



Counter-Terrorism and Other Legislation Amendment Act 2023

No. 96, 2023

**An Act to amend legislation relating to
counter-terrorism and the criminal law, and for
related purposes**

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

Contents

| | | |
|---|-------------------|-----------|
| 1 | Short title..... | 1 |
| 2 | Commencement..... | 2 |
| 3 | Schedules..... | 2 |
| Schedule 1—Amendment of the Crimes Act 1914 | | 3 |
| Part 1—Prescribed security zones and other matters | | 3 |
| <i>Crimes Act 1914</i> | | 3 |
| Part 2—Post-entry warrants | | 7 |
| <i>Crimes Act 1914</i> | | 7 |
| Schedule 2—Amendment of the Criminal Code Act 1995 etc. | | 14 |
| Part 1—Counter-terrorism amendments | | 14 |
| Division 1—Main amendments | | 14 |
| <i>Criminal Code Act 1995</i> | | 14 |
| Division 2—Consequential amendments | | 33 |
| <i>Administrative Decisions (Judicial Review) Act 1977</i> | | 33 |
| <i>Australian Security Intelligence Organisation Act 1979</i> | | 33 |
| <i>Crimes Act 1914</i> | | 33 |
| Part 2—Unauthorised disclosure of information by current and former Commonwealth officers etc.—sunsetting extension | | 35 |
| <i>Criminal Code Act 1995</i> | | 35 |



Counter-Terrorism and Other Legislation Amendment Act 2023

No. 96, 2023

An Act to amend legislation relating to counter-terrorism and the criminal law, and for related purposes

[Assented to 24 November 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Counter-Terrorism and Other Legislation
Amendment Act 2023*.

2 Commencement

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

| Commencement information | | |
|---------------------------------|---|---------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | The day after this Act receives the Royal Assent. | 25 November 2023 |

Note: This table relates only to the provisions of this Act as originally enacted.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 concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Crimes Act 1914

Part 1—Prescribed security zones and other matters

Crimes Act 1914

1 Section 3UA

Insert:

State or Territory police oversight body means:

- (a) an agency, body or authority that; or
- (b) a person who;
under a law of a State or Territory, has functions relating to the investigation of complaints about the conduct of members of the police force of the State or Territory.

2 After subsection 3UD(1)

Insert:

Informing a person of a right to make a complaint

- (1A) A police officer who stops and detains a person under this section must inform the person of any right the person has to make a complaint to:
 - (a) the Commonwealth Ombudsman; or
 - (b) a State or Territory police oversight body;about the conduct of the police officer in exercising the powers conferred by this section.
- (1B) Subsection (1A) does not require a police officer to inform a person of a right if it is not reasonably practicable to do so because of circumstances of urgency.

3 After subsection 3UJ(1)

Insert:

- (1A) In deciding whether to make a declaration under subsection (1) in relation to a Commonwealth place on the ground mentioned in paragraph (1)(a) or (b), the Minister must have regard to:
- (a) whether the impact of the declaration on the rights of persons in the Commonwealth place would be:
 - (i) reasonable; and
 - (ii) proportionate to that ground; and
 - (b) the appropriate duration of the declaration; and
 - (c) in the case of a declaration made on the ground mentioned in paragraph (1)(a)—the availability and effectiveness of any powers that:
 - (i) are conferred by a law of the Commonwealth (other than this Division) or a law of a State or Territory; and
 - (ii) would assist in preventing a terrorist act occurring; and
 - (d) in the case of a declaration made on the ground mentioned in paragraph (1)(b)—the availability and effectiveness of any powers that:
 - (i) are conferred by a law of the Commonwealth (other than this Division) or a law of a State or Territory; and
 - (ii) would assist in responding to a terrorist act that has occurred; and
 - (e) in the case of a declaration that is one of a series of successive declarations under subsection (1) in relation to the Commonwealth place—the impact and proportionality of that series of successive declarations; and
 - (f) such other matters (if any) as the Minister considers relevant.

4 Subsection 3UJ(3)

Repeal the subsection, substitute:

Duration of declaration

- (3) A declaration ceases to have effect:
- (a) at the end of 28 days after it is made; or
 - (b) if a shorter period is specified in the declaration—at the end of the shorter period;
- unless the declaration is revoked by the Minister before then.

