire an assumed identity;

(b) use an assumed identity.

(2) An application by a law enforcement officer of a law enforcement agency under subsection (1) is to be made to:

(a) if the person who is to acquire or use the assumed identity is a foreign officer, or the assumed identity is to be used in a foreign country:

(i) if the applicant is a member of the staff of the ACC—the chief officer of the ACC; or

(ii) in any other case—the chief officer of the Australian Federal Police; or

(b) in any other case—the chief officer of the law enforcement agency.

(3) An intelligence officer of an intelligence agency may apply to the chief officer of the agency for an authority for the officer or any

other person (including a foreign officer) to do either or both of the following:

(a) acquire an assumed identity;

(b) use an assumed identity.

(4) A separate application must be made in respect of each assumed identity to be acquired or used.

(5) An application:

(a) must be in writing in the form approved by the chief officer; and

(b) must contain:

(i) the name of the applicant; and

(ii) the name of the person to be authorised to acquire or use an assumed identity (if not the applicant); and

(iii) if the person referred to in subparagraph (ii) is not an officer of either an intelligence agency or a law enforcement agency or a foreign officer—the name and rank or position of the person proposed to be appointed as supervisor and an explanation of why it is necessary for a person who is not an officer to acquire or use the assumed identity; and

(iv) details of the proposed assumed identity; and

(v) reasons for the need to acquire or use an assumed identity; and

(vi) if the assumed identity is necessary for a purpose mentioned in subparagraph 15KB(2)(a)(i) or (ii)—details of the investigation or intelligence-gathering exercise in which the assumed identity will be used (to the extent known); and

(vii) details of any issuing agencies and the types of evidence to be issued by them; and

(viii) details of any application of a kind referred to in section 15KG (making entries in register of births, deaths or marriages) that is to be made under a corresponding assumed identity law.

(6) The chief officer may require the applicant to give such additional information concerning the application as is necessary for the chief officer's proper consideration of the application.

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

## 15KB Determination of applications

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

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

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

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

(4) The officer appointed as supervisor must be:

(a) in the case of the Australian Federal Police—a person who holds the rank of sergeant or an equivalent or higher rank; or

(b) in the case of Customs—a person who holds the position, or performs the duties, of a Customs Level 4 officer, or an equivalent or higher position, in Customs; or

(c) in the case of the ACC—a person who holds the position, or performs the duties, of either a senior investigator or of an APS Executive Level 1 position, or an equivalent or higher position, in the ACC; or

(d) in the case of the Australian Commission for Law Enforcement Integrity—a staff member of the Australian Commission for Law Enforcement Integrity who is authorised in writing by the Integrity Commissioner to act as a supervisor; or

(e) in the case of the Australian Taxation Office—a person who holds the position, or performs the duties, of an APS Executive Level 2 position, or an equivalent or higher position, in the Australian Taxation Office; or

(f) in the case of the Australian Security Intelligence Organisation—a person who holds the position, or performs the duties, of an ASIO Executive Officer Level 1 position, or an equivalent or higher position, in the Australian Security Intelligence Organisation; or

(g) in the case of the Australian Secret Intelligence Service—an intelligence officer of the Australian Secret Intelligence Service who is determined by the Director-General of the Australian Secret Intelligence Service.

(5) An authority may also authorise any one or more of the following:

(a) an application of a kind referred to in section 15KG for an order for an entry in a register of births, deaths or marriages under a corresponding assumed identity law;

(b) a request under section 15KI or 15KX;

(c) the use of an assumed identity in a foreign country.

(6) However, the chief officer of the ACC, the chief officer of the Australian Federal Police or the chief officer of an intelligence

agency may only authorise the use of the assumed identity in a foreign country if he or she is satisfied that it is reasonably necessary to do so.

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

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

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

(8) An authority is not a legislative instrument.

## 15KC Form of authority

(1) An authority must be:
  (a) in writing in the form approved by the chief officer; and
  (b) signed by the person granting it.

(2) An authority must state the following:
  (a) the name of the person granting the authority;
  (b) the date of the authority;
  (c) details of the assumed identity authorised;
  (d) details of any evidence of the assumed identity that may be acquired under the authority;
  (e) the conditions (if any) to which the authority is subject;
  (f) why the authority is granted;
  (g) if the authority relates to an authorised intelligence officer, an authorised law enforcement officer or a foreign officer—the name of the officer;
  (h) if the authority relates to an authorised civilian whose supervisor is a law enforcement officer:
    (i) the name of the authorised civilian; and
    (ii) the name of his or her supervisor under the authority; and
    (iii) the period for which the authority will remain in force, being a period not exceeding 3 months;
  (i) if the authority relates to an authorised civilian whose supervisor is an intelligence officer:
    (i) the name of the authorised civilian; and
    (ii) the name of his or her supervisor under the authority.

(3) The authority must also state the following:
  (a) each issuing agency to which a request may be made under section 15KI or 15KX;
  (b) whether it authorises an application under a corresponding assumed identity law for an order for an entry in a register of births, deaths or marriages;
  (c) whether the assumed identity can be used in a foreign country and the reasons for the need for this use.

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

(4) To avoid doubt, subparagraph (2)(h)(iii) does not prevent the grant of one or more further authorities in relation to an authorised civilian.

## 15KD Period of authority

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

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

## 15KE Variation or cancellation of authority

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

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

(2) The chief officer must give written notice of the variation or cancellation to:
  (a) where practicable, the authorised person to whom it relates; and

(b) if the authorised person is an authorised civilian—the authorised person's supervisor.

(3) The notice must state why the authority is varied or cancelled.

(4) The variation or cancellation takes effect:

(a) if the written notice is given to the authorised person and the authorised person is not an authorised civilian—on the day the written notice is given to the authorised person or, if a later day is stated in the notice, on the later day; or

(b) if the authorised person is an authorised civilian and the written notice is given to the authorised person's supervisor—on the day the written notice is given to the authorised person's supervisor or, if a later day is stated in the notice, on the later day; or

(c) in any other case—on the day stated in the notice.

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

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

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

## 15KF Yearly review of authority

(1) The chief officer of an agency must periodically review each authority granted by the chief officer or a delegate of the chief officer under this Part.

(2) A review of an authority under this section is to be conducted:

(a) in the case of an authority granted by the chief officer or a delegate of the chief officer of an intelligence agency to an authorised intelligence officer—at least once every 3 years; or

(b) in all other cases—at least once every 12 months.

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

(3) The purpose of a review is to determine whether use of the assumed identity under the authority is still necessary.

(4) If the chief officer is satisfied on a review that use of the assumed identity under the authority is no longer necessary, he or she must cancel the authority under section 15KE.

(5) If the chief officer is satisfied on a review that use of the assumed identity under the authority is still necessary, he or she must record his or her opinion, and the reasons for it, in writing.

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

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

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

The chief officer of:

(a) a law enforcement agency; or

(b) an intelligence agency;

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

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

(1) This section applies if:

(a) an authority for an assumed identity ceases to be in force; and

(b) there is an entry in relation to that assumed identity in a register of births, deaths or marriages because of an order under a corresponding assumed identity law.

(2) The chief officer must apply for an order under the corresponding assumed identity law to cancel the entry within 28 days after the day the authority ceases to be in force.

## Division 3—Evidence of Assumed Identity

### 15KI Request for evidence of assumed identity

(1) This section applies if an authority granted under section 15KB authorises a request under this section.

(2) The chief officer of a law enforcement agency or an intelligence agency who grants the authority may request the chief officer of an issuing agency stated in the authority to:
  (a) produce evidence of an assumed identity in accordance with the authority; and
  (b) give evidence of the assumed identity to the following:
    (i) the authorised person named in the authority;
    (ii) an officer of the law enforcement agency or the intelligence agency specified by the chief officer of that agency in the request.

