





# **Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015**

**No. 39, 2015**

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

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



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

*[Assented to 13 April 2015]*

The Parliament of Australia enacts:

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## 1 Short title

This Act may be cited as the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015*.

## 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.

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| <b>Commencement information</b>   |  |                     |
|---|--|---------------------|
| <b>Column 1</b>   | <b>Column 2</b>  | <b>Column 3</b>     |
| <b>Provisions</b>   | <b>Commencement</b>  | <b>Date/Details</b> |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent.  | 13 April 2015       |
| 2. Schedule 1, items 1 to 7   | The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent. | 13 October 2015     |
| 3. Schedule 1, items 8 to 11  | The day this Act receives the Royal Assent.  | 13 April 2015       |
| 4. Schedules 2 and 3  | The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent. | 13 October 2015     |

Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Data retention

### Part 1—Main amendments

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

##### 1 After Part 5-1

Insert:

### Part 5-1A—Data retention

#### Division 1—Obligation to keep information and documents

##### 187A Service providers must keep certain information and documents

- (1) A person (a *service provider*) who operates a service to which this Part applies (a *relevant service*) must keep, or cause to be kept, in accordance with section 187BA and for the period specified in section 187C:

- (a) information of a kind specified in or under section 187AA; or
- (b) documents containing information of that kind;

relating to any communication carried by means of the service.

Note 1: Subsection (3) sets out the services to which this Part applies.

Note 2: Section 187B removes some service providers from the scope of this obligation, either completely or in relation to some services they operate.

Note 3: Division 3 provides for exemptions from a service provider's obligations under this Part.

- (3) This Part applies to a service if:
- (a) it is a service for carrying communications, or enabling communications to be carried, by means of guided or unguided electromagnetic energy or both; and
  - (b) it is a service:
    - (i) operated by a carrier; or

- (ii) operated by an internet service provider (within the meaning of Schedule 5 to the *Broadcasting Services Act 1992*); or
  - (iii) of a kind for which a declaration under subsection (3A) is in force; and
  - (c) the person operating the service owns or operates, in Australia, infrastructure that enables the provision of any of its relevant services;
- but does not apply to a broadcasting service (within the meaning of the *Broadcasting Services Act 1992*).
- (3A) The Minister may, by legislative instrument, declare a service to be a service to which this Part applies.
- (3B) A declaration under subsection (3A):
- (a) comes into force when it is made, or on such later day as is specified in the declaration; and
  - (b) ceases to be in force at the end of the period of 40 sitting days of a House of the Parliament after the declaration comes into force.
- (3C) If a Bill is introduced into either House of the Parliament that includes an amendment of subsection (3), the Minister:
- (a) must refer the amendment to the Parliamentary Joint Committee on Intelligence and Security for review; and
  - (b) must not in that referral specify, as the period within which the Committee is to report on its review, a period that will end earlier than 15 sitting days of a House of the Parliament after the introduction of the Bill.
- (4) This section does not require a service provider to keep, or cause to be kept:
- (a) information that is the contents or substance of a communication; or
- Note: This paragraph puts beyond doubt that service providers are not required to keep information about telecommunications content.
- (b) information that:
    - (i) states an address to which a communication was sent on the internet, from a telecommunications device, using

an internet access service provided by the service provider; and

- (ii) was obtained by the service provider only as a result of providing the service; or

Note: This paragraph puts beyond doubt that service providers are not required to keep information about subscribers' web browsing history.

- (c) information to the extent that it relates to a communication that is being carried by means of another service:

- (i) that is of a kind referred to in paragraph (3)(a); and  
(ii) that is operated by another person using the relevant service operated by the service provider;

or a document to the extent that the document contains such information; or

Note: This paragraph puts beyond doubt that service providers are not required to keep information or documents about communications that pass "over the top" of the underlying service they provide, and that are being carried by means of other services operated by other service providers.

- (d) information that the service provider is required to delete because of a determination made under section 99 of the *Telecommunications Act 1997*, or a document to the extent that the document contains such information; or

- (e) information about the location of a telecommunications device that is not information used by the service provider in relation to the relevant service to which the device is connected.

- (5) Without limiting subsection (1), for the purposes of this section:

- (a) an attempt to send a communication by means of a relevant service is taken to be the sending of a communication by means of the service, if the attempt results in:

- (i) a connection between the telecommunications device used in the attempt and another telecommunications device; or

- (ii) an attempted connection between the telecommunications device used in the attempt and another telecommunications device; or

- (iii) a conclusion being drawn, through the operation of the service, that a connection cannot be made between the

telecommunications device used in the attempt and another telecommunications device; and

- (b) an untariffed communication by means of a relevant service is taken to be a communication by means of the service.
- (6) To avoid doubt, if information that subsection (1) requires a service provider to keep in relation to a communication is not created by the operation of a relevant service, subsection (1) requires the service provider to use other means to create the information, or a document containing the information.

### **187AA Information to be kept**

- (1) The following table sets out the kinds of information that a service provider must keep, or cause to be kept, under subsection 187A(1):

| <b>Kinds of information to be kept</b> |   |   |
|--|---|---|
| <b>Item</b>                            | <b>Topic<br/>Column 1</b>   | <b>Description of information<br/>Column 2</b>  |
| 1                                      | The subscriber of, and accounts, services, telecommunications devices and other relevant services relating to, the relevant service | <p>The following:</p> <p>(a) any information that is one or both of the following:</p> <p style="padding-left: 20px;">(i) any name or address information;</p> <p style="padding-left: 20px;">(ii) any other information for identification purposes;</p> <p>relating to the relevant service, being information used by the service provider for the purposes of identifying the subscriber of the relevant service;</p> <p>(b) any information relating to any contract, agreement or arrangement relating to the relevant service, or to any related account, service or device;</p> <p>(c) any information that is one or both of the following:</p> <p style="padding-left: 20px;">(i) billing or payment information;</p> <p style="padding-left: 20px;">(ii) contact information;</p> <p>relating to the relevant service, being information used by the service provider in relation to the relevant service;</p> |

**Schedule 1** Data retention  
**Part 1** Main amendments

| <b>Kinds of information to be kept</b> |  |   |
|--|--|---|
| <b>Item</b>                            | <b>Topic<br/>Column 1</b>  | <b>Description of information<br/>Column 2</b>  |
|  |  | (d) any identifiers relating to the relevant service or any related account, service or device, being information used by the service provider in relation to the relevant service or any related account, service or device;<br>(e) the status of the relevant service, or any related account, service or device.   |
| 2                                      | The source of a communication  | Identifiers of a related account, service or device from which the communication has been sent by means of the relevant service.  |
| 3                                      | The destination of a communication   | Identifiers of the account, telecommunications device or relevant service to which the communication:<br>(a) has been sent; or<br>(b) has been forwarded, routed or transferred, or attempted to be forwarded, routed or transferred.   |
| 4                                      | The date, time and duration of a communication, or of its connection to a relevant service   | The date and time (including the time zone) of the following relating to the communication (with sufficient accuracy to identify the communication):<br>(a) the start of the communication;<br>(b) the end of the communication;<br>(c) the connection to the relevant service;<br>(d) the disconnection from the relevant service.   |
| 5                                      | The type of a communication or of a relevant service used in connection with a communication | The following:<br>(a) the type of communication;<br>Examples: Voice, SMS, email, chat, forum, social media.<br>(b) the type of the relevant service;<br>Examples: ADSL, Wi-Fi, VoIP, cable, GPRS, VoLTE, LTE.<br>(c) the features of the relevant service that were, or would have been, used by or enabled for the communication.<br>Examples: Call waiting, call forwarding, data |

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**Kinds of information to be kept**

| <b>Item</b> | <b>Topic<br/>Column 1</b>   | <b>Description of information<br/>Column 2</b>  |
|-------------|---|---|
|             |   | volume usage.   |
|             |   | Note: This item will only apply to the service provider operating the relevant service: see paragraph 187A(4)(c).   |
| 6           | The location of equipment, or a line, used in connection with a communication | The following in relation to the equipment or line used to send or receive the communication:<br>(a) the location of the equipment or line at the start of the communication;<br>(b) the location of the equipment or line at the end of the communication.<br><br>Examples: Cell towers, Wi-Fi hotspots. |

- (2) The Minister may, by legislative instrument, make a declaration modifying (including by adding, omitting or substituting) the table in subsection (1), or that table as previously modified under this subsection.
- (3) A declaration under subsection (2):
- (a) comes into force when it is made, or on such later day as is specified in the declaration; and
  - (b) ceases to be in force at the end of the period of 40 sitting days of a House of the Parliament after the declaration comes into force.
- (4) If a Bill is introduced into either House of the Parliament that includes an amendment of subsection 187A(4) or subsection (1) or (5) of this section, the Minister:
- (a) must refer the amendment to the Parliamentary Joint Committee on Intelligence and Security for review; and
  - (b) must not in that referral specify, as the period within which the Committee is to report on its review, a period that will end earlier than 15 sitting days of a House of the Parliament after the introduction of the Bill.
- (5) For the purposes of items 2, 3, 4 and 6 of the table in subsection (1) and any modifications of those items under subsection (2), 2 or

more communications that together constitute a single communications session are taken to be a single communication.

### **187B Certain service providers not covered by this Part**

- (1) Subsection 187A(1) does not apply to a service provider (other than a carrier that is not a carriage service provider) in relation to a relevant service that it operates if:
  - (a) the service:
    - (i) is provided only to a person's immediate circle (within the meaning of section 23 of the *Telecommunications Act 1997*); or
    - (ii) is provided only to places that, under section 36 of that Act, are all in the same area; and
  - (b) the service is not subject to a declaration under subsection (2) of this section.
- (2) The Communications Access Co-ordinator may declare that subsection 187A(1) applies in relation to a relevant service that a service provider operates.
- (2A) Before making the declaration, the Communications Access Co-ordinator may consult the Privacy Commissioner.
- (3) In considering whether to make the declaration, the Communications Access Co-ordinator must have regard to:
  - (a) the interests of law enforcement and national security; and
  - (b) the objects of the *Telecommunications Act 1997*; and
  - (ba) the objects of the *Privacy Act 1988*; and
  - (bb) any submissions made by the Privacy Commissioner because of the consultation under subsection (2A); and
  - (c) any other matter that the Communications Access Co-ordinator considers relevant.
- (4) The declaration must be in writing.
- (5) A declaration made under subsection (2) is not a legislative instrument.

- (6) As soon as practicable after making a declaration under subsection (2), the Communications Access Co-ordinator must give written notice of the declaration to the Minister.
- (7) As soon as practicable after receiving the notice under subsection (6), the Minister must give written notice of the declaration to the Parliamentary Joint Committee on Intelligence and Security.

### **187BA Ensuring the confidentiality of information**

A service provider must protect the confidentiality of information that, or information in a document that, the service provider must keep, or cause to be kept, under section 187A by:

- (a) encrypting the information; and
- (b) protecting the information from unauthorised interference or unauthorised access.

### **187C Period for keeping information and documents**

- (1) The period for which a service provider must keep, or cause to be kept, information or a document under section 187A is:
  - (a) if the information is about, or the document contains information about, a matter of a kind described in paragraph (a) or (b) in column 2 of item 1 of the table in subsection 187AA(1)—the period:
    - (i) starting when the information or document came into existence; and
    - (ii) ending 2 years after the closure of the account to which the information or document relates; or
  - (b) otherwise—the period:
    - (i) starting when the information or document came into existence; and
    - (ii) ending 2 years after it came into existence.
- (2) However, the regulations may prescribe that, in relation to a specified matter of a kind described in paragraph (a) or (b) in column 2 of item 1 of the table in subsection 187AA(1), the period under subsection (1) of this section is the period referred to in paragraph (1)(b) of this section.

- (3) This section does not prevent a service provider from keeping information or a document for a period that is longer than the period provided under this section.

Note: Division 3 provides for reductions in periods specified under this section.

## **Division 2—Data retention implementation plans**

### **187D Effect of data retention implementation plans**

While there is in force a data retention implementation plan for a relevant service operated by a service provider:

- (a) the service provider must comply with the plan in relation to communications carried by means of that service; but
- (b) the service provider is not required to comply with subsection 187A(1) (or section 187BA or 187C) in relation to those communications.