5 After subsection 3UJ(5)

Insert:

Notification of declaration

- (5A) If a declaration of a Commonwealth place as a prescribed security zone under this section is made at a particular time, the Commissioner must:
- (a) as soon as practicable after that time; and
 - (b) in any event, within 72 hours after that time;
- arrange for:
- (c) a statement to be prepared that:
 - (i) states that the declaration has been made; and
 - (ii) identifies the prescribed security zone; and
 - (d) the statement to be given to:
 - (i) the Commonwealth Ombudsman; and
 - (ii) the Independent National Security Legislation Monitor; and
 - (iii) the Parliamentary Joint Committee on Intelligence and Security.

Reasons for making determination

- (5B) If a declaration was made under this section in relation to a Commonwealth place, the Minister must:
- (a) give the Parliamentary Joint Committee on Intelligence and Security a written statement setting out the reasons for the making of the declaration; and
 - (b) do so as soon as practicable after the declaration was made.

6 Subsection 3UJ(6) (at the end of the heading)

Add “*or notify*”.

7 Subsection 3UJ(6)

After “subsection (5)”, insert “or (5A)”.

8 After subsection 3UJ(6)

Insert:

Effect of failure to give statement of reasons

(6A) A failure to comply with subsection (5B) does not make the declaration ineffective to any extent.

9 Subsections 3UK(1), (2) and (3)

Omit “7 December 2023”, substitute “7 December 2026”.

**10 Application—declarations under section 3UJ of the
*Crimes Act 1914***

The amendments of section 3UJ of the *Crimes Act 1914* made by this Schedule apply in relation to a declaration made after the commencement of this item.

Part 2—Post-entry warrants

Crimes Act 1914

11 Section 3UA

Insert:

assessment officer: see subsection 3UJC(1).

nominated AAT member means a person in relation to whom a nomination is in force under section 3UJE.

post-entry warrant: see subsection 3UEB(1).

12 After section 3UEA

Insert:

3UEB Emergency entry to premises without warrant—post-entry warrants

Requirement to apply for post-entry warrant

- (1) A police officer who has entered premises under, or purportedly under, subsection 3UEA(1) must:
 - (a) apply to an assessment officer for a warrant (a *post-entry warrant*) under this section in relation to the entry to the premises; and
 - (b) do so as soon as practicable after the exercise, or purported exercise, of powers under section 3UEA in relation to the premises.
- (2) The application must:
 - (a) be in writing; and
 - (b) set out:
 - (i) the nature of the matters suspected by the police officer for the purposes of paragraphs 3UEA(1)(a) and (b); and
 - (ii) the grounds on which the police officer held the suspicion; and
 - (c) state whether the police officer is:

- (i) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
 - (ii) a special member (within the meaning of that Act); or
 - (iii) a member, however described, of a police force of a State or Territory; and
- (d) if the police officer is a member mentioned in subparagraph (c)(iii) of this subsection—identify the relevant State or Territory; and
- (e) state the police officer’s name, rank, identification number (however described) and police station (if applicable and necessary); and
- (f) state the police officer’s contact details, including details of how the assessment officer may give to the police officer the following:
- (i) any request in writing under subsection (4) of this section for information or documents;
 - (ii) the post-entry warrant or a notice of refusal to issue the warrant; and
- (g) if the police officer is a member, or special member, mentioned in subparagraph (c)(i) or (ii) of this subsection—include details of how the assessment officer may give to the Commissioner the post-entry warrant or a notice of refusal to issue the warrant; and
- (h) if the police officer is a member mentioned in subparagraph (c)(iii) of this subsection—include details of how the assessment officer may give to the Commissioner of Police in the police force of the relevant State or Territory, or the person holding equivalent rank, the post-entry warrant or a notice of refusal to issue the warrant; and
- (i) set out any information that:
- (i) is known to the police officer; and
 - (ii) the police officer considers may assist the assessment officer to give, to any current or former owners or occupiers of the premises who have been affected by the exercise, or purported exercise, of the powers under section 3UEA in relation to the premises, the post-entry warrant or a notice of refusal to issue the warrant; and
- (j) set out the time, date and place of the entry; and

- (k) set out any other information, and be accompanied by any documents, the police officer considers relevant to the application.
- (3) The information in the application must be sworn or affirmed by the police officer.