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

(3) The request must state a reasonable period for compliance with the request.

(4) The request must include:
  (a) the date of the authority granted under section 15KB; and
  (b) details of the assumed identity authorised; and
  (c) details of any evidence of the assumed identity that may be acquired under the authority.

(5) A request must not be made under this section for an entry in a register of births, deaths or marriages.

(6) In this section:

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

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

## 15KJ Government issuing agencies to comply with request

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

## 15KK Non-government issuing agencies may comply with request

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

## 15KL Cancellation of evidence of assumed identity

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

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

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

(2) In this section:

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

## 15KM Return of evidence of assumed identity

(1) This section applies if an authority for a person to acquire or use an assumed identity ceases to be in force.

(2) The chief officer of a law enforcement agency or the chief officer of an intelligence agency may, in writing, request the person to return to the chief officer any evidence of the assumed identity acquired under the authority.

(3) A person commits an offence if:

(a) a request has been made to the person under subsection (2); and

(b) the person fails to comply with the request.

Penalty: 10 penalty units.

### 15KN Protection from criminal liability—officers of issuing agencies

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

### 15KO Indemnity for issuing agencies and officers

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

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

## Division 4—Effect of Authority

### 15KP Assumed identity may be acquired and used

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

## 15KQ Protection from criminal liability—authorised persons

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

(a) the thing is done in the course of acquiring or using an assumed identity in accordance with an authority; and

(b) the thing is done:

(i) in the case of an authorised intelligence officer, an authorised law enforcement officer or an authorised foreign officer—in the course of his or her duty; or

(ii) in the case of an authorised civilian—in accordance with any direction by his or her supervisor under the authority; and

(c) doing the thing would not be an offence if the assumed identity were the person's real identity.

## 15KR Protection from criminal liability—third parties

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

(a) the person is a Commonwealth officer; and

(b) the thing is done in the course of the person's duty; and

(c) the chief officer who granted the authority has authorised the doing of the thing; and

(d) if an authorised person had done the thing in accordance with an authority, the authorised person would not have been criminally responsible for the offence because of the application of section 15KQ.

## 15KS Indemnity for authorised persons

(1) This section applies if the chief officer of either a law enforcement agency or an intelligence agency grants an authority.

(2) The Commonwealth must indemnify the authorised person under the authority for any liability incurred by the person (including reasonable costs) because of something done by the person if:

(a) the thing is done in the course of acquiring or using an assumed identity in accordance with the authority; and

(b) the thing is done:

(i) in the case of an authorised intelligence officer, an authorised law enforcement officer or an authorised foreign officer—in the course of his or her duty; or

(ii) in the case of an authorised civilian—in accordance with any direction by his or her supervisor under the authority; and

(c) any requirements prescribed under the regulations have been met.

## 15KT Particular qualifications

(1) Sections 15KQ, 15KR and 15KS do not apply to anything done by an authorised person if:

(a) a particular qualification is needed to do the thing; and

(b) the person does not have that qualification.

(2) Subsection (1) applies whether or not the person has acquired, as evidence of an assumed identity, a document that indicates that he or she has that qualification.

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

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

(1) If an authority has been varied in a way that limits its scope, this Part continues to apply to the authorised person to whom it relates as if it had not been varied in that way, for as long as the person:

(a) is unaware of the variation; and

(b) is not reckless about the existence of the variation.

(2) If an authority has been cancelled, this Part continues to apply to the authorised person to whom it related as if it had not been cancelled, for as long as the person:

(a) is unaware of the cancellation; and

(b) is not reckless about the existence of the cancellation.

(3) For the purposes of this section, a person is reckless about the existence of the variation or cancellation of an authority or authorisation if:
  (a) the person is aware of a substantial risk that the variation or cancellation has happened; and
  (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk that the authority has not been varied or cancelled.

## 15KV Transfer of control of authorities

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

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

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

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

(3) The chief officer of the originating agency must give the chief officer of the receiving agency a written document setting out:
  (a) whether the authority has been reviewed under section 15KF, and if so, when a review was last conducted; and
  (b) whether control of the authority has previously been transferred under this section, and if so:

(i) the date of each such transfer; and

(ii) the name of the originating agency and receiving agency in relation to each such transfer.

(4) Control of the authority is transferred at the time when the chief officer of the receiving agency signs and dates a copy of the authority.

(5) Despite subsection (4), if the authority relates to an authorised civilian, control of the authority is not transferred until the chief officer of the receiving agency appoints an officer of that agency to be the authorised civilian's supervisor.

(6) The chief officer of the receiving agency must vary the authority in accordance with section 15KE to state the name of the supervisor appointed under subsection (5).

(7) Control of an authority must not be transferred under this section if:

(a) the person who is to acquire or use the assumed identity, or who has acquired or used the assumed identity, is a foreign officer authorised to acquire or use the assumed identity by the chief officer of a law enforcement agency; or

(b) the assumed identity is to be, is being or has been used in a foreign country and the authority was granted by the chief officer of a law enforcement agency.

## 15KW Consequences of transfer of control of authorities

(1) This section sets out the consequences of the transfer of control of an authority under section 15KV.

(2) The authority continues to be in force after the transfer.

(3) The following provisions have effect, after the transfer, as if the chief officer of the receiving agency had granted the authority instead of the chief officer of the originating agency:

(a) section 15KE (which deals with variation and cancellation of authorities);

(b) section 15KF (which deals with review of authorities);

(c) sections 15KI and 15KX (which deal with requests for evidence of assumed identities).

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

(5) Section 15KL (which deals with cancellation of evidence of assumed identity) has effect as if the chief officer of the receiving agency had made the request under section 15KI.

## Division 5—Mutual Recognition under Corresponding Laws

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

(1) This section applies if an authority granted under section 15KB authorises a request under this section.

(2) The chief officer of a law enforcement agency or an intelligence agency who grants the authority may request the chief officer of an issuing agency of a participating jurisdiction stated in the authority to:
  (a) produce evidence of the assumed identity in accordance with the authority; and
  (b) give evidence of the assumed identity to the following:
    (i) the authorised person named in the authority;
    (ii) an officer of the law enforcement agency or the intelligence agency who is named in the request.

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

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

(3) The request must state that it is a request under this section.

(4) A request must not be made under this section for an entry in a register of births, deaths or marriages.

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

(1) This section applies if:
  (a) an authority under a corresponding assumed identity law authorises a request for:
    (i) the production of evidence of an assumed identity from a Commonwealth government issuing agency; and
    (ii) the giving of evidence of the assumed identity to the authorised person named in the authority; and
  (b) the request is made to the chief officer of the Commonwealth government issuing agency; and
  (c) the request states a reasonable period for compliance with the request.

(2) Subject to subsection (3), the chief officer of the agency who receives the request must comply with the request within the reasonable period stated in the request.

(3) This section does not require any of the following to comply with a request made as mentioned in paragraph (1)(b):
  (a) the chief officer of an intelligence agency;
  (b) the chief officer of the Defence Signals Directorate;
  (c) the chief officer of the Defence Imagery and Geospatial Organisation.

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

(1) The chief officer of an issuing agency who produces evidence of an assumed identity because of a request mentioned in

section 15KY must cancel the evidence if directed in writing to do so by the chief officer who authorised the request.

(2) In this section:

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

## 15L Indemnity for issuing agencies and officers

(1) This section applies if the chief officer of either a law enforcement agency or an intelligence agency makes a request to the chief officer of an issuing agency of a participating jurisdiction under section 15KX.