### **187E Applying for approval of data retention implementation plans**

- (1) A service provider may apply to the Communications Access Co-ordinator for approval of a data retention implementation plan for one or more relevant services operated by the service provider.
- (2) The plan must specify, in relation to each such service:
  - (a) an explanation of the current practices for keeping, and ensuring the confidentiality of, information and documents that section 187A would require to be kept, if the plan were not in force; and
  - (b) details of the interim arrangements that the service provider proposes to be implemented, while the plan is in force, for keeping, and ensuring the confidentiality of, such information and documents (to the extent that the information and documents will not be kept in compliance with section 187A (and sections 187BA and 187C)); and
  - (c) the day by which the service provider will comply with section 187A (and sections 187BA and 187C) in relation to all such information and documents, except to the extent that any decisions under Division 3 apply.

- (3) The day specified under paragraph (2)(c) must not be later than the day on which the plan would, if approved, cease to be in force under section 187H in relation to the service.
- (4) The plan must also specify:
  - (a) any relevant services, operated by the service provider, that the plan does not cover; and
  - (b) the contact details of the officers or employees of the service provider in relation to the plan.

### **187F Approval of data retention implementation plans**

- (1) If, under section 187E, a service provider applies for approval of a data retention implementation plan, the Communications Access Co-ordinator must:
  - (a) approve the plan and notify the service provider of the approval; or
  - (b) give the plan back to the service provider with a written request for the service provider to amend the plan to take account of specified matters.
- (2) Before making a decision under subsection (1), the Communications Access Co-ordinator must take into account:
  - (a) the desirability of achieving substantial compliance with section 187A (and sections 187BA and 187C) as soon as practicable; and
  - (b) the extent to which the plan would reduce the regulatory burden imposed on the service provider by this Part; and
  - (c) if, at the time the Co-ordinator receives the application, the service provider is contravening section 187A (or section 187BA or 187C) in relation to one or more services covered by the application—the reasons for the contravention; and
  - (d) the interests of law enforcement and national security; and
  - (e) the objects of the *Telecommunications Act 1997*; and
  - (f) any other matter that the Co-ordinator considers relevant.
- (3) If the Communications Access Co-ordinator does not, within 60 days after the day the Co-ordinator receives the application:
  - (a) make a decision on the application, and

- (b) communicate to the applicant the decision on the application; the Co-ordinator is taken, at the end of that period of 60 days, to have made the decision that the service provider applied for, and to have notified the service provider accordingly.
- (4) A decision that is taken under subsection (3) to have been made in relation to a service provider that applied for the decision has effect only until the Communications Access Co-ordinator makes, and communicates to the service provider, a decision on the application.

### **187G Consultation with agencies and the ACMA**

- (1) As soon as practicable after receiving an application under section 187E to approve a data retention implementation plan (the *original plan*), the Communications Access Co-ordinator must:
- (a) give a copy of the plan to the enforcement agencies and security authorities that, in the opinion of the Co-ordinator, are likely to be interested in the plan; and
  - (b) invite each such enforcement agency or security authority to provide comments on the plan to the Co-ordinator.

The Co-ordinator may give a copy of the plan to the ACMA.

#### *Request for amendment of original plan*

- (2) If:
- (a) the Communications Access Co-ordinator receives a comment from an enforcement agency or security authority requesting an amendment of the original plan; and
  - (b) the Co-ordinator considers the request to be a reasonable one;
- the Co-ordinator:
- (c) must request that the service provider make the amendment within 30 days (the *response period*) after receiving the comment or summary; and
  - (d) may give the service provider a copy of the comment or a summary of the comment.

*Response to request for amendment of original plan*

- (3) The service provider must respond to a request for an amendment of the original plan either:
- (a) by indicating its acceptance of the request, by amending the original plan appropriately and by giving the amended plan to the Communications Access Co-ordinator within the response period; or
  - (b) by indicating that it does not accept the request and providing its reasons for that non-acceptance.

*The ACMA's role*

- (4) If the service provider indicates that it does not accept a request for an amendment of the original plan, the Communications Access Co-ordinator must:
- (a) refer the request and the service provider's response to the ACMA; and
  - (b) request the ACMA to determine whether any amendment of the original plan is required.
- (5) The ACMA must then:
- (a) determine in writing that no amendment of the original plan is required in response to the request for the amendment; or
  - (b) if, in the opinion of the ACMA:
    - (i) the request for the amendment is a reasonable one; and
    - (ii) the service provider's response to the request for the amendment is not reasonable;determine in writing that the original plan should be amended in a specified manner and give a copy of the determination to the service provider.

*Co-ordinator to approve amended plan or to refuse approval*

- (6) The Communications Access Co-ordinator must:
- (a) if, on receipt of a determination under paragraph (5)(b), the service provider amends the original plan to take account of that determination and gives the amended plan to the Communications Access Co-ordinator—approve the plan as amended, and notify the service provider of the approval; or

- (b) otherwise—refuse to approve the plan, and notify the service provider of the refusal.

*ACMA determination not a legislative instrument*

- (7) A determination made under subsection (5) is not a legislative instrument.

**187H When data retention implementation plans are in force**

- (1) A data retention implementation plan for a relevant service operated by a service provider:
  - (a) comes into force when the Communications Access Co-ordinator notifies the service provider of the approval of the plan; and
  - (b) ceases to be in force in relation to that service:
    - (i) if the service provider was operating the service at the commencement of this Part—at the end of the implementation phase for this Part; or
    - (ii) if the service provider was not operating the service at the commencement of this Part—at the end of the period of 18 months starting on the day the service provider started to operate the service after that commencement.
- (2) The *implementation phase* for this Part is the period of 18 months starting on the commencement of this Part.

**187J Amending data retention implementation plans**

- (1) If a service provider's data retention implementation plan is in force, it may be amended only if:
  - (a) the service provider applies to the Communications Access Co-ordinator for approval of the amendment, and the Co-ordinator approves the amendment; or
  - (b) the Co-ordinator makes a request to the service provider for the amendment to be made, and the service provider agrees to the amendment.
- (2) Section 187F applies in relation to approval of the amendment under paragraph (1)(a) as if the application for approval of the

amendment were an application under section 187E for approval of a data retention implementation plan.

- (3) An amendment of a data retention implementation plan:
  - (a) comes into force when:
    - (i) if paragraph (1)(a) applies—the Co-ordinator notifies the service provider of the approval of the amendment; or
    - (ii) if paragraph (1)(b) applies—the service provider notifies the Co-ordinator of the service provider’s agreement to the amendment; but
  - (b) does not effect when the plan ceases to be in force under paragraph 187H(1)(b).

### **Division 3—Exemptions**

#### **187K The Communications Access Co-ordinator may grant exemptions or variations**

*Decision to exempt or vary*

- (1) The Communications Access Co-ordinator may:
  - (a) exempt a specified service provider from the obligations imposed on the service provider under this Part, either generally or in so far as they relate to a specified kind of relevant service; or
  - (b) vary the obligations imposed on a specified service provider under this Part, either generally or in so far as they relate to a specified kind of relevant service; or
  - (c) vary, in relation to a specified service provider, a period specified in section 187C, either generally or in relation to information or documents that relate to a specified kind of relevant service.

A variation must not impose obligations that would exceed the obligations to which a service provider would otherwise be subject under sections 187A and 187C.

- (2) The decision must be in writing.
- (3) The decision may be:

- (a) unconditional; or
  - (b) subject to such conditions as are specified in the decision.
- (4) A decision made under subsection (1) is not a legislative instrument.

*Effect of applying for exemption or variation*

- (5) If a service provider applies in writing to the Communications Access Co-ordinator for a particular decision under subsection (1) relating to the service provider:
- (a) the Co-ordinator:
    - (i) must give a copy of the application to the enforcement agencies and security authorities that, in the opinion of the Co-ordinator, are likely to be interested in the application; and
    - (ii) may give a copy of the application to the ACMA; and
  - (b) if the Co-ordinator does not, within 60 days after the day the Co-ordinator receives the application:
    - (i) make a decision on the application, and
    - (ii) communicate to the applicant the decision on the application;
- the Co-ordinator is taken, at the end of that period of 60 days, to have made the decision that the service provider applied for.
- (6) A decision that is taken under paragraph (5)(b) to have been made in relation to a service provider that applied for the decision has effect only until the Communications Access Co-ordinator makes, and communicates to the service provider, a decision on the application.

*Matters to be taken into account*

- (7) Before making a decision under subsection (1) in relation to a service provider, the Communications Access Co-ordinator must take into account:
- (a) the interests of law enforcement and national security; and
  - (b) the objects of the *Telecommunications Act 1997*; and

- (c) the service provider's history of compliance with this Part; and
  - (d) the service provider's costs, or anticipated costs, of complying with this Part; and
  - (e) any alternative data retention or information security arrangements that the service provider has identified.
- (8) The Communications Access Co-ordinator may take into account any other matter he or she considers relevant.

### **187KA Review of exemption or variation decisions**

- (1) A service provider may apply in writing to the ACMA for review of a decision under subsection 187K(1) relating to the service provider.
- (2) The ACMA must:
- (a) confirm the decision; or
  - (b) substitute for that decision another decision that could have been made under subsection 187K(1).
- A substituted decision under paragraph (b) has effect (other than for the purposes of this section) as if it were a decision of the Communications Access Co-ordinator under subsection 187K(1).
- (3) Before considering its review of the decision under subsection 187K(1), the ACMA must give a copy of the application to:
- (a) the Communications Access Co-ordinator; and
  - (b) any enforcement agencies and security authorities that were given, under subparagraph 187K(5)(a)(i), a copy of the application for the decision under review; and
  - (c) any other enforcement agencies and security authorities that, in the opinion of the ACMA, are likely to be interested in the application.

#### *Matters to be taken into account*

- (4) Before making a decision under subsection (2) in relation to a service provider, the ACMA must take into account:
- (a) the interests of law enforcement and national security; and

- (b) the objects of the *Telecommunications Act 1997*; and
  - (c) the service provider's history of compliance with this Part; and
  - (d) the service provider's costs, or anticipated costs, of complying with this Part; and
  - (e) any alternative data retention or information security arrangements that the service provider has identified.
- (5) The ACMA may take into account any other matter it considers relevant.

## **Division 4—Miscellaneous**

### **187KB Commonwealth may make a grant of financial assistance to service providers**

- (1) The Commonwealth may make a grant of financial assistance to a service provider for the purpose of assisting the service provider to comply with the service provider's obligations under this Part.
- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the service provider.
- (3) An agreement under subsection (2) may be entered into on behalf of the Commonwealth by the Minister.

### **187L Confidentiality of applications**

- (1) If the Communications Access Co-ordinator receives a service provider's application under section 187E for approval of a data retention implementation plan, or application for a decision under subsection 187K(1), the Co-ordinator must:
  - (a) treat the application as confidential; and
  - (b) ensure that it is not disclosed to any other person or body (other than the ACMA, an enforcement agency or a security authority) without the written permission of the service provider.

- (1A) If the ACMA receives a service provider's application under section 187KA for review of a decision under subsection 187K(1), the ACMA must:
- (a) treat the application as confidential; and
  - (b) ensure that it is not disclosed to any other person or body (other than the Communications Access Co-ordinator, an enforcement agency or a security authority) without the written permission of the service provider.
- (2) The ACMA, the Communications Access Co-ordinator, an enforcement agency or a security authority must, if it receives under subsection 187G(1), paragraph 187K(5)(a) or subsection 187KA(3) a copy of a service provider's application:
- (a) treat the copy as confidential; and
  - (b) ensure that it is not disclosed to any other person or body without the written permission of the service provider.

#### **187LA Application of the *Privacy Act 1988***

- (1) The *Privacy Act 1988* applies in relation to a service provider, as if the service provider were an organisation within the meaning of that Act, to the extent that the activities of the service provider relate to retained data.
- (2) Information that is kept under this Part, or information that is in a document kept under this Part is taken, for the purposes of the *Privacy Act 1988*, to be personal information about an individual if the information relates to:
- (a) the individual; or
  - (b) a communication to which the individual is a party.

#### **187M Pecuniary penalties and infringement notices**

Subsection 187A(1) and paragraph 187D(a) are civil penalty provisions for the purposes of the *Telecommunications Act 1997*.

Note: Parts 31 and 31B of the *Telecommunications Act 1997* provide for pecuniary penalties and infringement notices for contraventions of civil penalty provisions.