Requesting further information or documents

- (4) The assessment officer may request, in writing, that the police officer provide further information or documents relating to the application, and that the police officer do so in a particular way.
- (5) If the police officer is unable to provide some or all of the further information or documents requested, the police officer must, within a reasonable period, notify the assessment officer:
 - (a) of the information or documents that cannot be provided; and
 - (b) of the reasons why the information or documents cannot be provided.
- (6) If the assessment officer is notified in accordance with subsection (5) that some or all of the further information or documents cannot be provided, the assessment officer must (unless there is another reason not to) continue to consider the application despite having not received the further information or documents.

Issue of warrant

- (7) The assessment officer must:
 - (a) issue the post-entry warrant if, and only if, the assessment officer is satisfied, on the balance of probabilities, that in entering the premises the police officer suspected, on reasonable grounds, the matters mentioned in paragraphs 3UEA(1)(a) and (b); and
 - (b) otherwise, refuse to issue the post-entry warrant.
- (8) The issue of, or refusal to issue, the post-entry warrant does not affect whether or not the exercise, or purported exercise, of powers under section 3UEA was valid.

Note: Section 138 of the *Evidence Act 1995* (discretion to exclude improperly or illegally obtained evidence) may apply to evidence

obtained as a result of the exercise, or purported exercise, of powers under section 3UEA of this Act.

Content of warrant

- (9) The post-entry warrant, if issued, must include the following:
- (a) the information mentioned in paragraphs (2)(c), (d), (e) and (j);
 - (b) a statement of the reasons for issuing the warrant;
 - (c) a statement that the warrant has been issued under this section.

Notification requirements

- (10) If the assessment officer issues the post-entry warrant, the assessment officer must give a copy of the warrant to the persons mentioned in subsection (12) as soon as reasonably practicable after issuing the warrant.
- (11) If the assessment officer refuses to issue the post-entry warrant:
- (a) the assessment officer must give written notice of the refusal to the persons mentioned in subsection (12) as soon as reasonably practicable after refusing to issue the warrant; and
 - (b) the notice must include a statement of reasons for refusing to issue the warrant; and
 - (c) in the case of a notice given to a person mentioned in paragraph (12)(d)—the notice must also contain information about any right the person may have to:
 - (i) make a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976*; or
 - (ii) take civil or other action;in relation to the entry to the premises or the exercise, or purported exercise, of powers under section 3UEA in relation to the premises.
- (12) For the purposes of subsections (10) and (11), the persons are the following:
- (a) the police officer;
 - (b) if the police officer is a member of the Australian Federal Police (within the meaning of the *Australian Federal Police*

Act 1979) or a special member (within the meaning of that Act)—the Commissioner;

- (c) if the police officer is a member, however described, of a police force of a State or Territory—the Commissioner of Police in that police force or the person holding equivalent rank;
- (d) any current or former owners or occupiers of the premises:
 - (i) whom the assessment officer considers have been affected by the exercise, or purported exercise, of the powers under section 3UEA in relation to the premises; and
 - (ii) to whom the assessment officer considers it is practicable to give the post-entry warrant or notice of refusal (as the case requires).

Protection of information

- (13) Despite subsections (9) and (11), a post-entry warrant or notice of refusal must not include information if disclosure of that information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

13 At the end of subsection 3UJB(2)

Add:

- ; (e) the number of applications made by AFP police officers under section 3UEB for post-entry warrants;
- (f) the number of post-entry warrants issued under section 3UEB in response to applications made by AFP police officers;
- (g) the number of refusals to issue a post-entry warrant under section 3UEB in response applications made by AFP police officers.

14 After Subdivision CA of Division 3A of Part IAA

Insert:

Subdivision CB—Matters relating to post-entry warrants

3UJC Assessment officers

- (1) An *assessment officer* is:
 - (a) a person:
 - (i) who is a Judge of the Federal Court of Australia, or a Judge of the Supreme Court of a State or Territory; and
 - (ii) in relation to whom a consent under subsection 3UJD(1), and a declaration under subsection 3UJD(2), are in force; or
 - (b) a nominated AAT member.
- (2) A function or power conferred on a Judge by this Division is conferred on the Judge in a personal capacity and not as a court or a member of a court.
- (3) A Judge has, in relation to the performance or exercise of a function or power conferred on an assessment officer by this Division, the same protection and immunity as if the Judge were performing that function, or exercising that power, as, or as a member of, a court (being the court of which the Judge is a member).