(2) The agency that makes the request must indemnify the issuing agency and any officer of the issuing agency, for any liability incurred by the issuing agency or the officer of the issuing agency (including reasonable costs) if:

(a) the liability is incurred because of something done in the course of duty by the issuing agency or the officer of the issuing agency to comply with the request; and

(b) any requirements prescribed under the regulations have been met.

## 15LA Application of this Part to authorities under corresponding laws

(1) The following provisions apply to anything done in relation to a corresponding authority as if it were an authority granted under section 15KB:

(a) section 15KP (assumed identity may be acquired and used);

(b) section 15KT (particular qualifications);

(c) section 15KU (effect of being unaware of variation or cancellation of authority);

(d) section 15LB (misuse of assumed identity);

(e) section 15LC (disclosing information about assumed identity).

(2) Sections 15KN, 15KQ and 15KR apply to anything done in relation to a corresponding authority as if:

(a) the corresponding authority were an authority granted under section 15KB; and

(b) references in those sections to an offence under a law of a State or Territory were omitted.

## Division 6—Compliance and Monitoring

### Subdivision A—Misuse of Assumed Identity and Information

#### 15LB Misuse of assumed identity

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

Penalty: Imprisonment for 2 years.

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

Penalty: Imprisonment for 2 years.

#### 15LC Disclosing information about assumed identity

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

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

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct causes the disclosure of information; and

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

(d) the person is reckless as to whether his or her conduct will endanger the health or safety of any person.

Penalty: Imprisonment for 10 years.

(3) A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct causes the disclosure of information; and

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

(d) the person is reckless as to whether his or her conduct will prejudice the effective conduct of an investigation or intelligence-gathering in relation to criminal activity.

Penalty: Imprisonment for 10 years.

(4) A person does not commit an offence under subsection (1), (2) or (3) if the person causes the disclosure of information mentioned in paragraph (1)(c), (2)(c) or (3)(c) (as the case may be) and the disclosure is:

(a) in connection with the administration or execution of this Part or a corresponding assumed identity law; or

(b) for the purposes of any legal proceeding arising out of or otherwise related to this Part or a corresponding assumed identity law or of any report of any such proceedings; or

(c) made by the Commonwealth Director of Public Prosecutions for the purposes of a legal proceeding; or

(d) in accordance with the exercise of powers or performance of functions of a law enforcement agency or an intelligence agency; or

(e) in accordance with any requirement imposed by law.

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

Note 2: The mere existence of an exception under subsection (4) does not mean that a person might not commit an offence under a provision of another Act (such as section 39 or 41 of the *Intelligence Services Act 2001*) if the person causes the disclosure of information mentioned in paragraph (1)(c), (2)(c) or (3)(c).

## Subdivision B—Reporting and record-keeping

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

(1) As soon as practicable after the end of each financial year, the chief officer of a law enforcement agency must submit a report to the Minister that includes the following information for the year:

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

(b) a general description of the activities undertaken by authorised civilians and authorised law enforcement officers when using assumed identities under this Part during the year;

(c) the number of applications for authorities that were refused during the year;

(d) the number of authorities of which control was transferred by the chief officer under section 15KV during the year;

(e) the number of authorities of which control was transferred to the chief officer under section 15KV during the year;

(f) a statement whether or not any fraud or other unlawful activity was identified by an audit under section 15LG during the year;

(g) any other information relating to authorities and assumed identities and the administration of this Part that the Minister considers appropriate.

(2) The chief officer must advise the Minister of any information in the report that, in the chief officer's opinion, should be excluded from the report before the report is laid before the Parliament

because the information, if made public, could reasonably be expected to:

(a) endanger a person's safety; or

(b) prejudice an investigation or prosecution; or

(c) compromise any law enforcement agency's operational activities or methodologies.

(3) The Minister must exclude information from the report if satisfied on the advice of the chief officer of any of the grounds set out in subsection (2) and must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

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

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

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

(b) a general description of the activities undertaken by authorised civilians and authorised intelligence officers when using assumed identities under this Part during the year;

(c) the number of applications for authorities that were refused during the year;

(d) the number of authorities of which control was transferred by the chief officer under section 15KV during the year;

(e) the number of authorities of which control was transferred to the chief officer under section 15KV during the year;

(f) a statement whether or not any fraud or other unlawful activity was identified by an audit under section 15LG during the year;

(g) any other information relating to authorities and assumed identities and the administration of this Part that the Inspector-General considers appropriate.

## 15LF Record keeping

(1) The chief officer of either a law enforcement agency or an intelligence agency must keep appropriate records about the operation of this Part in respect of the agency.

(2) The records must include the following, in respect of authorities granted, varied or cancelled under this Part in respect of the agency:

(a) the date on which an authority was granted, varied or cancelled and the name of the person who granted, varied or cancelled it;

(b) the name of the authorised person under the authority, together with details of the assumed identity to which the authority applies;

(c) details of any request made to an issuing agency under section 15KI or 15KX (request for evidence of assumed identity) in respect of the authority;

(d) the general nature of the duties undertaken by the authorised person under the assumed identity;

(e) general details of relevant financial transactions entered into using the assumed identity;

(f) details of reviews of the authority under section 15KF (yearly review of authority).

(3) The records must include the following in respect of authorities the control of which has been transferred to or from the chief officer of the agency under section 15KV:

(a) the names of the chief officers of the originating agency and the receiving agency in relation to the transfer;

(b) the name of the originating agency and the receiving agency in relation to the transfer;

(c) the date of the transfer;

(d) if control of the authority had previously been transferred under section 15KV:

(i) the date of each such transfer; and

(ii) the name of the originating agency and receiving agency in relation to each such transfer.

### 15LG Audit of records

(1) The chief officer of either a law enforcement agency or an intelligence agency must cause the records kept under section 15LF for each authority in respect of the agency to be audited:
  (a) at least once every 6 months while the authority is in force; and
  (b) at least once in the 6 months after the cancellation or expiry of the authority.

(2) The audit is to be conducted by a person appointed by the chief officer.

(3) The person appointed to conduct the audit:
  (a) may, but need not be, an officer of the agency; and
  (b) must not be a person:
    (i) who granted, varied or cancelled any of the authorities to which the records under section 15LF relate; or
    (ii) to whom control of any of the authorities to which the records under section 15LF relate was transferred; or
    (iii) who is or was an authorised person under any of the authorities to which those records relate.

(4) The results of an audit must be reported to the chief officer.

## Division 7—General

### 15LH Delegation of chief officer's functions

(1) Except as provided by this section (and despite any other Act or law to the contrary) the functions of a chief officer under this Part may not be delegated to any other person.

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

(3) In this section:

***senior officer*** means:

(a) in relation to the Australian Federal Police:

(i) any senior executive AFP employee of the Australian Federal Police within the meaning of section 25 of the *Australian Federal Police Act 1979*; or

(ii) any Deputy Commissioner of Police within the meaning of section 6 of the *Australian Federal Police Act 1979*; or

(iii) a person occupying a position in the Australian Federal Police that is equivalent to or higher than the positions mentioned in subparagraphs (i) and (ii); and

(b) in relation to Customs—any SES employee who is a member of the staff of Customs within the meaning of section 15 of the *Customs Administration Act 1985*, or a person occupying an equivalent or higher position in Customs; and

(c) in relation to the ACC—any SES employee who is a member of the staff of the ACC within the meaning of section 47 of the *Australian Crime Commission Act 2002*, or a person occupying an equivalent or higher position in the ACC; and

(d) in relation to the Australian Commission for Law Enforcement Integrity:

(i) the Assistant Integrity Commissioner; or

(ii) a staff member of the Australian Commission for Law Enforcement Integrity who is an SES employee, or a person occupying an equivalent or higher position in the Australian Commission for Law Enforcement Integrity, and who is authorised in writing by the Integrity Commissioner for the purposes of this provision; and

(e) in relation to the Australian Taxation Office—any Deputy Commissioner as defined in section 2 of the *Taxation Administration Act 1953*, or a person occupying an equivalent or higher position in the Australian Taxation Office; and

(f) in relation to the Australian Security Intelligence Organisation—any senior officer of the Australian Security Intelligence Organisation as defined in section 24 of the *Australian Security Intelligence Organisation Act 1979*, or a

person occupying an equivalent or higher position in the Australian Security Intelligence Organisation; and

(g) in relation to the Australian Secret Intelligence Service (***ASIS***)—a senior ASIS intelligence officer designated by the Deputy Director-General of ASIS, or a person occupying an equivalent or higher position in ASIS; and

(h) in relation to a Commonwealth agency specified in the regulations for the purposes of the definition of ***law enforcement agency***—an officer specified in the regulations to be a senior officer of the agency.