### 187N Review of operation of Part

- (1) The Parliamentary Joint Committee on Intelligence and Security must review the operation of this Part.
- (1A) The review:
  - (a) must start on or before the second anniversary of the end of the implementation phase; and
  - (b) must be concluded on or before the third anniversary of the end of the implementation phase.
- (2) The Committee must give the Minister a written report of the review.
- (3) Until the review is completed, the head (however described) of an enforcement agency must keep:
  - (a) all of the documents that he or she is required to retain under section 185; and
  - (b) all of the information that he or she is required, by paragraphs 186(1)(e) to (k), to include in a report under subsection 186(1);relating to the period starting on the commencement of this Part and ending when the review is completed.
- (4) Until the review is completed, the Director-General of Security must keep:
  - (a) all of the authorisations made under Division 3 of Part 4-1; and
  - (b) all of the information that he or she is required, by paragraphs 94(2A)(c) to (j) of the *Australian Security Intelligence Organisation Act 1979*, to include in a report referred to in subsection 94(1) of that Act;relating to the period starting on the commencement of this Part and ending when the review is completed.
- (5) Subsections (3) and (4) do not limit any other obligation to keep information under this Act or another law.

**187P Annual reports**

- (1) The Minister must, as soon as practicable after each 30 June, cause to be prepared a written report on the operation of this Part during the year ending on that 30 June.
- (1A) Without limiting the matters that may be included in a report under subsection (1), it must include information about:
  - (a) the costs to service providers of complying with this Part;  
and
  - (b) the use of data retention implementation plans approved under Division 2 of this Part.
- (2) A report under subsection (1) must be included in the report prepared under subsection 186(2) relating to the year ending on that 30 June.
- (3) A report under subsection (1) must not be made in a manner that is likely to enable the identification of a person.

## Part 2—Other amendments

### *Australian Security Intelligence Organisation Act 1979*

#### 1A Section 4

Insert:

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

#### 1B Paragraphs 94(2A)(a) and (b)

Omit “year”, substitute “period”.

#### 1C At the end of subsection 94(2A)

Add:

- ; and (c) the number of authorisations made during the period under section 175 and subsection 176(3) of the *Telecommunications (Interception and Access) Act 1979*; and
- (d) the purposes for which those authorisations were made; and
- (e) the lengths of time for which the information or documents that were, or would have been, covered by those authorisations had been held when access was sought; and
- (f) the number of those authorisations that related to retained data that included information of a kind referred to in item 1 of the table in subsection 187AA(1) of that Act; and
- (g) the number of those authorisations that related to retained data that included information of a kind referred to in item 2, 3, 4, 5 or 6 of the table in subsection 187AA(1) of that Act; and
- (h) the number of those authorisations that were made under journalist information warrants issued under Subdivision B of Division 4C of Part 4-1 of that Act; and
- (i) the number of journalist information warrants issued under that Subdivision during the period; and
- (j) information of a kind declared under subsection (2C) of this section.

## **1D After subsection 94(2A)**

Insert:

- (2B) A report under subsection (1) is to set out the matters referred to in paragraph (2A)(e) by specifying:
- (a) in relation to each of 8 successive periods of 3 months, the number of the authorisations sought for information or documents held for lengths of time included in that period; and
  - (b) the number of the authorisations sought for information or documents held for lengths of time exceeding 24 months.
- (2C) The Minister may, by legislative instrument, declare kinds of information that are to be set out in a report under subsection (1).

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

### **1E Section 3**

Insert:

***retained data activity*** means an activity relating to information, or documents, that a service provider has been required to keep under Part 5-1A of the *Telecommunications (Interception and Access) Act 1979*.

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

### **1F After paragraph 29(1)(bb)**

Insert:

- (bc) to conduct the review under section 187N of the *Telecommunications (Interception and Access) Act 1979*; and
- (bd) subject to subsection (5), to review any matter that:
  - (i) relates to the retained data activities of ASIO; and
  - (ii) is included, under paragraph 94(2A)(c), (d), (e), (f), (g), (h), (i) or (j) of the *Australian Security Intelligence Organisation Act 1979*, in a report referred to in subsection 94(1) of that Act; and
- (be) subject to subsection (5), to review any matter that:

- (i) relates to the retained data activities of the AFP in relation to offences against Part 5.3 of the *Criminal Code*; and
- (ii) is set out, under paragraph 186(1)(e), (f), (g), (h), (i), (j) or (k) of the *Telecommunications (Interception and Access) Act 1979*, in a report under subsection 186(1) of that Act; and

### **1G At the end of section 29**

Add:

- (4) Subject to subsection (5), paragraphs (3)(c) and (k) do not apply to things done in the performance of the Committee's functions under paragraphs (1)(bd) and (be).
- (5) The Committee's functions under paragraphs (1)(bd) and (be):
  - (a) are to be performed for the sole purpose of assessing, and making recommendations on, the overall operation and effectiveness of Part 5-1A of the *Telecommunications (Interception and Access) Act 1979*; and
  - (b) do not permit reviewing the retained data activities of service providers; and
  - (c) may not be performed for any purpose other than that set out in paragraph (a).

Note: The performance of the Committee's functions under paragraphs (1)(bd) and (be) are also subject to the requirements of Schedule 1.

### ***Privacy Act 1988***

#### **1H Subsection 6(1) (at the end of the definition of *personal information*)**

Add:

Note: Section 187LA of the *Telecommunications (Interception and Access) Act 1979* extends the meaning of personal information to cover information kept under Part 5-1A of that Act.

#### **1J Subsection 6C(1) (note)**

Repeal the note, substitute:

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Note 1: Under section 187LA of the *Telecommunications (Interception and Access) Act 1979*, service providers are, in relation to their activities relating to retained data, treated as organisations for the purposes of this Act.

Note 2: Regulations may prescribe an instrumentality by reference to one or more classes of instrumentality. See subsection 13(3) of the *Legislative Instruments Act 2003*.

## ***Telecommunications Act 1997***

### **2 Section 7 (at the end of the definition of *civil penalty provision*)**

Add:

; or (c) a provision of the *Telecommunications (Interception and Access) Act 1979* that is declared by that Act to be a civil penalty provision for the purposes of this Act.

### **3 Subsection 105(5A)**

Repeal the subsection, substitute:

(5A) The ACMA must monitor, and report each financial year to the Minister on:

- (a) the operation of Part 14 and on the costs of compliance with the requirements of that Part; and
- (b) without limiting paragraph (a), the costs of compliance with the requirements of Part 5-1A of the *Telecommunications (Interception and Access) Act 1979* (about data retention).

### **3A After subsection 280(1A)**

Insert:

(1B) Subject to subsection (1C), paragraph (1)(b) does not apply to a disclosure of information or a document if:

- (a) the disclosure is required or authorised because of:
    - (i) a subpoena; or
    - (ii) a notice of disclosure; or
    - (iii) an order of a court;
- in connection with a civil proceeding; and

- (b) the information or document is kept, by a service provider (within the meaning of the *Telecommunications (Interception and Access) Act 1979*), solely for the purpose of complying with Part 5-1A of that Act; and
- (c) the information or document is not used or disclosed by the service provider for any purpose other than one or more of the following purposes:
  - (i) complying with Part 5-1A of that Act;
  - (ii) complying with the requirements of warrants under Chapters 2 and 3 of that Act or authorisations under Chapter 4 of that Act;
  - (iii) complying with requests or requirements to make disclosures provided for by sections 284 to 288 of this Act;
  - (iv) providing persons with access to their personal information in accordance with the *Privacy Act 1988*;
  - (v) a purpose prescribed by the regulations;
  - (vi) a purpose incidental to any of the purposes referred to in subparagraphs (i) to (v).

(1C) Subsection (1B) does not apply:

- (a) in circumstances of a kind prescribed by the regulations; or
- (b) to a disclosure to an enforcement agency (within the meaning of the *Telecommunications (Interception and Access) Act 1979*); or
- (c) to a disclosure that occurs during the implementation phase (within the meaning of that Act).

### **3B Section 281**

Before “Division 2”, insert “(1)”.

### **3C At the end of section 281**

Add:

- (2) Subject to subsection (3), this section does not apply to a disclosure of information or a document by a person as a witness in a civil proceeding if the information or document:
  - (a) is kept, by a service provider (within the meaning of the *Telecommunications (Interception and Access) Act 1979*),

solely for the purpose of complying with Part 5-1A of that Act; and

- (b) is not used or disclosed by the service provider for any purpose other than one or more of the following purposes:
  - (i) complying with Part 5-1A of that Act;
  - (ii) complying with the requirements of warrants under Chapters 2 and 3 of that Act or authorisations under Chapter 4 of that Act;
  - (iii) complying with requests or requirements to make disclosures provided for by sections 284 to 288 of this Act;
  - (iv) providing persons with access to their personal information in accordance with the *Privacy Act 1988*;
  - (v) a purpose prescribed by the regulations;
  - (vi) a purpose incidental to any of the purposes referred to in subparagraphs (i) to (v).
- (3) Subsection (2) does not apply:
  - (a) in circumstances of a kind prescribed by the regulations; or
  - (b) to a disclosure to an enforcement agency (within the meaning of the *Telecommunications (Interception and Access) Act 1979*); or
  - (c) to a disclosure that occurs during the implementation phase (within the meaning of that Act).

#### **4 Subsection 314(8)**

Omit “Part 5-3 or 5-5 of the *Telecommunications (Interception and Access) Act 1979* (about”, substitute “Part 5-1A, 5-3 or 5-5 of the *Telecommunications (Interception and Access) Act 1979* (about data retention,”.

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

#### **5 Subsection 5(1)**

Insert:

***Defence Minister*** has the same meaning as in the *Intelligence Services Act 2001*.

**Foreign Affairs Minister** has the same meaning as in the *Intelligence Services Act 2001*.

**IGIS official** has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

**implementation phase** has the meaning given by subsection 187H(2).

**infrastructure** means any line or equipment used to facilitate communications across a telecommunications network.

**journalist information warrant** means a warrant issued under Division 4C of Part 4-1.

**Part 4-1 issuing authority** means a person in respect of whom an appointment is in force under section 6DC.

**Public Interest Advocate** means a person declared under section 180X to be a Public Interest Advocate.

**related account, service or device**, in relation to a service to which Part 5-1A applies, means:

- (a) an account; or
- (b) a telecommunications device; or
- (c) another service of a kind referred to in paragraph 187A(3)(a); that is related to the service.

**retained data** means information, or documents, that a service provider is or has been required to keep under Part 5-1A.

**service provider** has the meaning given by subsection 187A(1).

**source** (except in item 2 of the table in subsection 187AA(1)) means a person who provides information:

- (a) to another person who is working in a professional capacity as a journalist; and
- (b) in the normal course of the other person's work in such a capacity; and
- (c) in the expectation that the information may be disseminated in the form of:
  - (i) news, current affairs or a documentary; or

- (ii) commentary or opinion on, or analysis of, news, current affairs or a documentary.

## **6 At the end of subsection 6R(3)**

Add “and all the enforcement agencies”.

## **6A After section 6DB**

Insert:

### **6DC Part 4-1 issuing authorities**

- (1) The Minister may, by writing, appoint as a Part 4-1 issuing authority:
  - (a) a person who is:
    - (i) a judge of a court created by the Parliament; or
    - (ii) a magistrate;and in relation to whom a consent under subsection (2) is in force; or
  - (b) a person who:
    - (i) holds an appointment to the Administrative Appeals Tribunal as Deputy President, full-time senior member, part-time senior member or member; and
    - (ii) is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or a Territory; and
    - (iii) has been enrolled for at least 5 years.
- (2) A person who is:
  - (a) a judge of a court created by the Parliament; or
  - (b) a magistrate;may, by writing, consent to be appointed by the Minister under subsection (1).
- (3) A person’s appointment ceases to have effect if:
  - (a) the person ceases to be a person whom the Minister could appoint under this section; or
  - (b) the Minister, by writing, revokes the appointment.
- (4) A Part 4-1 issuing authority has, in relation to the performance or exercise of a function or power conferred on a Part 4-1 issuing

authority by this Act, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

**6B Section 64 (heading)**

Repeal the heading, substitute:

**64 Dealing in connection with Organisation’s or Inspector-General’s functions**

**6C Subsection 64(1)**

After “its functions”, insert “or the performance by the Inspector-General of Intelligence and Security of his or her functions”.