Note: A member of the Administrative Appeals Tribunal has the same protection and immunity as a Justice of the High Court (see subsection 60(1) of the *Administrative Appeals Tribunal Act 1975*).

3UJD Consent of Judges

- (1) A Judge of the Federal Court of Australia, or of the Supreme Court of a State or Territory, may, by writing, consent to be declared an assessment officer by the Minister administering the *Judiciary Act 1903* under subsection (2).
- (2) The Minister administering the *Judiciary Act 1903* may, by writing, declare a Judge in relation to whom a consent under subsection (1) is in force to be an assessment officer for the purposes of this Division.
- (3) A consent or declaration under this section is not a legislative instrument.

3UJE Nominated AAT members

- (1) The Minister administering the *Administrative Appeals Tribunal Act 1975* (the **AAT Minister**) may, by writing, nominate a person who holds one of the following appointments to the Administrative Appeals Tribunal to issue post-entry warrants and perform related functions under this Act:
 - (a) Deputy President;
 - (b) full-time senior member.
- (2) Despite subsection (1), the AAT Minister must not nominate a person who holds an appointment as a full-time senior member of the Tribunal unless the person:
 - (a) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or of the Australian Capital Territory; and
 - (b) has been so enrolled for not less than 5 years.
- (3) A nomination ceases to be in force if:
 - (a) the nominated AAT member ceases to hold an appointment described in subsection (1); or
 - (b) the AAT Minister, by writing, withdraws the nomination.

15 Subsection 3UK(1)

Before “3UF”, insert “3UEB or”.

16 Application—post-entry warrants

Section 3UEB of the *Crimes Act 1914*, as inserted by this Schedule, applies in relation to an entry to premises that occurs after the commencement of this item.

Schedule 2—Amendment of the Criminal Code Act 1995 etc.

Part 1—Counter-terrorism amendments

Division 1—Main amendments

Criminal Code Act 1995

1 Subsection 100.1(1) of the *Criminal Code*

Insert:

exemption condition:

- (a) in relation to a control order—has the meaning given by subsection 104.5B(2); or
- (b) in relation to an extended supervision order or an interim supervision order—has the meaning given by subsection 105A.7C(2).

2 Subsection 100.1(1) of the *Criminal Code* (definition of *issuing court*)

Repeal the definition, substitute:

issuing court means the Federal Court of Australia.

3 Section 104.1 of the *Criminal Code*

Omit “obligations, prohibitions and restrictions”, substitute “conditions”.

4 Subparagraphs 104.3(d)(i) and (ii) of the *Criminal Code*

Omit “obligations, prohibitions or restrictions”, substitute “conditions”.

5 Paragraph 104.4(1)(d) of the *Criminal Code*

Repeal the paragraph, substitute:

- (d) the court is satisfied on the balance of probabilities that:
 - (i) each of the conditions; and
 - (ii) the combined effect of all of the conditions;

to be imposed on the person by the order in accordance with section 104.5A is reasonably necessary, and reasonably appropriate and adapted, for the purpose of:

- (iii) protecting the public from a terrorist act; or
- (iv) preventing the provision of support for or the facilitation of a terrorist act; or
- (v) preventing the provision of support for or the facilitation of the engagement in a hostile activity in a foreign country.

6 At the end of subsection 104.4(1) of the *Criminal Code*

Add:

Note: The issuing court may, in accordance with section 104.5B, specify conditions from which exemptions may be granted.

7 Subsection 104.4(2) of the *Criminal Code*

Repeal the subsection, substitute:

- (2) For the purposes of paragraph (1)(d), in determining whether:
 - (a) each of the conditions; and
 - (b) the combined effect of all of the conditions;

to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, the court must take into account:

- (c) as a paramount consideration in all cases—the objects of this Division (see section 104.1); and
- (d) as a primary consideration in the case where the person is 14 to 17 years of age—the best interests of the person; and
- (e) as an additional consideration in all cases—the impact of:
 - (i) each of those conditions; and
 - (ii) the combined effect of all of those conditions; on the person’s circumstances (including the person’s financial and personal circumstances).

8 Subsection 104.4(2A) of the *Criminal Code*

Omit “paragraph (2)(b)”, substitute “paragraph (2)(d)”.