# Part IACA—Witness identity protection for operatives

## Division 1—Preliminary

### 15M Definitions

(1) In this Part:

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

***chief officer*** of a law enforcement agency means the following:

(a) in relation to the Australian Federal Police—the Commissioner of the Australian Federal Police;

(b) in relation to Customs—the Chief Executive Officer of Customs;

(c) in relation to the ACC—the Chief Executive Officer of the ACC;

(d) in relation to the Australian Commission for Law Enforcement Integrity—the Integrity Commissioner;

(e) in relation to the Australian Taxation Office—the Commissioner of Taxation;

(f) in relation to a Commonwealth agency specified in the regulations for the purposes of the definition of ***law enforcement agency***—the officer specified in the regulations as the chief officer of that agency.

***conduct*** includes any act or omission.

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

***corresponding witness identity protection law*** means:

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

(b) a provision or provisions of a law of a State or Territory;

prescribed by the regulations for the purposes of this definition.

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

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

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

(a) Part IAB (about controlled operations); or

(b) Part IAC (about assumed identities).

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

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

***law enforcement agency*** means the following:

(a) the Australian Federal Police;

(b) Customs;

(c) the ACC;

(d) the Australian Commission for Law Enforcement Integrity;

(e) the Australian Taxation Office;

(f) any other Commonwealth agency specified in the regulations.

***operative*** means a person who is or was:

(a) a participant in a controlled operation authorised under Part IAB; or

(b) authorised to acquire and use an assumed identity under Part IAC by the chief officer of a law enforcement agency;

but does not include a person who is or was an intelligence officer (within the meaning of Part IAC).

***party*** to a proceeding, means:

(a) for a criminal proceeding—the prosecutor and each accused person; or

(b) for a civil proceeding—each person who is a party to the proceeding.

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

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

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

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

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

(2) For the purposes of this Part:

(a) anything permitted to be done by a party to a proceeding may be done by the party's lawyer; and

(b) any requirement to give something to a party to a proceeding is satisfied by giving the thing to the party's lawyer.

## 15MA Meaning of *criminal proceeding*

(1) In this Part, ***criminal proceeding*** means a proceeding for the prosecution, whether summarily or on indictment, of an offence or offences.

(2) To avoid doubt, each of the following is part of a ***criminal proceeding***:

(a) a bail proceeding;

(b) a committal proceeding;

(c) the discovery, exchange, production, inspection or disclosure of intended evidence, documents and reports of persons intended to be called by a party to give evidence;

(d) a sentencing proceeding;

(e) an appeal proceeding;

(f) a proceeding with respect to any matter in which a person seeks a writ of mandamus or prohibition or an injunction against an officer or officers of the Commonwealth (within the meaning of subsection 39B(1B) of the *Judiciary Act 1903*) in relation to:

(i) a decision to prosecute a person for one or more offences against a law of the Commonwealth; or

(ii) a related criminal justice process decision (within the meaning of subsection 39B(3) of that Act);

(g) any other pre-trial, interlocutory or post-trial proceeding prescribed by regulations for the purposes of this paragraph.

## 15MB Meaning of *civil proceeding*

(1) In this Part, ***civil proceeding*** means any proceeding in a court of the Commonwealth, a State or Territory, other than a criminal proceeding.

(2) To avoid doubt, each of the following is part of a ***civil proceeding***:

(a) any proceeding on an ex parte application (including an application made before pleadings are filed in a court);

(b) the discovery, exchange, production, inspection or disclosure of intended evidence, documents and reports of persons intended to be called by a party to give evidence;

(c) an appeal proceeding;

(d) any interlocutory or other proceeding prescribed by regulations for the purposes of this paragraph.

## 15MC When a charge is outstanding or pending

(1) For the purposes of this Part:

(a) a charge against a person for an offence is ***outstanding*** until the charge is finally dealt with in any of the following ways:

(i) the charge is withdrawn;

(ii) the charge is dismissed by a court;

(iii) the person is discharged by a court following a committal hearing;

(iv) the person is acquitted or found guilty of the offence by a court; and

(b) a charge against a person for an offence is ***pending*** if the person has not yet been charged with the offence, but:

(i) the person has been arrested for the offence, unless the person has been later released without being charged with an offence; or

(ii) a summons to appear before a court to answer a charge for the offence has been served on the person; and

(c) an allegation of professional misconduct against a person is ***outstanding*** if the allegation has not been finally dealt with in accordance with the procedures that apply for the purposes of dealing with an allegation of that kind.

## Division 2—Witness Identity Protection Certificates for Operatives

### 15MD Application of Part

(1) This Part applies to a proceeding in which an operative is, or may be, required to give evidence obtained as an operative.

(2) To avoid doubt, this Part does not affect the operation of any law in relation to the protection of a person who gives, or intends to give, evidence in a proceeding.

(3) To avoid doubt, this Part does not, other than as expressly provided, limit the power of a court to control proceedings in relation to a matter before it.

### 15ME Witness identity protection certificate

(1) The chief officer of a law enforcement agency may give a witness identity protection certificate for an operative in relation to a proceeding if:

(a) the operative is, or may be required, to give evidence in the proceeding; and

(b) the chief officer is satisfied on reasonable grounds that the disclosure in the proceeding of the operative's identity or where the operative lives is likely to:
  (i) endanger the safety of the operative or another person; or
  (ii) prejudice any current or future investigation; or
  (iii) prejudice any current or future activity relating to security.

(2) The chief officer must make all reasonable enquiries to enable the chief officer to ascertain the information required to be included in the certificate by section 15MG.

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

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

(4) A decision to give a witness identity protection certificate:
  (a) is final; and
  (b) cannot be appealed against, reviewed, called into question, quashed or invalidated in any court.

(5) Subsection (4) does not prevent a decision to give a witness identity protection certificate being called into question in the course of any proceedings of a disciplinary nature against the person who made the decision.

(6) A witness identity protection certificate purporting to be issued under subsection (1):
  (a) must be taken to be such a certificate and to have been properly issued; and
  (b) is prima facie evidence of the matters in the certificate.

(7) A witness identity protection certificate is not a legislative instrument.

## 15MF Statutory declaration by operative

(1) Before a witness identity protection certificate is given for an operative, the operative must make a statutory declaration of the following matters:

(a) whether the operative has been convicted or found guilty of an offence and, if so, particulars of each offence;

(b) whether any charges against the operative for an offence are pending or outstanding and, if so, particulars of each charge;

(c) if the operative is or was a law enforcement officer:

(i) whether the operative has been found guilty of professional misconduct and, if so, particulars of each finding; and

(ii) whether, to the operative's knowledge, any allegations of professional misconduct against him or her are outstanding and, if so, particulars of each allegation;

(d) whether, to the operative's knowledge, a court has made any adverse comment about the operative's credibility and, if so, particulars of the comment;

(e) whether the operative has made a false representation when the truth was required and, if so, particulars of the representation;

(f) if there is anything else known to the operative that may be relevant to the operative's credibility—particulars of the thing.