**6D Subsection 64(2)**

Repeal the subsection, substitute:

- (2) A person, being the Director-General of Security or an ASIO employee, ASIO affiliate or IGIS official, may:
- (a) in connection with the performance by the Organisation of its functions; or
  - (b) in connection with the performance by the Inspector-General of Intelligence and Security of his or her functions;
- communicate to another such person, make use of, or make a record of, foreign intelligence information.

**6E Paragraph 176(5)(b)**

Repeal the paragraph, substitute:

- (b) unless it is revoked earlier, ends at the time specified in the authorisation, which must be a time that:
- (i) is no later than the end of the period of 90 days beginning on the day the authorisation is made; and
  - (ii) if the authorisation is made under a journalist information warrant—is no later than the end of the period specified under section 180N as the period for which the warrant is to remain in force.

### **6F Subsection 176(6)**

Repeal the subsection, substitute:

*Revoking the authorisation*

- (6) An eligible person must revoke the authorisation if:
- (a) he or she is satisfied that the disclosure is no longer required;  
or
  - (b) in a case where the authorisation is made under a journalist information warrant:
    - (i) the warrant is revoked under subsection 180N(1); or
    - (ii) the Director-General of Security has informed the Minister under section 180P that the Director-General is satisfied that the grounds on which the warrant was issued have ceased to exist.

Note: Section 184 deals with notification of authorisations.

### **6G Paragraph 180(6)(b)**

Repeal the paragraph, substitute:

- (b) unless it is revoked earlier, ends at the time specified in the authorisation, which must be a time that:
- (i) is no later than the end of the period of 45 days beginning on the day the authorisation is made; and
  - (ii) if the authorisation is made under a journalist information warrant—is no later than the end of the period specified under subsection 180U(3) as the period for which the warrant is to remain in force.

### **6H Subsection 180(7)**

Repeal the subsection, substitute:

*Revoking the authorisation*

- (7) An authorised officer of the criminal law-enforcement agency must revoke the authorisation if:
- (a) he or she is satisfied that the disclosure is no longer required;  
or

- (b) in a case where the authorisation is made under a journalist information warrant—the warrant is revoked under subsection 180W(1).

Note: Section 184 deals with notification of authorisations.

### **6J Section 180F**

Omit “have regard to whether any interference with the privacy of any person or persons that may result from the disclosure or use is justifiable”, substitute “be satisfied on reasonable grounds that any interference with the privacy of any person or persons that may result from the disclosure or use is justifiable and proportionate”.

### **6K Before paragraph 180F(a)**

Insert:

- (aa) the gravity of any conduct in relation to which the authorisation is sought, including:
- (i) the seriousness of any offence in relation to which the authorisation is sought; and
  - (ii) the seriousness of any pecuniary penalty in relation to which the authorisation is sought; and
  - (iii) the seriousness of any protection of the public revenue in relation to which the authorisation is sought; and
  - (iv) whether the authorisation is sought for the purposes of finding a missing person;

### **6L After Division 4B of Part 4-1**

Insert:

## **Division 4C—Journalist information warrants**

### **Subdivision A—The requirement for journalist information warrants**

#### **180G The Organisation**

- (1) An eligible person (within the meaning of subsection 175(2) or 176(2), as the case requires) must not make an authorisation under

Division 3 that would authorise the disclosure of information or documents relating to a particular person if:

- (a) the eligible person knows or reasonably believes that particular person to be:
    - (i) a person who is working in a professional capacity as a journalist; or
    - (ii) an employer of such a person; and
  - (b) a purpose of making the authorisation would be to identify another person whom the eligible person knows or reasonably believes to be a source;
- unless a journalist information warrant is in force in relation to that particular person.
- (2) Nothing in this section affects by implication the kind of person in relation to whom a warrant (other than a journalist information warrant) may be issued under this Act.

### **180H Enforcement agencies**

- (1) An authorised officer of an enforcement agency must not make an authorisation under section 178, 178A, 179 or 180 that would authorise the disclosure of information or documents relating to a particular person if:
  - (a) the authorised officer knows or reasonably believes that particular person to be:
    - (i) a person who is working in a professional capacity as a journalist; or
    - (ii) an employer of such a person; and
  - (b) a purpose of making the authorisation would be to identify another person whom the authorised officer knows or reasonably believes to be a source;

unless a journalist information warrant is in force, in relation to that particular person, under which authorised officers of the agency may make authorisations under that section.
- (2) An authorised officer of the Australian Federal Police must not make an authorisation under Division 4A that would authorise the disclosure of information or documents relating to a particular person if:

- (a) the authorised officer knows or reasonably believes that particular person to be:
    - (i) a person who is working in a professional capacity as a journalist; or
    - (ii) an employer of such a person; and
  - (b) a purpose of making the authorisation would be to identify another person whom the authorised officer knows or reasonably believes to be a source.
- (3) Nothing in this section affects by implication the kind of person in relation to whom a warrant (other than a journalist information warrant) may be issued under this Act.

### **Subdivision B—Issuing journalist information warrants to the Organisation**

#### **180J Requesting a journalist information warrant**

- (1) The Director-General of Security may request the Minister to issue a journalist information warrant in relation to a particular person.
- (2) The request must specify the facts and other grounds on which the Director-General considers it necessary that the warrant be issued.

#### **180K Further information**

- (1) The Minister may require the Director-General of Security to give to the Minister, within the period specified in the requirement, further information in connection with a request under this Subdivision.
- (2) If the Director-General breaches the requirement, the Minister may:
  - (a) refuse to consider the request; or
  - (b) refuse to take any action, or any further action, in relation to the request.

#### **180L Issuing a journalist information warrant**

- (1) After considering a request under section 180J, the Minister must:
-

- (a) issue a journalist information warrant that authorises the making of authorisations under Division 3 in relation to the particular person to which the request relates; or
  - (b) refuse to issue a journalist information warrant.
- (2) The Minister must not issue a journalist information warrant unless the Minister is satisfied that:
- (a) the Organisation's functions would extend to the making of authorisations under Division 3 in relation to the particular person; and
  - (b) the public interest in issuing the warrant outweighs the public interest in protecting the confidentiality of the identity of the source in connection with whom authorisations would be made under the authority of the warrant, having regard to:
    - (i) the extent to which the privacy of any person or persons would be likely to be interfered with by the disclosure of information or documents under authorisations that are likely to be made under the authority of the warrant; and
    - (ii) the gravity of the matter in relation to which the warrant is sought; and
    - (iii) the extent to which that information or those documents would be likely to assist in the performance of the Organisation's functions; and
    - (iv) whether reasonable attempts have been made to obtain the information or documents by other means; and
    - (v) any submissions made by a Public Interest Advocate under section 180X; and
    - (vi) any other matters the Minister considers relevant.
- (3) A journalist information warrant issued under this section may specify conditions or restrictions relating to making authorisations under the authority of the warrant.

### **180M Issuing a journalist information warrant in an emergency**

- (1) The Director-General of Security may issue a journalist information warrant in relation to a particular person if:

- (a) a request under section 180J has been made for the issue of a journalist information warrant in relation to the particular person; and
  - (b) the Minister has not, to the knowledge of the Director-General, made a decision under section 180L in relation to the request; and
  - (c) within the preceding period of 3 months:
    - (i) the Minister has not refused to issue a journalist information warrant in relation to the particular person; and
    - (ii) the Director-General has not issued such a journalist information warrant; and
  - (d) the Director-General is satisfied that, security will be, or is likely to be, seriously prejudiced if the access to which the request relates does not begin before a journalist information warrant can be issued and made available by the Minister; and
  - (e) either:
    - (i) the issuing of the warrant is authorised under subsection (3); or
    - (ii) the Director-General is satisfied that none of the Ministers specified in subsection (4) is readily available or contactable.
- (2) The Director-General must not issue a journalist information warrant unless the Director-General is satisfied as to the matters set out in paragraphs 180L(2)(a) and (b).

*Authorisation to issue a warrant under this section*

- (3) A Minister specified in subsection (4) may, if he or she is satisfied as to the matters set out in paragraphs 180L(2)(a) and (b), orally give an authorisation under this subsection for the Director-General to issue the warrant under this section.
  - (4) The Ministers who may orally give an authorisation are:
    - (a) the Minister; or
    - (b) if the Director-General is satisfied that the Minister is not readily available or contactable—any of the following Ministers:
-

- (i) the Prime Minister;
  - (ii) the Defence Minister;
  - (iii) the Foreign Affairs Minister.
- (5) The authorisation may specify conditions or restrictions relating to issuing the warrant.
- (6) The Director-General must ensure that a written record of an authorisation given under subsection (3) is made as soon as practicable (but no later than 48 hours) after the authorisation is given.

*Duration of a warrant under this section*

- (7) A journalist information warrant under this section must specify the period (not exceeding 48 hours) for which it is to remain in force. The Minister may revoke the warrant at any time before the end of the specified period.

*Copies of warrant and other documents*

- (8) Immediately after issuing a journalist information warrant under this section, the Director-General must give the Minister:
- (a) a copy of the warrant; and
  - (b) a statement of the grounds on which the warrant was issued; and
  - (c) either:
    - (i) a copy of the record made under subsection (6); or
    - (ii) if the Director-General was satisfied as mentioned in subparagraph (1)(e)(ii)—a summary of the facts of the case justifying issuing the warrant.
- (9) Within 3 business days after issuing a journalist information warrant under this section, the Director-General must give the Inspector-General of Intelligence and Security:
- (a) a copy of the warrant; and
  - (b) either:
    - (i) a copy of the record made under subsection (6); or

- (ii) if the Director-General was satisfied as mentioned in subparagraph (1)(e)(ii)—a summary of the facts of the case justifying issuing the warrant.

(10) Subsection (9) has effect despite subsection 185D(1).

### **180N Duration of a journalist information warrant**

A journalist information warrant issued under section 180L must specify the period (not exceeding 6 months) for which it is to remain in force. The Minister may revoke the warrant at any time before the end of the specified period.

### **180P Discontinuance of authorisations before expiry of a journalist information warrant**

If, before a journalist information warrant issued under this Subdivision ceases to be in force, the Director-General of Security is satisfied that the grounds on which the warrant was issued have ceased to exist, he or she must:

- (a) forthwith inform the Minister accordingly; and
- (b) takes such steps as are necessary to ensure that the making of authorisations under the authority of the warrant is discontinued.

### **Subdivision C—Issuing journalist information warrants to enforcement agencies**

#### **180Q Enforcement agency may apply for a journalist information warrant**

- (1) An enforcement agency may apply to a Part 4-1 issuing authority for a journalist information warrant in relation to a particular person.
- (2) The application must be made on the agency's behalf by:
  - (a) if the agency is referred to in subsection 39(2)—a person referred to in that subsection in relation to that agency; or
  - (b) otherwise:
    - (i) the chief officer of the agency; or

- (ii) an officer of the agency (by whatever name called) who holds, or is acting in, an office or position in the agency nominated under subsection (3).
- (3) The chief officer of the agency may, in writing, nominate for the purposes of subparagraph (2)(b)(ii) an office or position in the agency that is involved in the management of the agency.
- (4) A nomination under subsection (3) is not a legislative instrument.
- (5) The application may be made in writing or in any other form.

Note: The *Electronic Transactions Act 1999* deals with giving information in writing by means of an electronic communication.

### **180R Further information**

- (1) The Part 4-1 issuing authority may require:
  - (a) in any case—the chief officer of the agency; or
  - (b) if the application is made, on the agency’s behalf, by a person other than the chief officer—that other person;to give to the Part 4-1 issuing authority, within the period and in the form specified in the requirement, further information in connection with the application.
- (2) If the chief officer or other person breaches the requirement, the Part 4-1 issuing authority may:
  - (a) refuse to consider the application; or
  - (b) refuse to take any action, or any further action, in relation to the application.

### **180S Oaths and affirmations**

- (1) Information given to the Part 4-1 issuing authority in connection with the application must be verified on oath or affirmation.
- (2) For the purposes of this section, the Part 4-1 issuing authority may:
  - (a) administer an oath or affirmation; or
  - (b) authorise another person to administer an oath or affirmation.The oath or affirmation may be administered in person, or by telephone, video call, video link or audio link.