9 Paragraph 104.5(1)(c) of the *Criminal Code*

Repeal the paragraph, substitute:

- (c) specify:
- (i) all of the conditions that are to be imposed in accordance with section 104.5A on the person by the order; and
 - (ii) any exemption conditions that are to be imposed in accordance with section 104.5B on the person by the order; and

10 Subsections 104.5(3) to (6) of the *Criminal Code*

Repeal the subsections.

11 Section 104.5A of the *Criminal Code*

Repeal the section, substitute:

104.5A Conditions of an interim control order

General conditions

- (1) Without limiting the conditions that the issuing court may impose on the person by the order, those conditions may relate to any of the following:
- (a) that the person not be present at one or more of the following:
 - (i) specified areas or places;
 - (ii) specified classes of areas or places;
 - (iii) any area or place determined by a specified authority;
 - (b) that the person reside at specified premises, and not begin to reside at any other premises without the prior permission of a specified authority;
 - (c) that the person remain at specified premises between specified times each day, or on specified days, subject to subsection (5);
 - (d) that the person not leave Australia, or the State or Territory in which the person's residence is located;
 - (e) that the person provide a specified authority with the person's passport (or passports) while the order is in force;

- (f) that the person not change the person's name, or use any name that is not specified in the order;
- (g) that the person not apply for one or more of the following:
 - (i) any Australian travel document;
 - (ii) any travel document of a foreign country;
 - (iii) any licence to operate equipment, machinery, a heavy vehicle or a weapon, or any licence to possess a weapon;
- (h) that the person not communicate or associate by any means (including through third parties) with one or more of the following:
 - (i) specified individuals;
 - (ii) specified classes of individuals;
 - (iii) any individuals determined by a specified authority;
- (i) that the person not access or use specified forms of telecommunication or other technology (including the internet);
- (j) that the person not possess or use specified articles or substances;
- (k) that the person not carry out specified activities;
- (l) that the person not engage in one or more of the following:
 - (i) specified work;
 - (ii) specified classes of work;
 - (iii) specified activities relating to specified work or classes of work;
- (m) that the person not engage in any training or education without the prior permission of a specified authority;
- (n) that the person do any or all of the following:
 - (i) attend and participate in treatment, rehabilitation or intervention programs or activities;
 - (ii) undertake psychological or psychiatric assessment or counselling;as specified in the order or as directed by a specified authority;
- (o) that the person attend and participate in interviews and assessments (including for the purposes of paragraph (n)) as specified in the order or as directed by a specified authority;

- (p) that the person allow the results of the interviews and assessments referred to in paragraph (o), and any other specified information, to be disclosed to a specified authority;
- (q) that the person provide specified information to a specified authority within a specified period or before a specified event;
- (r) that the person comply with any reasonable direction given to the person by a specified authority in relation to any specified condition (whether or not the condition is imposed in accordance with this subsection).

Note: See also subsections (9) and (10) and section 100.1 in relation to references to premises, reside or residence, and work.

Conditions relating to monitoring and enforcement

- (2) Without limiting the conditions that the issuing court may impose on the person by the order, those conditions may also relate to any of the following:
 - (a) that the person submit to testing by a specified authority in relation to the possession or use of specified articles or substances;
 - (b) that the person allow themselves to be photographed by a specified authority;
 - (c) that the person allow impressions of the person's fingerprints to be taken by a specified authority;
 - (d) that the person be subject to electronic monitoring (for example, by wearing a monitoring device at all times), and comply with directions given by a specified authority in relation to electronic monitoring;
 - (e) a condition that:
 - (i) the person carry at all times a specified mobile phone; and
 - (ii) the person be available to answer any call from a specified authority or, as soon as reasonably practicable, return a call that the person was unable to answer; and
 - (iii) the person comply with specified directions, or any directions given by a specified authority, in relation to the condition in subparagraph (i) or (ii);

- (f) that the person attend at places, and report to persons, at times, specified:
 - (i) in the order; or
 - (ii) by a specified authority;
- (g) that the person allow visits at specified premises from, and entry to specified premises by, a specified authority at any time for the purpose of ensuring the person's compliance with a condition imposed in accordance with paragraph (1)(c);
- (h) that the person provide a specified authority with a schedule setting out the person's proposed movements for a specified period and comply with that schedule during the period;
- (i) that the person allow any police officer to enter specified premises and:
 - (i) search the person; and
 - (ii) search the person's residence or any premises which the person intends to be the person's residence; and
 - (iii) search any other premises under the person's control; and
 - (iv) seize any item found during those searches, including to allow the item to be examined forensically;
- (j) that the person facilitate access (including by providing passwords or in any other way) to one or more of the following:
 - (i) electronic equipment or technology;
 - (ii) any data held within, or accessible from, any electronic equipment or technology;owned or controlled by the person, for the purposes of a police officer searching and seizing any such equipment or accessing such data (or both).