(2) Subject to subsection (3), a person cannot be compelled to disclose or produce a statutory declaration made under this section in any proceeding.

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

(a) proceedings for perjury or otherwise in respect of the falsity of the statutory declaration; or

(b) proceedings of a disciplinary nature against a law enforcement officer; or

(c) investigations or inquiries by a person or body in any jurisdiction having jurisdiction to investigate or inquire into the conduct of a law enforcement officer.

## 15MG Form of witness identity protection certificate

(1) A witness identity protection certificate for an operative in relation to a proceeding must state the following:

(a) if the operative:

(i) is known to a party to the proceeding or a party's lawyer by a name other than the operative's real name—that name (the ***assumed name***); or

(ii) is not known to any party to the proceeding or any party's lawyer by a name—the operative's court name for the proceeding;

(b) the period the operative was involved in the investigation to which the proceeding relates;

(c) the name of the agency;

(d) the date of the certificate;

(e) the grounds for giving the certificate;

(f) whether the operative has been convicted or found guilty of an offence and, if so, particulars of each offence;

(g) whether any charges against the operative for an offence are pending or outstanding and, if so, particulars of each charge;

(h) if the operative is or was a law enforcement officer:

(i) whether the operative has been found guilty of professional misconduct and, if so, particulars of each finding; and

(ii) whether any allegations of professional misconduct against the operative are outstanding and, if so, particulars of each allegation;

(i) whether, to the knowledge of the person giving the certificate, a court has made any adverse comment about the operative's credibility and, if so, particulars of the comment;

(j) whether, to the knowledge of the person giving the certificate, the operative has made a false representation when the truth was required and, if so, particulars of the representation;

(k) if there is anything else known to the person giving the certificate that may be relevant to the operative's credibility—particulars of the thing.

(2) A witness identity protection certificate for an operative must not contain information that may allow the operative's identity, or where the operative lives, to be revealed.

## 15MH Filing and notification

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

(2) The person who files the certificate must give a copy of it to each party to the proceeding at least 14 days (or the shorter period agreed to by the party) before the day the operative is to give evidence.

(3) The court may order the person filing the certificate to give a copy of it to a person stated in the order.

(4) This section applies subject to section 15MI.

## 15MI Leave for non-compliance

(1) The person who has filed, or proposes to file, a witness identity protection certificate may apply to the court for leave not to comply with the requirement under subsection 15MH(2) in relation to the time within which a copy of the certificate is to be given.

(2) However, the court must not give such leave unless it is satisfied that it was not reasonably practicable to comply with the requirement referred to in subsection (1).

## 15MJ Effect of witness identity protection certificate

(1) This section applies if a witness identity protection certificate for an operative in relation to a proceeding is filed in a court.

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

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

(iii) a person involved in the proceeding must not make a statement that discloses, or may lead to the disclosure of, the operative's identity or where the operative lives.

(3) For the purposes of this section, a person involved in a proceeding includes:

(a) the court; and

(b) a party to the proceeding; and

(c) a person given leave to be heard or make submissions in the proceeding; and

(d) a lawyer representing a person referred to in paragraph (b) or (c) or a lawyer assisting the court in the proceeding; and

(e) any other officer of the court or person assisting the court in the proceeding; and

(f) a person acting in the execution of any process or the enforcement of any order in the proceeding.

### 15MK Orders to protect operative's identity etc.

(1) The court in which a witness identity protection certificate is filed may make any order it considers necessary or desirable to protect the identity of the operative for whom the certificate is given or to prevent the disclosure of where the operative lives.

(4) The court must make an order suppressing the publication of anything said when an order is made as mentioned in subsection (1).

(5) To avoid doubt, subsection (4) does not prevent the taking of a transcript of court proceedings, but the court may make an order for how the transcript is to be dealt with, including an order suppressing its publication.

(6) A person commits an offence if:

(a) an order has been made under subsection (1), (4) or (5); and

(b) the person engages in conduct; and

(c) the conduct contravenes the order.

Penalty: Imprisonment for 2 years.

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

## 15ML Disclosure of operative's identity to presiding officer

(1) This section applies if a witness identity protection certificate for an operative in relation to a proceeding is filed in a court.

(2) The presiding officer in the proceeding may require the operative to do one or both of the following:
  (a) to disclose the operative's true identity to the presiding officer;
  (b) to provide the presiding officer with photographic evidence of that identity.

(3) The presiding officer must not:
  (a) record information disclosed to the presiding officer under subsection (2); or
  (b) retain or copy a document or other thing provided to the presiding officer under that subsection.

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

(1) This section applies if a witness identity protection certificate for an operative in relation to a proceeding is filed in a court.

(2) A party to the proceeding, or a lawyer assisting the court in the proceeding, may apply to the court:
  (a) for leave:
    (i) to ask a question of a witness, including the operative, that may lead to the disclosure of the operative's identity or where the operative lives; or
    (ii) for a person involved in the proceeding to make a statement that discloses, or may lead to the disclosure of, the operative's identity or where the operative lives; or
  (b) for an order requiring a witness, including the operative, to answer a question, give evidence or provide information that discloses, or may lead to the disclosure of, the operative's identity or where the operative lives.

(3) In this section:

***person involved in the proceeding*** has the same meaning as in subsection 15MJ(3).

(4) The court may do either or both of the following:
  (a) give leave for the party or lawyer to do anything mentioned in paragraph (2)(a);
  (b) make an order requiring a witness to do anything mentioned in paragraph (2)(b).

(5) However, the court must not give leave or make an order unless it is satisfied about each of the following:
  (a) there is evidence that, if accepted, would substantially call into question the operative's credibility;
  (b) it would be impractical to test properly the credibility of the operative without allowing the risk of disclosure of, or disclosing, the operative's identity or where the operative lives;
  (c) it is in the interests of justice for the operative's credibility to be able to be tested.

(6) If there is a jury in the proceeding, the application must be heard in the absence of the jury.

(7) Unless the court considers that the interests of justice require otherwise, the court must be closed when:
  (a) the application is made; and
  (b) if leave is given or an order is made—the question is asked (and answered), the evidence is given, the information is provided or the statement is made.

(8) The court must make an order suppressing the publication of anything said when:
  (a) the application is made; and
  (b) if leave is given or an order is made—the question is asked (and answered), the evidence is given, the information is provided or the statement is made.

(9) To avoid doubt, subsection (8) does not prevent the taking of a transcript of court proceedings, but the court may make an order for how the transcript is to be dealt with, including an order suppressing its publication.

(10) The court may make any other order it considers appropriate to protect the operative's identity or to prevent the disclosure of where the operative lives.

(11) A person commits an offence if:
  (a) an order has been made under subsection (8), (9) or (10); and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the order.

Penalty: Imprisonment for 2 years.

(12) Subsection (11) does not limit the court's powers, including, but not limited to, the court's power to punish for contempt.

## 15MN Application for leave—joinder as respondent

(1) This section applies if:
  (a) a witness identity protection certificate for an operative in relation to a proceeding is filed in a court; and
  (b) a person applies:
    (i) for leave under section 15MI or 15MM; or
    (ii) for an order under section 15MK or 15MM.

(2) The court in which the application is pending may allow a person to join the application as a respondent if:
  (a) the person is:
    (i) the operative in relation to whom the witness identity protection certificate is given; or
    (ii) the chief officer of the agency who gave the witness identity protection certificate; and
  (b) the person applies to be joined to the application as a respondent; and
  (c) the person has sufficient interest in the subject matter of the application.

(3) If a court allows a person to join the application as a respondent under subsection (2), the court must allow the person, or the person's legal representative, to appear and be heard.