### **180T Issuing a journalist information warrant**

- (1) After considering an application under section 180Q, the Part 4-1 issuing authority must:
  - (a) issue a journalist information warrant that authorises the making of authorisations under one or more of sections 178, 178A, 179 and 180 in relation to the particular person to which the application relates; or
  - (b) refuse to issue a journalist information warrant.
- (2) The Part 4-1 issuing authority must not issue a journalist information warrant unless the Part 4-1 issuing authority is satisfied that:
  - (a) the warrant is reasonably necessary for whichever of the following purposes are applicable:
    - (i) if the warrant would authorise the making of authorisations under section 178—for the enforcement of the criminal law;
    - (ii) if the warrant would authorise the making of authorisations under section 178A—finding a person who the Australian Federal Police, or a Police Force of a State, has been notified is missing;
    - (iii) if the warrant would authorise the making of authorisations under section 179—the enforcement of a law imposing a pecuniary penalty or for the protection of the public revenue;
    - (iv) if the warrant would authorise the making of authorisations under section 180—the investigation of an offence of a kind referred to in subsection 180(4); and
  - (b) the public interest in issuing the warrant outweighs the public interest in protecting the confidentiality of the identity of the source in connection with whom authorisations would be made under the authority of the warrant, having regard to:
    - (i) the extent to which the privacy of any person or persons would be likely to be interfered with by the disclosure of information or documents under authorisations that are likely to be made under the authority of the warrant; and

- (ii) the gravity of the matter in relation to which the warrant is sought; and
- (iii) the extent to which that information or those documents would be likely to assist in relation to that matter; and
- (iv) whether reasonable attempts have been made to obtain the information or documents by other means; and
- (v) any submissions made by a Public Interest Advocate under section 180X; and
- (vi) any other matters the Part 4-1 issuing authority considers relevant.

#### **180U Form and content of a journalist information warrant**

- (1) A journalist information warrant issued under this Subdivision must be in accordance with the prescribed form and must be signed by the Part 4-1 issuing authority who issues it.
- (2) A journalist information warrant issued under this Subdivision may specify conditions or restrictions relating to making authorisations under the authority of the warrant.
- (3) A journalist information warrant issued under this Subdivision must specify, as the period for which it is to be in force, a period of up to 90 days.
- (4) A Part 4-1 issuing authority must not vary a journalist information warrant issued under this Subdivision by extending the period for which it is to be in force.
- (5) Neither of subsections (3) and (4) prevents the issue of a further warrant under this Act in relation to a person, in relation to which a warrant under this Act has, or warrants under this Act have, previously been issued.

#### **180V Entry into force of a journalist information warrant**

A journalist information warrant issued under this Subdivision comes into force when it is issued.

**180W Revocation of a journalist information warrant by chief officer**

- (1) The chief officer of an enforcement agency:
  - (a) may, at any time, by signed writing, revoke a journalist information warrant issued under this Subdivision to the agency; and
  - (b) must do so, if he or she is satisfied that the grounds on which the warrant was issued to the agency have ceased to exist.
- (2) The chief officer of an enforcement agency may delegate his or her power under paragraph (1)(a) to a certifying officer of the agency.

**Subdivision D—Miscellaneous**

**180X Public Interest Advocates**

- (1) The Prime Minister shall declare, in writing, one or more persons to be Public Interest Advocates.
- (2) A Public Interest Advocate may make submissions:
  - (a) to the Minister about matters relevant to:
    - (i) a decision to issue, or refuse to issue, a journalist information warrant under section 180L; or
    - (ii) a decision about the conditions or restrictions (if any) that are to be specified in such a warrant; or
  - (b) to a Part 4-1 issuing authority about matters relevant to:
    - (i) a decision to issue, or refuse to issue, the warrant under section 180T; or
    - (ii) a decision about the conditions or restrictions (if any) that are to be specified in such a warrant.
- (3) The regulations may prescribe matters relating to the performance of the role of a Public Interest Advocate.
- (4) A declaration under subsection (1) is not a legislative instrument.

**6M After subparagraph 181A(3)(b)(i)**

Insert:

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- (ia) to enable a person to comply with his or her obligations under section 185D or 185E; or

**6N After paragraph 181A(3)(b)**

Insert:

; or (c) the disclosure is:

- (i) to an IGIS official for the purpose of the Inspector-General of Intelligence and Security exercising powers, or performing functions or duties, under the *Inspector-General of Intelligence and Security Act 1986*; or
- (ii) by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, under that Act.

**6P After subparagraph 181A(6)(b)(i)**

Insert:

- (ia) to enable a person to comply with his or her obligations under section 185D or 185E; or

**6Q After paragraph 181A(6)(b)**

Insert:

; or (c) the use is by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, under the *Inspector-General of Intelligence and Security Act 1986*.

**6R After subparagraph 181B(3)(b)(i)**

Insert:

- (ia) to enable a person to comply with his or her obligations under section 185D or 185E; or

**6S Before subparagraph 181B(6)(b)(i)**

Insert:

- (ia) to enable a person to comply with his or her obligations under section 185D or 185E; or

### 6T Subsection 182(2)

Repeal the subsection, substitute:

*Exempt disclosures*

- (2) Paragraph (1)(b) does not apply to a disclosure of non-missing person information if:
- (a) the disclosure is reasonably necessary:
    - (i) for a person to comply with his or her obligations under section 185D or 185E; or
    - (ii) for the performance by the Organisation of its functions; or
    - (iii) for the enforcement of the criminal law; or
    - (iv) for the enforcement of a law imposing a pecuniary penalty; or
    - (v) for the protection of the public revenue; or
  - (b) the disclosure is:
    - (i) to an IGIS official for the purpose of the Inspector-General of Intelligence and Security exercising powers, or performing functions or duties, under the *Inspector-General of Intelligence and Security Act 1986*; or
    - (ii) by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, under that Act.

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

### 6U Subsection 182(3)

Repeal the subsection, substitute:

*Exempt uses*

- (3) Paragraph (1)(b) does not apply to a use of non-missing person information if:
- (a) the use is reasonably necessary:
    - (i) for a person to comply with his or her obligations under section 185D or 185E; or

- (ii) for the enforcement of the criminal law; or
- (iii) for the enforcement of a law imposing a pecuniary penalty; or
- (iv) for the protection of the public revenue; or
- (b) the use is by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, under the *Inspector-General of Intelligence and Security Act 1986*.

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

## **6V At the end of Division 6 of Part 4-1**

Add:

### **182A Disclosure/use offences: journalist information warrants**

- (1) A person commits an offence if:
  - (a) the person discloses or uses information; and
  - (b) the information is about any of the following:
    - (i) whether a journalist information warrant (other than such a warrant that relates only to section 178A) has been, or is being, requested or applied for;
    - (ii) the making of such a warrant;
    - (iii) the existence or non-existence of such a warrant;
    - (iv) the revocation of such a warrant.

Penalty: Imprisonment for 2 years.

- (2) A person commits an offence if:
  - (a) the person discloses or uses a document; and
  - (b) the document consists (wholly or partly) of any of the following:
    - (i) a journalist information warrant (other than such a warrant that relates only to section 178A);
    - (ii) the revocation of such a warrant.

Penalty: Imprisonment for 2 years.

### **182B Permitted disclosure or use: journalist information warrants**

Paragraphs 182A(1)(a) and (2)(a) do not apply to a disclosure or use of information or a document if:

- (a) the disclosure or use is for the purposes of the warrant, revocation or notification concerned; or
- (b) the disclosure or use is reasonably necessary:
  - (i) to enable the making of submissions under section 180X; or
  - (ii) to enable a person to comply with his or her obligations under section 185D or 185E; or
  - (iii) to enable the Organisation to perform its functions; or
  - (iv) to enforce the criminal law; or
  - (v) to enforce a law imposing a pecuniary penalty; or
  - (vi) to protect the public revenue; or
- (c) in the case of a disclosure—the disclosure is:
  - (i) to an IGIS official for the purpose of the Inspector-General of Intelligence and Security exercising powers, or performing functions or duties, under the *Inspector-General of Intelligence and Security Act 1986*; or
  - (ii) by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, under that Act; or
- (d) in the case of a use—the use is by an IGIS official in connection with the IGIS official exercising powers, or performing functions or duties, under the *Inspector-General of Intelligence and Security Act 1986*.

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

### **6W At the end of section 185**

Add:

- (3) This section does not limit subsection 187N(3).

### **6X After section 185C**

Insert:

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**185D Notification etc. of authorisations intended to identify media sources**

*The Organisation*

- (1) If a journalist information warrant is issued under Subdivision B of Division 4C of Part 4-1:
    - (a) the Director-General of Security must, as soon as practicable, give a copy of the warrant to the Inspector-General of Intelligence and Security; and
    - (b) the Minister must, as soon as practicable, cause the Parliamentary Joint Committee on Intelligence and Security to be notified of the issuing of the warrant.
  - (2) If an authorisation under Division 3 of Part 4-1 is made under the authority of the warrant, the Director-General of Security must, as soon as practicable after the expiry of the warrant, give a copy of the authorisation to the Inspector-General of Intelligence and Security.
  - (3) If:
    - (a) the Inspector-General gives to the Minister a report under section 22 or 25A of the *Inspector-General of Intelligence and Security Act 1986*; and
    - (b) the report relates (wholly or partly) to one or both of the following:
      - (i) a journalist information warrant issued to the Organisation;
      - (ii) one or more authorisations referred to in subsection (2) of this section;the Minister must, as soon as practicable, cause a copy of the report to be given to the Parliamentary Joint Committee on Intelligence and Security.
  - (4) The Parliamentary Joint Committee on Intelligence and Security may request a briefing from the Inspector-General on :
    - (a) a journalist information warrant; or
    - (b) an authorisation or authorisations;to which a report referred to in paragraph (3)(b) of this section relates.
-

*Enforcement agencies*

- (5) If a journalist information warrant is issued to an enforcement agency:
- (a) if the agency was the Australian Federal Police:
    - (i) the Commissioner of Police must, as soon as practicable, give copies of the warrant to the Minister and the Ombudsman; and
    - (ii) the Minister must, as soon as practicable after receiving a copy, cause the Parliamentary Joint Committee on Intelligence and Security to be notified of the issuing of the warrant; and
  - (b) otherwise—the chief officer of the agency must, as soon as practicable, give a copy of the warrant to the Ombudsman.
- (6) If an authorisation under Division 4 of Part 4-1 is made under the authority of the warrant, the chief officer of the agency must, as soon as practicable after the expiry of the warrant, give a copy of the authorisation to the Ombudsman.
- (7) If:
- (a) the Ombudsman gives to the Minister a report under section 186J of this Act; and
  - (b) the report relates (wholly or partly) to one or both of the following:
    - (i) a journalist information warrant issued to the Australian Federal Police;
    - (ii) one or more authorisations, referred to in subsection (6) of this section, that were made by one or more authorised officers of the Australian Federal Police;
- the Minister must, as soon as practicable, cause a copy of the report to be given to the Parliamentary Joint Committee on Intelligence and Security.
- (8) The Parliamentary Joint Committee on Intelligence and Security may request a briefing from the Ombudsman on:
- (a) a journalist information warrant; or
  - (b) an authorisation or authorisations;
- to which a report referred to in paragraph (7)(b) of this section relates.
-

## **185E Reports on access to retained data**

### *The Organisation*

- (1) If:
  - (a) the Inspector-General of Intelligence and Security gives to the Minister a report under section 22 or 25A of the *Inspector-General of Intelligence and Security Act 1986*; and
  - (b) the report relates (wholly or partly) to the purpose or manner of access to retained data by means of one or more authorisations under Division 3 of Part 4-1 of this Act;the Minister must, as soon as practicable, cause a copy of the report to be given to the Parliamentary Joint Committee on Intelligence and Security.
- (2) The Parliamentary Joint Committee on Intelligence and Security may request a briefing from the Inspector-General on the authorisation or authorisations.

### *Australian Federal Police*

- (3) If:
  - (a) the Ombudsman gives to the Minister a report under section 186J of this Act; and
  - (b) the report relates (wholly or partly) to the purpose or manner of access to retained data by means of one or more authorisations under Division 4 or 4A of Part 4-1 of this Act; and
  - (c) the authorisation or authorisations were made by one or more authorised officers of the Australian Federal Police;the Minister must, as soon as practicable, cause a copy of the report to be given to the Parliamentary Joint Committee on Intelligence and Security.
- (4) The Parliamentary Joint Committee on Intelligence and Security may request a briefing from the Ombudsman on the authorisation or authorisations.