Note 1: For paragraphs (2)(b) and (c), restrictions apply to the use of photographs or impressions of fingerprints (see section 104.5C).

Note 2: For paragraph (2)(d), see also section 104.5D (obligations relating to monitoring devices).

- (3) A power exercised under a condition imposed in accordance with subsection (2) (other than a power to give a direction) may be exercised only if the person exercising the power is satisfied that it is reasonably necessary to do so in order to:

- (a) give effect to the order; or
- (b) facilitate or monitor compliance with the order.

Directions

- (4) If a condition imposed on the person by the order authorises a specified authority to give a direction, the specified authority may give a direction only if the specified authority is satisfied that the direction is reasonable in all the circumstances to give effect to:
 - (a) the condition; or
 - (b) the object of this Division (see section 104.1).

Limitations

- (5) A condition imposed on the person by the order must not require the person to remain at specified premises for more than 12 hours within any 24 hours.
- (6) If the person is subject to an order under a law of a State or Territory that is equivalent to a control order, the issuing court must consider the conditions under that State or Territory order in imposing conditions on the person by the order.

General rules about conditions

- (7) To avoid doubt, without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, a condition imposed on the person by the order may:
 - (a) prohibit or restrict specified conduct of the person, or impose obligations on the person; or
 - (b) impose restrictions and obligations on the person in relation to classes of conduct, and prohibit other classes of that conduct; or
 - (c) impose different restrictions, obligations and prohibitions in relation to different classes of conduct; or
 - (d) for conduct that is prohibited by a condition described in a paragraph of subsection (1)—impose restrictions and obligations on the person in relation to that conduct instead of prohibiting that conduct; or

- (e) for conduct described in a paragraph of subsection (1) or (2)—impose different restrictions, obligations and prohibitions in relation to that conduct.

Access to lawyers

- (8) This section does not affect the person's right to contact, communicate or associate with the person's lawyer unless the person's lawyer is an individual covered by the condition in paragraph (1)(h). If the person's lawyer is so specified, the person may contact, communicate or associate with any other lawyer who is not so specified.

References to work

- (9) In subsection (1), a reference to work includes a reference to voluntary work.

Meaning of premises

- (10) In this section:

premises includes a place, an aircraft, a vehicle and a vessel.

104.5B Conditions where exemptions may be granted

- (1) The issuing court may specify conditions included in the order that are to be exemption conditions.
- (2) An ***exemption condition*** is a condition specified in the order from which the person may apply for a temporary exemption.
- (3) The issuing court may make provision in relation to applications for temporary exemptions.
- (4) The person may apply, in writing, to a specified authority for an exemption from an exemption condition. The application must:
- (a) include a reason for the exemption; and
 - (b) comply with any other requirements provided for under subsection (3).
- (5) If the person so applies, the specified authority may:

- (a) require further information to be provided by the person before making a decision in relation to the application; and
- (b) either:
 - (i) grant or refuse the exemption; or
 - (ii) grant the exemption subject to any reasonable directions specified in writing by the specified authority.

104.5C Treatment of photographs and impressions of fingerprints

- (1) If the issuing court, by the order, imposes on the person a condition referred to in paragraph 104.5A(2)(b) or (c), a photograph, or an impression of fingerprints, taken of or from the person in accordance with the order must be used only for the purpose of ensuring compliance with the order.
- (2) If:
 - (a) no control order has been in force in relation to the person for 12 months; and
 - (b) either:
 - (i) no proceedings relating to a control order relating to the person were on foot in that 12-month period; or
 - (ii) proceedings relating to a control order relating to the person were discontinued or completed within that 12-month period;the photograph or the impression must be destroyed as soon as practicable after the end of that 12-month period.
- (3) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct contravenes subsection (1).

Penalty: Imprisonment for 2 years.