## 15MO Directions to jury

(1) This section applies if:

(a) a witness identity protection certificate for an operative in relation to a proceeding is filed in a court; and
(b) there is a jury in the proceeding; and
(c) the operative gives evidence.

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

## 15MP Appeals and adjournments

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

(2) A court (the ***appeal court***) that has jurisdiction to hear and determine appeals from a judgment, order or direction in the proceedings has jurisdiction to hear and determine an appeal against the decision to give or refuse leave, or to make or refuse to make the order.

(3) The following persons may appeal against the decision to give or refuse leave, or to make or refuse to make the order:
(a) a party to the proceedings;
(b) if the appeal court is satisfied that the operative to whom the certificate relates or the chief officer who gave the certificate has a sufficient interest in the decision—the operative or the chief officer.

(4) If a party to the proceedings appeals against the decision to give or refuse leave, or to make or refuse to make the order, the appeal court may allow the operative to whom the certificate relates, or

the chief officer who gave the certificate, to join the appeal as a respondent, if the appeal court is satisfied that the operative or chief officer has a sufficient interest in the decision.

(5) A party to the proceedings, the operative to whom the certificate relates or the chief officer who gave the certificate may apply to the original court for an adjournment:

(a) to appeal against the decision of the original court to give or refuse leave, or to make or refuse to make the order; or

(b) to decide whether to appeal or seek leave to appeal against the decision.

(6) If an application is made under subsection (5), the original court must grant the adjournment.

## 15MQ Witness identity protection certificate—cancellation

(1) This section applies if the chief officer of a law enforcement agency gives a witness identity protection certificate for an operative in relation to a proceeding.

(2) The chief officer must cancel the witness identity protection certificate if the chief officer considers that it is no longer necessary or appropriate to prevent the disclosure of the operative's identity or where the operative lives.

(3) If the chief officer cancels the certificate after it has been filed in a court, the chief officer must immediately give notice to the court and each party to the proceeding, in writing, that the certificate has been cancelled.

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

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

(1) This section applies if the chief officer of a law enforcement agency gives a witness identity protection certificate for an operative in relation to a proceeding.

(2) The chief officer may, in writing, permit a person to give information (otherwise than in the proceeding) that discloses, or may lead to the disclosure of, the operative's identity or where the

operative lives if the chief officer considers it necessary or appropriate for the information to be given.

(3) The permission:
- (a) must name the person who may give the information; and
- (b) must name the person to whom the information may be given; and
- (c) must state the information that may be given; and
- (d) may state how the information may be given.

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

## 15MS Disclosure offences

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

Penalty: Imprisonment for 2 years.

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

(ii) the conduct is authorised by leave or by an order under section 15MM;

(iii) the conduct is permitted under section 15MR; and

(f) the person is reckless as to whether his or her conduct will endanger the health or safety of another person.

Penalty: Imprisonment for 10 years.

(3) A person commits an offence if:

(a) a witness identity protection certificate for an operative in relation to a proceeding has been given; and

(b) the certificate has not been cancelled under section 15MQ; and

(c) the person engages in conduct; and

(d) the conduct results in the disclosure of the operative's identity or where the operative lives; and

(e) none of the following applies:

(i) the conduct is required by section 15ML;

(ii) the conduct is authorised by leave or by an order under section 15MM;

(iii) the conduct is permitted under section 15MR; and

(f) the person is reckless as to whether his or her conduct will:

(i) prejudice any current or future investigation; or

(ii) prejudice any current or future activity relating to security.

Penalty: Imprisonment for 10 years.

## 15MT Evidentiary certificates

(1) A chief officer of a law enforcement agency may sign a certificate stating any of the following:

(a) that, for the purposes of paragraph 15MS(1)(b), (2)(b) or (3)(b), a witness identity protection certificate for an operative in relation to a proceeding has not been cancelled under section 15MQ;

(b) whether, for the purposes of subparagraph 15MS(1)(e)(i), (2)(e)(i) or (3)(e)(i), the conduct that is the subject of the offence was required by section 15ML;

(c) whether, for the purposes of subparagraph 15MS(1)(e)(ii), (2)(e)(ii) or (3)(e)(ii), the conduct that is the subject of the offence was authorised by leave or by an order under section 15MM;

(d) whether, for the purposes of subparagraph 15MS(1)(e)(iii), (2)(e)(iii) or (3)(e)(iii), the conduct that is the subject of the offence was permitted under section 15MR.

(2) In any proceedings, a certificate given under this section is prima facie evidence of the matters certified in it.

### 15MU Reports about witness identity protection certificates

(1) As soon as practicable after the end of each financial year, the chief officer of a law enforcement agency must submit to the Minister a report about witness identity protection certificates given by the chief officer during that year.

(2) The report must include the following:

(a) the number of witness identity protection certificates given;

(b) on what basis the chief officer was satisfied about the matters mentioned in paragraph 15ME(1)(b) for each certificate;

(c) if disclosure of an operative's identity to a presiding officer was required by section 15ML—details of the proceeding in relation to which disclosure was required and details of the things that the presiding officer required the operative to do under that section;

(d) if leave was given or an order made under section 15MM in a proceeding in which a witness identity protection certificate for an operative was filed—details of the proceeding that relate to the leave or order;

(e) if leave was given for joinder of a person as a respondent to proceedings under section 15MN—details of the person who was joined and who appeared on their behalf;

(f) if leave was given for an adjournment under section 15MP—details of whether an appeal was made against the decision under that section;

(g) if a witness identity protection certificate was cancelled under section 15MQ—the reasons why the certificate was cancelled;

(h) if a permission was given under section 15MR—the reasons why the permission was given;

(i) any other information relating to witness identity protection certificates and the administration of this Part that the Minister considers appropriate.

(3) A report must not include information that discloses, or may lead to the disclosure of, an operative's identity, or where the operative lives, unless the witness identity protection certificate for the operative has been cancelled.

(4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

## Division 3—Mutual Recognition under Corresponding Laws

### 15MW Recognition of witness identity protection certificates under corresponding laws

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

(a) section 15MH (filing and notification);

(b) section 15MI (leave for non-compliance);

(c) section 15MJ (effect of witness identity protection certificate);

(d) section 15MK (orders to protect operative's identity etc.);

(e) section 15ML (disclosure of operative's identity to presiding officer);

(f) section 15MM (disclosure of operative's identity etc. despite certificate);

(g) section 15MN (application for leave—joinder as respondent);

(h) section 15MO (directions to jury);

(i) section 15MP (adjournment for appeal decision);

(j) section 15MS (disclosure offences);

(k) section 15MT (evidentiary certificates).

## Division 4—General

### 15MX Delegation

(1) Except as provided by this section (and despite any other Act or law to the contrary), the functions of a chief officer under this Part may not be delegated to any other person.

(2) A chief officer may delegate any of the chief officer's functions under this Part (except this power of delegation) to a senior officer of the law enforcement agency.

(3) In this section:

***senior officer*** means:

(a) in relation to the Australian Federal Police—a Deputy Commissioner, an Assistant Commissioner, or a person occupying an equivalent or higher rank in the Australian Federal Police; and

(b) in relation to Customs—a Deputy Chief Executive Officer of Customs, or a person occupying an equivalent or higher position in Customs; and

(c) in relation to the ACC, either of the following:

(i) the Executive Director Operational Strategies, the Executive Director Intelligence Strategies, or a person occupying an equivalent or higher position in the ACC;

(ii) a person occupying a position prescribed by the regulations; and

(d) in relation to the Australian Taxation Office—an Assistant Commissioner, or a person occupying an equivalent or higher position in the Australian Taxation Office; and

(e) in relation to a Commonwealth agency specified in the regulations for the purposes of the definition of ***law enforcement agency***—an officer of the agency specified in the regulations to be a senior officer of the agency.