## **6Y At the end of subsection 186(1)**

Add:

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- ; and (e) the offences and other matters for which authorised officers of the agency made authorisations under sections 178, 178A, 179 and 180 during that year; and
- (f) the lengths of time for which the information or documents that were covered by those authorisations had been held when the authorisations were made; and
- (g) the number of occasions during that year on which authorised officers of the agency made authorisations relating to retained data that included information of a kind referred to in item 1 of the table in subsection 187AA(1); and
- (h) the number of occasions during that year on which authorised officers of the agency made authorisations relating to retained data that included information of a kind referred to in item 2, 3, 4, 5 or 6 of the table in subsection 187AA(1); and
- (i) the number of authorisations, referred to in paragraph (e) of this subsection, that were made under journalist information warrants issued to the agency under Subdivision C of Division 4C of Part 4-1; and
- (j) the number of journalist information warrants issued to the agency under that Subdivision during the period; and
- (k) information of a kind declared under subsection (1E) of this section.

## **6Z After subsection 186(1)**

Insert:

- (1A) The report under subsection (1) is to set out the offences and other matters referred to in paragraph (1)(e) by means of the categories declared under subsection (1B).
- (1B) The Minister may, by legislative instrument, declare categories of offences and other matters into which the offences and other matters are to be divided for the purposes of paragraph (1)(e).
- (1C) The report under subsection (1) is to set out the matters referred to in paragraph (1)(f) by specifying:
  - (a) in relation to each of 8 successive periods of 3 months, the number of the authorisations made for information or

documents held for lengths of time included in that period;  
and

(b) the number of the authorisations made for information or  
documents held for lengths of time exceeding 24 months.

(1D) For the purposes of paragraph (1)(f), disregard any authorisations  
under subsection 180(2), except to the extent that they include  
authorisations under subsection 180(3).

(1E) The Minister may, by legislative instrument, declare kinds of  
information that are to be set out in the report under subsection (1).

## Part 3—Application provisions

### 7 Existing information and documents

- (1) The amendments made by this Schedule apply in relation to information or a document:
  - (a) that is of a kind referred to in paragraph 187A(1)(a) or (b) of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act; and
  - (b) that a service provider was keeping, or causing to be kept, immediately before the commencement of this item; and
  - (c) in relation to which a period specified in section 187C of that Act as so amended had not expired before that commencement.
- (2) However, this item does not require a service provider to create, or to have created, any information or document that was not created by the operation, before that commencement, of a service to which Part 5-1A of that Act as so amended applies.

### 8 Reducing the period for keeping information or documents

- (1) A service provider must not, before the commencement Part 5-1A of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act, reduce the period for which it keeps or causes to be kept any information or document that the service provider will, after that commencement, be required by that Part to keep or cause to be kept.
- (2) This item is taken to be a civil penalty provision for the purposes of the *Telecommunications Act 1997*, as if it had been so declared by a provision of that Act.

### 9 Applications made before commencement of Part 5-1A

- (1) At any time after this Act receives the Royal Assent, a service provider may apply for either or both of the following:
  - (a) approval of:
    - (i) a data retention implementation plan; or
    - (ii) an amendment of a data retention implementation plan;

- under Division 2 of Part 5-1A of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act;
- (b) a decision under subsection 187K(1) or 187KA(2) of that Act as so amended.

- (2) Paragraph (1)(a) of this item does not apply to an application for approval of a data retention implementation plan unless the application would, if made after the commencement of Part 5-1A of that Act as so amended, have complied with section 187E of that Act as so amended.

## **10 Decisions made before commencement of Part 5-1A**

- (1) To avoid doubt, the power to make a decision under section 187F, 187G, 187J, 187K or 187KA of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act is taken, for the purposes of section 4 of the *Acts Interpretation Act 1901*, to be a power to make an instrument of an administrative character.
- (2) Subsection 187F(3) of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act applies, in relation to an application made before the commencement of Part 5-1A of that Act as so amended for approval of a data retention implementation plan, as if references in that subsection to 60 days were references to the number of days provided for in subitem (4) of this item.
- (3) Paragraph 187K(5)(b) of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act applies, in relation to an application made before the commencement of Part 5-1A of that Act as so amended for a decision under subsection 187K(1) of that Act as so amended, as if references in that paragraph to 60 days were references to the number of days provided for in subitem (4) of this item.
- (4) For the purposes of subitem (2) or (3), the number of days is:
- (a) the number of days in the period between:
    - (i) the day the application referred to in that subitem was made; and
    - (ii) the day immediately before the commencement of Part 5-1A of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act; or
  - (b) 60 days;
- whichever is the greater.

## 11 Keeping information or documents before commencement of Part 5-1A

A service provider may, before the commencement of this item, keep or cause to be kept any information or document that, after that commencement, Part 5-1A of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act will require the service provider to keep or cause to be kept.

## 12 First reporting period after commencement of Part 5-1A

- (1) The annual report referred to in subsection 94(1) of the *Australian Security Intelligence Organisation Act 1979* for the period during which Part 5-1A commenced is to include a statement of the matters referred to in paragraphs 94(2A)(c) to (j) of that Act as amended by this Act only to the extent that the matters relate to the part of that period occurring after Part 5-1A commenced.
- (2) A report under section 186 of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act for the period during which Part 5-1A commenced is to include a statement of the matters referred to in paragraphs 186(1)(e) to (k) of that Act as so amended only to the extent that the matters relate to the part of that period occurring after Part 5-1A commenced.
- (3) In this item:  
*Part 5-1A* means Part 5-1A of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act.

## **Schedule 2—Restricting access to stored communications and telecommunications data**

### **Part 1—Main amendments**

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

##### **1 Subparagraphs 107J(1)(a)(i) and (ii)**

Omit “an enforcement agency”, substitute “a criminal law-enforcement agency”.

##### **2 Subsection 110(1)**

Omit “An enforcement agency”, substitute “A criminal law-enforcement agency”.

##### **3 After section 110**

Insert:

##### **110A Meaning of *criminal law-enforcement agency***

- (1) Each of the following is a *criminal law-enforcement agency*:
- (a) the Australian Federal Police;
  - (b) a Police Force of a State;
  - (c) the Australian Commission for Law Enforcement Integrity;
  - (d) the ACC;
  - (e) the Australian Customs and Border Protection Service;
  - (ea) the Australian Securities and Investments Commission;
  - (eb) the Australian Competition and Consumer Commission;
  - (f) the Crime Commission;
  - (g) the Independent Commission Against Corruption;
  - (h) the Police Integrity Commission;
  - (i) the IBAC;
  - (j) the Crime and Corruption Commission of Queensland;
  - (k) the Corruption and Crime Commission;

- (l) the Independent Commissioner Against Corruption;
  - (m) subject to subsection (7), an authority or body for which a declaration under subsection (3) is in force.
- (2) The head of an authority or body may request the Minister to declare the authority or body to be a criminal law-enforcement agency.
- (3) The Minister may, by legislative instrument, declare:
- (a) an authority or body to be a criminal law-enforcement agency; and
  - (b) persons specified, or of a kind specified, in the declaration to be officers of the criminal law-enforcement agency for the purposes of this Act.
- (3A) The Minister may make the declaration whether or not the head of the authority or body has made a request under subsection (2).
- (3B) The Minister must not make the declaration unless the Minister is satisfied on reasonable grounds that the functions of the authority or body include investigating serious contraventions.
- (4) In considering whether to make the declaration, the Minister must have regard to:
- (b) whether access to stored communications, and the making of authorisations under section 180, would be reasonably likely to assist the authority or body in investigating serious contraventions; and
  - (c) whether the authority or body:
    - (i) is required to comply with the Australian Privacy Principles; or
    - (ii) is required to comply with a binding scheme that provides protection of personal information that meets the requirements of subsection (4A); or
    - (iii) has agreed in writing to comply with a scheme providing such protection of personal information, in relation to personal information disclosed to it under Chapter 3 or 4, if the declaration is made; and
  - (d) whether the authority or body proposes to adopt processes and practices that would ensure its compliance with the obligations of a criminal law-enforcement agency under
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- Chapter 3, and the obligations of an enforcement agency under Chapter 4; and
- (e) whether the Minister considers that the declaration would be in the public interest; and
  - (f) any other matter that the Minister considers relevant.
- (4A) For the purposes of subparagraphs (4)(c)(ii) and (iii), the protection of personal information provided by the scheme must:
- (a) be comparable to the protection provided by the Australian Privacy Principles; and
  - (b) include a mechanism for monitoring the authority's or body's compliance with the scheme; and
  - (c) include a mechanism that enables an individual to seek recourse if his or her personal information is mishandled.
- (5) In considering whether to make the declaration, the Minister may consult such persons or bodies as the Minister thinks fit. In particular, the Minister may consult the Privacy Commissioner and the Ombudsman.
- (6) The declaration may be subject to conditions.
- (7) Without limiting subsection (6), a condition may provide that the authority or body is not to exercise:
- (a) a power conferred on a criminal law-enforcement agency by or under a specified provision in Chapter 3; or
  - (b) a power conferred on an enforcement agency by or under a specified provision in Chapter 4.
- The authority or body is taken, for the purposes of this Act, not to be a criminal law-enforcement agency for the purposes of that provision in Chapter 3, or an enforcement agency for the purposes of that provision in Chapter 4, as the case requires.
- (8) The Minister may, by legislative instrument, revoke a declaration under subsection (3) relating to an authority or body if the Minister is no longer satisfied that the circumstances justify the declaration remaining in force.
- (9) The revocation under subsection (8) of a declaration relating to an authority or body does not affect the validity of:

- (a) a domestic preservation notice given by the authority or body; or
  - (b) a stored communications warrant issued to the authority or body; or
  - (c) an authorisation made by an authorised officer of the authority or body under Division 4 of Part 4-1;
- that was in force immediately before the revocation took effect.
- (10) A declaration under subsection (3):
- (a) comes into force when it is made, or on such later day as is specified in the declaration; and
  - (b) ceases to be in force at the end of the period of 40 sitting days of a House of the Parliament after the declaration comes into force.
- (11) If a Bill is introduced into either House of the Parliament that includes an amendment of subsection (1), the Minister:
- (a) must refer the amendment to the Parliamentary Joint Committee on Intelligence and Security for review; and
  - (b) must not in that referral specify, as the period within which the Committee is to report on its review, a period that will end earlier than 15 sitting days of a House of the Parliament after the introduction of the Bill.

#### **4 Before section 177**

Insert:

##### **176A Meaning of *enforcement agency***

- (1) Each of the following is an ***enforcement agency***:
- (a) subject to subsection 110A(7), a criminal law-enforcement agency;
  - (b) subject to subsection (7), an authority or body for which a declaration under subsection (3) is in force.
- (2) The head of an authority or body may request the Minister to declare the authority or body to be an enforcement agency.
- (3) The Minister may, by legislative instrument, declare:
- (a) an authority or body to be an enforcement agency; and

- (b) persons specified, or of a kind specified, in the declaration to be officers of the enforcement agency for the purposes of this Act.
- (3A) The Minister may make the declaration whether or not the head of the authority or body has made a request under subsection (2).
- (3B) The Minister must not make the declaration unless the Minister is satisfied on reasonable grounds that the functions of the authority or body include:
- (a) enforcement of the criminal law; or
  - (b) administering a law imposing a pecuniary penalty; or
  - (c) administering a law relating to the protection of the public revenue.
- (4) In considering whether to make the declaration, the Minister must have regard to:
- (b) whether the making of authorisations under section 178 or 179 would be reasonably likely to assist the authority or body in performing the functions referred to in subsection (3B); and
  - (c) whether the authority or body:
    - (i) is required to comply with the Australian Privacy Principles; or
    - (ii) is required to comply with a binding scheme that provides protection of personal information that meets the requirements of subsection (4A); or
    - (iii) has agreed in writing to comply with a scheme providing such protection of personal information, in relation to personal information disclosed to it under Chapter 4, if the declaration is made; and
  - (d) whether the authority or body proposes to adopt processes and practices that would ensure its compliance with the obligations of an enforcement agency under Chapter 4; and
  - (e) whether the Minister considers that the declaration would be in the public interest; and
  - (f) any other matter that the Minister considers relevant.
- (4A) For the purposes of subparagraphs (4)(c)(ii) and (iii), the protection of personal information provided by the scheme must:
-

- (a) be comparable to the protection provided by the Australian Privacy Principles; and
    - (b) include a mechanism for monitoring the authority's or body's compliance with the scheme; and
    - (c) include a mechanism that enables an individual to seek recourse if his or her personal information is mishandled.
  - (5) In considering whether to make the declaration, the Minister may consult such persons or bodies as the Minister thinks fit. In particular, the Minister may consult the Privacy Commissioner and the Ombudsman.
  - (6) The declaration may be subject to conditions.
  - (7) Without limiting subsection (6), a condition may provide that the authority or body is not to exercise a power conferred on an enforcement agency by or under a specified provision in Chapter 4. The authority or body is taken, for the purposes of this Act, not to be an enforcement agency for the purposes of that provision.
  - (8) The Minister may, by legislative instrument, revoke a declaration under subsection (3) relating to an authority or body if the Minister is no longer satisfied that the circumstances justify the declaration remaining in force.
  - (9) The revocation under subsection (8) of a declaration relating to an authority or body does not affect the validity of an authorisation, made by an authorised officer of the authority or body under this Division, that was in force immediately before the revocation took effect.
  - (10) A declaration under subsection (3):
    - (a) comes into force when it is made, or on such later day as is specified in the declaration; and
    - (b) ceases to be in force at the end of the period of 40 sitting days of a House of the Parliament after the declaration comes into force.
  - (11) If a Bill is introduced into either House of the Parliament that includes an amendment of subsection (1), the Minister:
    - (a) must refer the amendment to the Parliamentary Joint Committee on Intelligence and Security for review; and
-

- (b) must not in that referral specify, as the period within which the Committee is to report on its review, a period that will end earlier than 15 sitting days of a House of the Parliament after the introduction of the Bill.