# Part 2—Provisions relating to pre-commencement authorisations under State controlled operations law

## 11 Relationship to other laws and matters

(1) Subject to this item and item 15, this Part is not intended to limit a discretion that a court has:

(a) to admit or exclude evidence in any proceedings; or

(b) to stay criminal proceedings in the interests of justice.

(2) In determining whether evidence should be admitted or excluded in any proceedings, the fact that the evidence was obtained as a result of a person engaging in criminal activity is, subject to subitem (5), to be disregarded if:

(a) the person was a participant in an operation authorised before commencement under a State controlled operations law, acting in the course of that operation; and

(b) the criminal activity was conduct constituting an offence for which a person would, but for item 12, be criminally responsible.

(3) This item applies to criminal activity engaged in before, on or after commencement.

(4) This item applies to the following:

(a) proceedings that were instituted before commencement, but have not been completed as at commencement;

(b) proceedings instituted on or after commencement;

(c) subject to subitem (5)—appeals arising from proceedings instituted before, on or after commencement.

(5) Despite subitem (4), if a court has determined before commencement that particular evidence be excluded, this item does not provide a ground of appeal against that determination.

## 12 Protection from criminal responsibility for conduct engaged in before, on or after commencement under a pre-commencement State authorisation

(1) This item applies to a participant in an operation authorised under a State controlled operations law if:

(a) the operation was authorised before commencement; and

(b) the participant engaged in conduct, whether before, on or after commencement, in the course of, and for the purposes of, the operation; and

(c) engaging in that conduct was a Commonwealth offence.

(2) Despite any other law of the Commonwealth, the participant is not criminally responsible for the Commonwealth offence, if:

(a) the conduct was authorised by, and was engaged in in accordance with, the authority to conduct the controlled operation; and

(b) the conduct did not involve the participant intentionally inducing a person to commit a Commonwealth offence or an offence against a law of a State or Territory that the person would not otherwise have intended to commit; and

(c) the conduct did not involve the participant engaging in any conduct that was likely to:

(i) cause the death of, or serious injury to, any person; or

(ii) involve the commission of a sexual offence against any person; and

(d) if the person is a civilian participant in the operation—he or she acts in accordance with the instructions of a law enforcement officer.

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

## 13 Effect of item 12 on other laws relating to criminal investigation

Item 12 does not apply to a person's conduct that is, or could have been, authorised under a Commonwealth law or a law of a State or Territory relating to the following:

(a) arrest or detention of individuals;

(b) searches of individuals;

(c) entry onto, or searches or inspection of, premises;

(d) searches, inspections or seizures of other property;

(e) forensic procedure;

(f) electronic surveillance devices or telecommunications interception;
(g) identification procedures;
(h) the acquisition or use of assumed identities;
(i) any other matter concerning powers of criminal investigation.

## 14 Protection from criminal responsibility for certain ancillary conduct

(1) This item applies if:
(a) a person engaged in conduct (the ***ancillary conduct***), whether before, on or after commencement, that related to conduct (the ***related conduct***) that:
(i) was engaged in before, on or after commencement by another person; and
(ii) constituted an offence for which a person would, but for item 12, be criminally responsible; and
(b) engaging in the ancillary conduct was or is an ancillary offence (within the meaning of the *Criminal Code*) in relation to the offence constituted by the related conduct.

(2) Despite any law of the Commonwealth, the person who engaged in the ancillary conduct is not criminally responsible for the ancillary offence if, at the time the person engaged in the ancillary conduct, he or she believed the related conduct was being engaged in, or would be engaged in, by a participant in an operation authorised before commencement under a State controlled operations law.

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

## 15 Evidence of authorities

A document purporting to be an authority granted under a State controlled operations law:
(a) is admissible in any legal proceedings; and
(b) in the absence of evidence to the contrary, is proof in any proceedings (not being criminal or disciplinary proceedings against a law enforcement officer) that the person granting

the authority was satisfied of the facts he or she was required to be satisfied of to grant the authority.

## 16 Definitions

In this Part:

***commencement*** means the commencement of this item.

***State controlled operations law*** means:

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

(b) a provision or provisions of a law of a State or Territory;

prescribed by the regulations for the purposes of this definition.

# Part 3—General application and transitional provisions

## 17 Controlled operations authorised before commencement continue under old law

(1) Despite the repeals and amendments made by this Part, the *Crimes Act 1914*, as in force immediately before the commencement of this item, continues to apply after that commencement, in relation to a pre-commencement controlled operation, as if those repeals and amendments had not happened.

(2) In this item:

***pre-commencement controlled operation*** means a controlled operation authorised under Part IAB of the *Crimes Act 1914* before the commencement of this item, whether or not the pre-commencement controlled operation had been completed as at that commencement.

## 18 Controlled operations—continuation of Division 3 of Part IAB

Despite the repeal of Division 3 of Part IAB of the *Crimes Act 1914* by this Part, that Division, as in force immediately before the commencement of this item, is taken to continue in effect as if it had not been repealed.

## 19 Assumed identities—authorisations taken to be authority under new law

(1) This item applies to an authorisation that was granted under section 15XG of the *Crimes Act 1914* immediately before the commencement of this item.

(2) The authorisation has effect, after the commencement of this item, as if it were an authority granted under section 15KB as inserted by this Schedule.

## 20 Assumed identities—continuation of old law in relation to States without corresponding laws

(1) Despite the repeal of Part IAC of the *Crimes Act 1914* by this Schedule:

(a) section 15XH of that Act, as in force immediately before the commencement of this item, continues in effect after that commencement, in relation to a State or Territory that is not a participating jurisdiction, as if that repeal had not happened; and

(b) that Part, and any other provision of the *Crimes Act 1914* that relates to the operation of that Part, continues in effect in relation to authorisations under that Part and assumed identities acquired or used under such authorisations as if that repeal had not happened.

(2) In this item:

***participating jurisdiction*** has the same meaning as in section 15K of the *Crimes Act 1914*, as in force immediately after the commencement of this item.

# Part 4—Consequential amendment

## *Customs Act 1901*

### 21 Section 219ZJA (definition of *serious Commonwealth offence*)

Omit “15HB”, substitute “15GE”.

# Schedule 4—Other amendments

## Part 1—Joint commission

### *Criminal Code Act 1995*

#### 1 Subsection 11.1(7) of the *Criminal Code*

After “section 11.2 (complicity and common purpose),”, insert “section 11.2A (joint commission), section 11.3 (commission by proxy),”.

#### 2 Subsection 11.2(5) of the *Criminal Code*

Omit “principal offender”, substitute “other person”.

#### 3 Subsection 11.2(6) of the *Criminal Code*

Omit “to the offence of aiding, abetting, counselling or procuring the commission of that offence”, substitute “for the purposes of determining whether a person is guilty of that offence because of the operation of subsection (1)”.

#### 4 After section 11.2 of the *Criminal Code*

Insert:

**11.2A Joint commission**

*Joint commission*

(1) If:
  (a) a person and at least one other party enter into an agreement to commit an offence; and
  (b) either:
    (i) an offence is committed in accordance with the agreement (within the meaning of subsection (2)); or
    (ii) an offence is committed in the course of carrying out the agreement (within the meaning of subsection (3));

the person is taken to have committed the joint offence referred to in whichever of subsection (2) or (3) applies and is punishable accordingly.

*Offence committed in accordance with the agreement*

(2) An offence is committed in accordance with the agreement if:

(a) the conduct of one or more parties in accordance with the agreement makes up the physical elements consisting of conduct of an offence (the ***joint offence***) of the same type as the offence agreed to; and

(b) to the extent that a physical element of the joint offence consists of a result of conduct—that result arises from the conduct engaged in; and

(c) to the extent that a physical element of the joint offence consists of a circumstance—the conduct engaged in, or a result of the conduct engaged in, occurs in that circumstance.