## Part 2—Other amendments

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

#### **5 Subsection 5(1) (definition of *Crime and Misconduct Commission*)**

Omit “Misconduct”, substitute “Corruption”.

#### **6 Subsection 5(1) (definition of *criminal law-enforcement agency*)**

Repeal the definition, substitute:

*criminal law-enforcement agency* has the meaning given by section 110A.

#### **7 Subsection 5(1) (definition of *enforcement agency*)**

Repeal the definition, substitute:

*enforcement agency* has the meaning given by section 176A.

#### **8 Subsection 5(1) (at the end of the definition of *officer*)**

Add:

- ; or (n) in the case of a criminal law-enforcement agency for which a declaration under subsection 110A(3) is in force—a person specified, or of a kind specified, in the declaration to be an officer of the criminal law-enforcement agency for the purposes of this Act; or
- (o) in the case of an enforcement agency for which a declaration under subsection 176A(3) is in force—a person specified, or of a kind specified, in the declaration to be an officer of the enforcement agency for the purposes of this Act.

#### **9 Section 107G**

Omit “an enforcement agency or the Organisation”, substitute “a criminal law-enforcement agency, or the Organisation”.

**10 Section 107G**

Omit “an interception agency or the Organisation”, substitute “a criminal law-enforcement agency that is an interception agency, or the Organisation,”.

**11 Subsection 107J(1) (heading)**

Repeal the heading, substitute:

*Notices given by criminal law-enforcement agencies*

**12 Paragraphs 107L(2)(a), 107M(1)(a), (2)(a) and (3)(a)**

Omit “an enforcement agency”, substitute “a criminal law-enforcement agency”.

**13 Part 3-3 (heading)**

Repeal the heading, substitute:

**Part 3-3—Access by criminal law-enforcement agencies to stored communications**

**14 Section 110 (heading)**

Repeal the heading, substitute:

**110 Criminal law-enforcement agencies may apply for stored communications warrants**

**15 Subsections 111(3) and 116(1)**

Omit “an enforcement agency”, substitute “a criminal law-enforcement agency”.

**16 Subparagraph 120(1)(a)(i)**

Omit “enforcement agency”, substitute “criminal law-enforcement agency”.

**17 Subsection 120(2)**

Omit “an enforcement agency’s”, substitute “a criminal law-enforcement agency’s”.

**18 Subparagraph 120(2)(b)(ii)**

Omit “enforcement agency”, substitute “criminal law-enforcement agency”.

**19 Paragraph 120(3)(a)**

Omit “enforcement agency’s”, substitute “criminal law-enforcement agency’s”.

**20 Paragraph 120(3)(a)**

Omit “enforcement agency”, substitute “criminal law-enforcement agency”.

**21 Subsection 120(4)**

Omit “enforcement agency”, substitute “criminal law-enforcement agency”.

**22 Subsection 122(1)**

Omit “an enforcement agency”, substitute “a criminal law-enforcement agency”.

**23 Paragraph 122(1)(a)**

Omit “enforcement agency”, substitute “criminal law-enforcement agency”.

**24 Subsection 122(2)**

Omit “an enforcement agency”, substitute “a criminal law-enforcement agency”.

**25 Subsection 122(2)**

Omit “other enforcement agency”, substitute “other criminal law-enforcement agency”.

**26 Subsection 122(3)**

Omit “an enforcement agency”, substitute “a criminal law-enforcement agency”.

**27 Subsection 123(1)**

Omit “an enforcement agency”, substitute “a criminal law-enforcement agency”.

**28 Subsection 123(1)**

Omit “other enforcement agency”, substitute “other criminal law-enforcement agency”.

**29 Subsection 123(2)**

Omit “enforcement agency”, substitute “criminal law-enforcement agency”.

**30 Subsection 127(2)**

Omit “an enforcement agency” (wherever occurring), substitute “a criminal law-enforcement agency”.

**31 Paragraphs 127(2)(a) and (b)**

Omit “enforcement agency”, substitute “criminal law-enforcement agency”.

**32 Subsections 127(3) and 128(1)**

Omit “an enforcement agency”, substitute “a criminal law-enforcement agency”.

**33 Subsection 128(3)**

Omit “an enforcement agency” (wherever occurring), substitute “a criminal law-enforcement agency”.

**34 Section 130 (heading)**

Repeal the heading, substitute:

**130 Evidentiary certificates relating to actions by criminal law-enforcement agencies**

**35 Subsections 130(1) and (2)**

Omit “an enforcement agency”, substitute “a criminal law-enforcement agency”.

**36 Section 131**

Omit “an enforcement agency”, substitute “a criminal law-enforcement agency”.

**37 Subsection 135(1) (heading)**

Repeal the heading, substitute:

*Communicating information to the appropriate criminal law-enforcement agency*

**38 Paragraph 135(1)(a)**

Omit “enforcement agency”, substitute “criminal law-enforcement agency”.

**39 Subsection 135(2)**

Omit “an enforcement agency”, substitute “a criminal law-enforcement agency”.

**40 Section 138 (heading)**

Repeal the heading, substitute:

**138 Employee of carrier may communicate information to criminal law-enforcement agency**

**41 Subsection 138(2)**

Omit “enforcement agency”, substitute “criminal law-enforcement agency”.

**42 Subsection 139(1)**

Omit “an enforcement agency”, substitute “a criminal law-enforcement agency”.

**43 Paragraph 139(2)(a)**

Omit “enforcement agency”, substitute “criminal law-enforcement agency”.

**44 Paragraph 150(1)(a)**

Omit “an enforcement agency’s”, substitute “a criminal law-enforcement agency’s”.

**45 Subsections 159(1) and 160(1)**

Omit “an enforcement agency”, substitute “a criminal law-enforcement agency”.

**46 Subsections 161A(1) and (2) and 162(1)**

Omit “enforcement agency”, substitute “criminal law-enforcement agency”.

**47 Section 163**

Omit “enforcement agency”, substitute “criminal law-enforcement agency”.

## Part 3—Application provisions

### 48 Existing domestic preservation notices

If:

- (a) a domestic preservation notice was given to a carrier before the commencement of this Schedule; and
- (b) the notice was in force immediately before that commencement; and
- (c) the authority or body that gave the notice was not the Organisation; and
- (d) on that commencement, the authority or body is not a criminal law-enforcement agency (whether or not it is an enforcement agency);

after that commencement, the notice continues in force, and Chapter 3 of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act continues to apply in relation to the notice, as if the authority or body were a criminal law-enforcement agency.

### 49 Existing stored communications warrants

If:

- (a) a stored communications warrant was issued to an authority or body before the commencement of this Schedule; and
- (b) the warrant was in force immediately before that commencement; and
- (c) on that commencement, the authority or body is not a criminal law-enforcement agency (whether or not it is an enforcement agency);

after that commencement, the warrant continues in force, and Chapter 3 of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act continues to apply in relation to the warrant, as if the authority or body were a criminal law-enforcement agency.

### 50 Existing authorisations

If:

- (a) an authority or body made an authorisation under Division 4 of Part 4-1 of the *Telecommunications (Interception and*

*Access*) Act 1979 before the commencement of this Schedule;  
and

- (b) the authorisation was in force immediately before that commencement; and
- (c) on that commencement, the authority or body is not an enforcement agency;

after that commencement, the authorisation continues in force, and Chapter 4 of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act continues to apply in relation to the authorisation, as if the authority or body were an enforcement agency.

## **51 Evidentiary certificates**

(1) If:

- (a) an authority or body issued a certificate under section 107U or 130 of the *Telecommunications (Interception and Access) Act 1979* before the commencement of this Schedule; and
- (b) on that commencement, the authority or body is not a criminal law-enforcement agency (whether or not it is an enforcement agency);

after that commencement, the certificate continues in force as if the authority or body were a criminal law-enforcement agency.

(2) If:

- (a) an authority or body issued a certificate under section 185C of the *Telecommunications (Interception and Access) Act 1979* before the commencement of this Schedule; and
- (b) on that commencement, the authority or body is not an enforcement agency;

after that commencement, the certificate continues in force as if the authority or body were an enforcement agency.

(3) An authority or body that:

- (a) was a criminal law-enforcement agency immediately before the commencement of this Schedule; and
- (b) on that commencement, is not a criminal law-enforcement agency (whether or not it is an enforcement agency);

continues after that commencement to have the power to issue certificates under section 107U or 130 of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act, with respect to anything done before that commencement, as if it were a criminal law-enforcement agency.

(4) An authority or body that:

- (a) was an enforcement agency immediately before the commencement of this Schedule; and
- (b) on that commencement, is not an enforcement agency;

continues after that commencement to have the power to issue certificates under section 185C of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act, with respect to anything done before that commencement, as if it were an enforcement agency.

## **Schedule 3—Oversight by the Commonwealth Ombudsman**

### **Part 1—Amendments**

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

##### **1 Subsection 5C(1)**

Omit “or 3-5”, substitute “or Chapter 4A”.

##### **2 At the end of section 87**

Add:

- (6) A person must not refuse:
- (a) to attend before a person; or
  - (b) to give information; or
  - (c) to answer questions;
- when required to do so under this section.

Penalty for an offence against this subsection:      Imprisonment  
for 6 months.

##### **3 Section 134**

After “or 3-6”, insert “or Chapter 4A”.

##### **4 Part 3-5 (heading)**

Repeal the heading, substitute:

### **Part 3-5—Keeping and inspection of records**

##### **5 Divisions 1 and 2 of Part 3-5**

Repeal the Divisions, substitute:

## Division 1—Obligation to keep records

### 151 Obligation to keep records

- (1) The chief officer of a criminal law-enforcement agency must cause the following, or copies of the following, to be kept in the agency's records for the period specified in subsection (3):
  - (a) each preservation notice given by the agency, and documents or other materials that indicate whether the notice was properly given;
  - (b) each notice under subsection 107L(3) of the revocation of such a preservation notice, and documents or other materials that indicate whether the revocation was properly made;
  - (c) each stored communications warrant issued to the agency, and documents or other materials that indicate whether the warrant was properly applied for, including:
    - (i) a copy of each application for such a warrant; and
    - (ii) a copy of each affidavit supporting such an application; and
    - (iii) documents or other materials that indicate whether the applicant for such a warrant complied with the requirements of Division 1 of Part 3-3;
  - (d) each instrument revoking such a warrant under section 122, and documents or other materials that indicate whether the revocation was properly made;
  - (e) documents or other materials that indicate the persons approved under subsection 127(2), and the persons appointed under subsection 127(3) to be approving officers for the purposes of subsection 127(2);
  - (f) each authorisation by the chief officer under subsection 135(2);
  - (g) each request for mutual assistance, being a request to which a mutual assistance application relates, and documents or other materials that indicate:
    - (i) whether the request was made lawfully; or
    - (ii) the offence in relation to which the request was made;
  - (h) documents or other materials that indicate whether the communication, use or recording of lawfully accessed

information (other than foreign intelligence information, preservation notice information or stored communication warrant information) complied with the requirements of Division 2 of Part 3-4;

- (i) documents indicating whether information or a record was destroyed in accordance with section 150;
  - (j) each evidentiary certificate issued under this Chapter;
  - (k) each report given to the Minister under Division 1 of Part 3-6;
  - (l) documents and other materials of a kind prescribed under subsection (2) of this section.
- (2) The Minister may, by legislative instrument, prescribe kinds of documents and other materials that the chief officer of a criminal law-enforcement agency must cause to be kept in the agency's records.
- (3) The period for which the chief officer of a criminal law-enforcement agency must cause a particular item to be kept in the agency's records under subsection (1) of this section is the period:
- (a) starting when the item came into existence; and
  - (b) ending:
    - (i) when 3 years have elapsed since the item came into existence; or
    - (ii) when the Ombudsman gives a report to the Minister under section 186J that is about records that include the item;
- whichever happens earlier.