*Offence committed in the course of carrying out the agreement*

(3) An offence is committed in the course of carrying out the agreement if the person is reckless about the commission of an offence (the ***joint offence***) that another party in fact commits in the course of carrying out the agreement.

*Intention to commit an offence*

(4) For a person to be guilty of an offence because of the operation of this section, the person and at least one other party to the agreement must have intended that an offence would be committed under the agreement.

*Agreement may be non-verbal etc.*

(5) The agreement:

(a) may consist of a non-verbal understanding; and

(b) may be entered into before, or at the same time as, the conduct constituting any of the physical elements of the joint offence was engaged in.

*Termination of involvement etc.*

(6) A person cannot be found guilty of an offence because of the operation of this section if, before the conduct constituting any of the physical elements of the joint offence concerned was engaged in, the person:

(a) terminated his or her involvement; and

(b) took all reasonable steps to prevent that conduct from being engaged in.

*Person may be found guilty even if another party not prosecuted etc.*

(7) A person may be found guilty of an offence because of the operation of this section even if:

(a) another party to the agreement has not been prosecuted or has not been found guilty; or

(b) the person was not present when any of the conduct constituting the physical elements of the joint offence was engaged in.

*Special liability provisions apply*

(8) Any special liability provisions that apply to the joint offence apply also for the purposes of determining whether a person is guilty of that offence because of the operation of this section.

Note: The heading to section 11.3 of the *Criminal Code* is replaced by the heading "**Commission by proxy**".

## 5 Subsection 11.6(4) of the *Criminal Code* (note)

Omit "and 11.3 (innocent agency)", substitute ", 11.2A (joint commission), and 11.3 (commission by proxy)".

## 6 Subsection 14.1(1) of the *Criminal Code* (note)

Omit "subsection 11.2(1)", substitute "subsections 11.2(1) and 11.2A(1)".

## 7 Subsection 15.1(1) of the *Criminal Code* (note)

Omit "subsection 11.2(1)", substitute "subsections 11.2(1) and 11.2A(1)".

## 8 Subsection 15.2(1) of the *Criminal Code* (note)

Omit "subsection 11.2(1)", substitute "subsections 11.2(1) and 11.2A(1)".

## 9 Subsection 15.3(1) of the *Criminal Code* (note)

Omit "subsection 11.2(1)", substitute "subsections 11.2(1) and 11.2A(1)".

## 10 Section 15.4 of the *Criminal Code* (note)

Omit “subsection 11.2(1)”, substitute “subsections 11.2(1) and 11.2A(1)”.

## 11 Subsection 70.5(1) of the *Criminal Code* (note)

After “11.2(1)”, insert “, 11.2A(1)”.

## 12 Paragraph 302.6(a) of the *Criminal Code*

After “11.2”, insert “or 11.2A”.

## 13 Dictionary in the *Criminal Code* (paragraph (b) of the definition of *ancillary offence*)

After “11.2”, insert “, 11.2A”.

# Part 2—Amendment of the Telecommunications (Interception and Access) Act 1979

## Division 1—Offences involving criminal organisations

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

#### 14 Subsection 5(1)

Insert:

***associate***, with a criminal organisation or a member of such an organisation, includes:

(a) be in the company of the organisation or member; and

(b) communicate with the organisation or member by any means (including by post, fax, telephone, or by email or other electronic means).

#### 15 Subsection 5(1)

Insert:

***criminal organisation*** means an organisation (whether incorporated or not, and however structured) that is:

(a) a declared organisation within the meaning of:

(i) the *Crimes (Criminal Organisations Control) Act 2009* of New South Wales; or

(ii) the *Serious and Organised Crime (Control) Act 2008* of South Australia; or

(b) an organisation of a kind specified by or under, or described or mentioned in, a prescribed provision of a law of a State or Territory.

#### 16 Subsection 5(1)

Insert:

***member***, of a criminal organisation, includes:

(a) in the case of an organisation that is a body corporate—a director and an officer of the body corporate; and

(b) in any case:

(i) an associate member or prospective member (however described) of the organisation; and

(ii) a person who identifies himself or herself, in some way, as belonging to the organisation; and

(iii) a person who is treated by the organisation or persons who belong to the organisation, in some way, as if he or she belongs to the organisation.

## 16A After subsection 5D(3)

Insert:

*Offences relating to criminal groups*

(3AA) An offence is also a ***serious offence*** if it is an offence against section 93T of the *Crimes Act 1900* of New South Wales.

## 17 At the end of section 5D

Add:

*Offences relating to criminal organisations*

(9) An offence is also a ***serious offence*** if:

(a) the particular conduct constituting the offence involved, involves or would involve, as the case requires:

(i) associating with a criminal organisation, or a member of a criminal organisation; or

(ii) contributing to the activities of a criminal organisation; or

(iii) aiding, abetting, counselling or procuring the commission of a prescribed offence for a criminal organisation; or

(iv) being, by act or omission, in any way, directly or indirectly, knowingly concerned in, or party to, the commission of a prescribed offence for a criminal organisation; or

(v) conspiring to commit a prescribed offence for a criminal organisation; and

(b) if the offence is covered by subparagraph (a)(i)—the conduct constituting the offence was engaged in, or is reasonably suspected of having been engaged in, for the purpose of

supporting the commission of one or more prescribed offences by the organisation or its members; and

(c) if the offence is covered by subparagraph (a)(ii)—the conduct constituting the offence was engaged in, or is reasonably suspected of having been engaged in, for the purpose of enhancing the ability of the organisation or its members to commit or facilitate the commission of one or more prescribed offences.

### 18 Application

Subsections 5D(3AA) and (9) of the *Telecommunications (Interception and Access) Act 1979* apply whether the conduct constituting the offences concerned was engaged in before or after the commencement of this item.

## Division 2—Use of information for purposes of organised crime control laws

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

### 18A Subsection 5(1)

Insert:

***organised crime control law*** means a law of a State, a purpose of which is to combat organised crime or restrict the activities of criminal organisations, that provides for:

(a) the declaration of an organisation as a declared organisation; or

(b) the making of orders described as control orders or interim control orders in relation to members of criminal organisations.

### 18B Subsection 5(1) (at the end of subparagraphs (c)(i), (ii), (iia) and (iib) of the definition of *permitted purpose*)

Add “or”.

### 18C Subsection 5(1) (at the end of paragraph (c) of the definition of *permitted purpose*)

Add:

(v) 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, an organised crime control law of that State; or

## 18D After paragraph 5B(1)(c)

Insert:

(ca) a proceeding under, or a proceeding relating to a matter arising under, an organised crime control law; or

## 18E At the end of paragraphs 6L(1)(a), (b) and (c)

Add "or".

## 18F After paragraph 6L(1)(c)

Insert:

(ca) a proceeding under, or in relation to a matter arising under, an organised crime control law of that State; or

## 18G At the end of paragraph 6L(1)(d)

Add "or".

## 18H After subparagraph 68(d)(i)

Insert:

(ia) the subject matter of a proceeding under, or in relation to a matter arising under, an organised crime control law of a State; or

## 18J Application

The *Telecommunications (Interception and Access) Act 1979*, as amended by this Division, applies in relation to the communication, use and making of a record of information, and the giving of information in evidence in proceedings, on or after the commencement of this item, whether the information was obtained before or after that commencement.

# Part 3—Regulations

## 19 Regulations

(1) The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.

[*Minister's second reading speech made in—*
*House of Representatives on 24 June 2009*
*Senate on 23 November 2009*]