## **6 At the end of Part 4-2**

Add:

### **186A Obligation to keep records**

- (1) The chief officer of an enforcement agency must cause the following, or copies of the following, to be kept in the agency's records for the period specified in subsection (3):

- (a) each authorisation made by an authorised officer of the agency under section 178, 178A, 179 or 180, and documents or other materials that indicate any of the following:
  - (i) whether the authorisation was properly made (including whether the authorised officer took into account the matters referred to in subsection 178(3), 178A(3), 179(3) or 180(4) (as the case requires), the matters referred to in section 180F and all other relevant considerations);
  - (ii) if the authorisation is made under section 180—the period during which the authorisation is in force;
  - (iii) when the authorisation was notified under subsection 184(3);
- (b) each notice of the revocation under subsection 180(7) of an authorisation under section 180, and documents or other materials that indicate any of the following:
  - (i) whether the revocation was properly made;
  - (ii) when the revocation was notified under subsection 184(4);
- (c) if the agency is the Australian Federal Police—each authorisation made by an authorised officer of the Australian Federal Police under section 180A or 180B, and documents or other materials that indicate any of the following:
  - (i) whether the authorisation was properly made (including whether the authorised officer took into account the matters referred to in subsection 180A(3) or (5), 180B(3) or (8) or 180E(1) (as the case requires), the matters referred to in section 180F and all other relevant considerations);
  - (ii) if the authorisation is made under section 180B—the period during which the authorisation is in force;
  - (iii) if the authorisation is made under subsection 180B(8)—whether the authorised officer was satisfied as to the matters referred to in paragraphs 180B(8)(a) and (b);
  - (iv) when the authorisation was notified under subsection 184(5);
- (d) if the agency is the Australian Federal Police—each notice of the extension under subsection 180B(6) of an authorisation

- under section 180B, and documents or other materials that indicate any of the following:
- (i) whether the extension was properly made;
  - (ii) when the extension was notified under subsection 184(5);
- (e) if the agency is the Australian Federal Police—each notice of the revocation under subsection 180B(4) of an authorisation under section 180B, and documents or other materials that indicate any of the following:
- (i) whether the revocation was properly made;
  - (ii) when the revocation was notified under subsection 184(6);
- (f) if the agency is the Australian Federal Police—each authorisation made by an authorised officer of the Australian Federal Police under section 180C or 180D, and documents or other materials that indicate whether the authorisation was properly made, including whether the authorised officer took into account:
- (i) the matters referred to in subsection 180C(2), 180D(2) or 180E(1) (as the case requires); and
  - (ii) the matters referred to in section 180F; and
  - (iii) all other relevant considerations;
- (g) documents or other materials that indicate whether:
- (i) a disclosure of information or a document to which subsection 181B(1) or (2) applies took place in circumstances referred to in subsection 181B(3); or
  - (ii) a use of information or a document to which subsection 181B(4) or (5) applies took place in circumstances referred to in subsection 181B(6); or
  - (iii) a disclosure or use of information or a document to which subsection 182(1) applies took place in circumstances referred to in subsection 182(2), (2A), (3), (4) or (4A);
- (h) each evidentiary certificate issued under section 185C;
- (i) each report given to the Minister under section 186;
- (j) documents and other materials of a kind prescribed under subsection (2) of this section.

- (2) The Minister may, by legislative instrument, prescribe kinds of documents and other materials that the chief officer of an enforcement agency must cause to be kept in the agency's records.
- (3) The period for which the chief officer of an enforcement agency must cause a particular item to be kept in the agency's records under subsection (1) of this section is the period:
  - (a) starting when the item came into existence; and
  - (b) ending:
    - (i) when 3 years have elapsed since the item came into existence; or
    - (ii) when the Ombudsman gives a report to the Minister under section 186J that is about records that include the item;whichever happens earlier.
- (4) Subsection (3) does not affect the operation of section 185.

## **7 Before Chapter 5**

Insert:

# **Chapter 4A—Oversight by the Commonwealth Ombudsman**

## **186B Inspection of records**

- (1) The Ombudsman must inspect records of an enforcement agency to determine:
  - (a) the extent of compliance with Chapter 4 by the agency and its officers; and
  - (b) if the agency is a criminal law-enforcement agency—the extent of compliance with Chapter 3 by the agency and its officers.
- (2) For the purpose of an inspection under this section, the Ombudsman:
  - (a) after notifying the chief officer of the agency, may 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) despite any other law, is entitled to make copies of, and to take extracts from, records of the agency; and
  - (d) may require a member of staff of the agency to give the Ombudsman any information that the Ombudsman considers necessary, being information:
    - (i) that is in the member's possession, or to which the member has access; and
    - (ii) that is relevant to the inspection.
- (3) Before inspecting records of an enforcement agency under this section, the Ombudsman must give reasonable notice to the chief officer of the agency of when the inspection will occur.
- (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) To avoid doubt, subsection (1) does not require the Ombudsman to inspect all of the records of an enforcement agency that are relevant to the matters referred to in paragraphs (1)(a) and (b).
- (6) While an operation is being conducted under:
  - (a) a stored communications warrant; or
  - (b) an authorisation under Division 3, 4 or 4A of Part 4-1;the Ombudsman may refrain from inspecting any records of the agency concerned that are relevant to the obtaining or execution of the warrant or authorisation.

### **186C Power to obtain relevant information**

- (1) If the Ombudsman has reasonable grounds to believe that an officer of a particular enforcement agency is able to give information relevant to an inspection under this Chapter of the agency's records, the Ombudsman may:

- (a) if the Ombudsman knows the officer's identity—by writing given to the officer, require the officer to do one or both of the following:
    - (i) give the information to the Ombudsman, by writing signed by the officer, at a specified place and within a specified period;
    - (ii) attend before a specified inspecting officer to answer questions relevant to the inspection; or
  - (b) if the Ombudsman does not know the officer's identity—require the chief officer of the agency, or a person nominated by the chief officer, to attend before a specified inspecting officer to answer questions relevant to the inspection.
- (2) A requirement under subsection (1) to attend before an inspecting officer must specify:
- (a) a place for the attendance; and
  - (b) a period within which, or a time and day when, the attendance is to occur.
- The place, and the period or the time and day, must be reasonable having regard to the circumstances in which the requirement is made.
- (3) A person must not refuse:
- (a) to attend before a person; or
  - (b) to give information; or
  - (c) to answer questions;
- when required to do so under this section.

Penalty for an offence against this subsection:      Imprisonment for 6 months.

### **186D 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 Chapter, on the ground that giving the information, answering the question, or giving access to the document, as the case may be, would:
- (a) contravene a law; or

- (b) be contrary to the public interest; or
  - (c) might tend to incriminate the person or make the person liable to a penalty.
- (2) However:
- (a) the information, the answer, or the fact that the person has given access to the document, as the case may be; 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 133, 181A, 181B or 182, or against Part 7.4 or 7.7 of the *Criminal Code*.
- (3) Nothing in section 133, 181A, 181B or 182, or in any other law, prevents an officer of an enforcement 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 Chapter of the agency's records.
- (4) Nothing in section 133, 181A, 181B or 182, or in any other law, prevents an officer of an enforcement 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).

### **186E Application of Ombudsman Act**

- (1) Section 11A of the *Ombudsman Act 1976* does not apply in relation to the exercise or proposed exercise of a power, or the performance or the proposed performance of a function, of the Ombudsman under this Chapter.
- (2) A reference in section 19 of the *Ombudsman Act 1976* to the Ombudsman's operations does not include a reference to anything that an inspecting officer has done or omitted to do under this Chapter.

- (3) Subject to section 186D of this Act, subsections 35(2), (3), (4) and (8) of the *Ombudsman Act 1976* apply for the purposes of this Chapter and so apply as if:
- (a) a reference in those subsections to an officer were a reference to an inspecting officer; and
  - (b) a reference in those subsections to information did not include a reference to lawfully accessed information or lawfully intercepted information; and
  - (c) a reference in those subsections to that Act were a reference to this Chapter; and
  - (d) paragraph 35(3)(b) of that Act were omitted; and
  - (e) section 35A of that Act had not been enacted.

**186F Exchange of information between Ombudsman and State inspecting authorities**

- (1) If the Ombudsman has obtained under this Act information relating to an authority of a State or Territory, the Ombudsman may give the information to another authority of that State or Territory (an *inspecting authority*) that:
- (a) has powers under the law of that State or Territory; and
  - (b) has the function of making inspections of a similar kind to those provided for in section 186B of this Act when the inspecting authority is exercising those powers.
- (2) However, the Ombudsman may give the information only if the Ombudsman is satisfied that giving the information is necessary to enable the inspecting authority to perform its functions in relation to the authority of the State or Territory.
- (3) The Ombudsman may receive, from an inspecting authority, information relevant to the performance of the Ombudsman's functions under this Act.

**186G Delegation by Ombudsman**

- (1) The Ombudsman may delegate:
- (a) to an APS employee responsible to the Ombudsman; or

- (b) to a person having similar oversight functions to the Ombudsman under the law of a State or Territory or to an employee responsible to that person;  
all or any of the Ombudsman's powers under this Chapter 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.

### **186H 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 Chapter.

### **186J Reports**

- (1) The Ombudsman must report to the Minister, in writing, about the results of inspections under section 186B of the records of agencies during a financial year.
- (2) The report under subsection (1) must be given to the Minister as soon as practicable after the end of the financial year.
- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives it.
- (4) The Ombudsman may report to the Minister in writing at any time about the results of an inspection under this Chapter and must do so if so requested by the Minister.
- (5) If, as a result of an inspection under this Chapter of the records of an enforcement agency, the Ombudsman is of the opinion that an officer of the agency has contravened a provision of this Act, the Ombudsman may include in his or her report on the inspection a report on the contravention.

**Schedule 3** Oversight by the Commonwealth Ombudsman  
**Part 1** Amendments

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Note: In complying with this section, the Ombudsman remains bound by the obligations imposed by sections 133, 181B and 182.

- (6) The Ombudsman must give a copy of a report under subsection (1) or (4) to the chief officer of any enforcement agency to which the report relates.
- (7) 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 enforcement agency's operational activities or methodologies.

## **Part 2—Application provisions**

### **8 Existing inspections by the Ombudsman**

If an inspection that the Ombudsman was conducting before the commencement of this Schedule under section 152 of the *Telecommunications (Interception and Access) Act 1979* was not finished before that commencement, after that commencement:

- (a) the inspection is taken to be an inspection conducted under Chapter 4A of that Act as amended by this Act; and
- (b) anything done under that section in relation to the inspection before that commencement is taken to have been done under Chapter 4A of that Act as so amended.

### **9 Reports**

If:

- (a) an inspection that the Ombudsman was conducting before the commencement of this Schedule under section 152 of the *Telecommunications (Interception and Access) Act 1979* was finished before that commencement; but
- (b) the inspection was not dealt with before that commencement in any report to the Minister under section 153 of that Act;

section 186J of that Act as amended by this Act applies in relation to the inspection as if it had been conducted under section 186B of that Act as so amended.

### **10 Obligation to keep records**

- (1) Sections 151 and 186A of the *Telecommunications (Interception and Access) Act 1979* as amended by this Act do not apply in relation to anything done before the commencement of this Schedule.
- (2) Despite the repeal of sections 150A and 151 of the *Telecommunications (Interception and Access) Act 1979* by this Act, those sections continue to apply in relation to things done before the commencement of this Schedule as if those sections had not been repealed.

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*[Minister's second reading speech made in—  
House of Representatives on 30 October 2014  
Senate on 24 March 2015]*

(242/14)

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