104.5D Obligations relating to monitoring devices

Additional obligations on person

- (1) If the issuing court, by the order, imposes on the person the condition referred to in paragraph 104.5A(2)(d) (the **monitoring condition**) that the person wear a monitoring device, then:

- (a) the monitoring condition must require the person to wear the monitoring device at all times; and
- (b) the order must include the condition referred to in paragraph 104.5A(2)(e); and
- (c) the order must include a condition that the person do all of the following:
 - (i) allow a specified authority to enter the person's residence at any reasonable time for any purpose relating to the electronic monitoring of the person;
 - (ii) allow a specified authority to install, repair or fit the monitoring device or any related monitoring equipment;
 - (iii) take the steps specified in the order (if any) and any other reasonable steps to ensure that the monitoring device and any related monitoring equipment are or remain in good working order;
 - (iv) if the person becomes aware that the monitoring device and any related monitoring equipment are not in good working order—notify a specified authority as soon as reasonably practicable;
 - (v) allow a specified authority, police officer or corrective services officer to remove the monitoring device;
 - (vi) allow a police officer to remove any related monitoring equipment.

Powers of specified authorities and others

- (2) After including the monitoring condition in the order, the issuing court must also include in the order an authorisation for:
 - (a) one or more specified authorities to enter the person's residence as specified in the order at any reasonable time for any purpose relating to the electronic monitoring of the person; and
 - (b) one or more specified authorities to install, repair or fit the monitoring device and any related monitoring equipment; and
 - (c) one or more specified authorities or police officers to take the steps specified in the order to ensure that the device and any related monitoring equipment are or remain in good working order; and

- (d) one or more specified authorities, police officers or corrective services officers to remove the monitoring device; and
 - (e) one or more police officers to remove any related monitoring equipment.
- (3) If:
- (a) a monitoring device is installed on the person; and
 - (b) any of the following events occurs:
 - (i) the monitoring condition is removed from the order;
 - (ii) the order ceases to be in force;
 - (iii) the person is detained in custody;
- the device and any related monitoring equipment may be removed in accordance with paragraph (2)(d) or (e) even though no authorisation under subsection (2) is in force.

Note: For the definition of *detained in custody*, see subsection 100.1(1).

Powers relating to monitoring devices and related electronic equipment

- (4) Before exercising a power referred to in paragraph (2)(a), (b), (d) or (e), or subsection (3), a specified authority, police officer or corrective services officer must inform the person:
- (a) that the device and equipment are to be installed, repaired, fitted or removed (as the case requires); and
 - (b) of the proposed timing of the taking of the action; and
 - (c) that the person may consent to the taking of the action; and
 - (d) that if consent is not given, reasonable force may be used to take the action, or to enter the person's residence in order to take the action.
- (5) If the person does not give consent, reasonable force may be used by a police officer to take the action, or to enter the person's residence in order to take the action.

12 Subdivision CA of Division 104 of Part 5.3 of the *Criminal Code*

Repeal the Subdivision.

13 Subparagraph 104.12(1)(b)(iii) of the *Criminal Code*

Omit “section 104.22”, substitute “section 104.5C”.

14 After subparagraph 104.12(1)(b)(vii) of the *Criminal Code*

Insert:

(viiia) that the order may be varied by consent, in accordance with section 104.22;

15 Paragraph 104.14(7)(b) of the *Criminal Code*

Omit “obligations, prohibitions or restrictions”, substitute “conditions”.

16 Paragraph 104.16(1)(c) of the *Criminal Code*

Omit “obligations, prohibitions and restrictions mentioned in subsection 104.5(3) that are to be imposed on the person by the order”, substitute “conditions that are to be imposed on the person by the order in accordance with section 104.5A”.

17 After paragraph 104.16(1)(c) of the *Criminal Code*

Insert:

(ca) specifies any exemption conditions that are to be imposed in accordance with section 104.5B on the person by the order;
and

18 After subparagraph 104.17(1)(b)(ii) of the *Criminal Code*

Insert:

(iia) that the order may be varied, by consent, in accordance with section 104.22;

19 Paragraph 104.19(1)(b) of the *Criminal Code*

Omit “obligations, prohibitions or restrictions” (wherever occurring), substitute “conditions”.

20 Section 104.20 of the *Criminal Code* (at the end of the heading)

Add: “on application by the person or the AFP Commissioner”.

21 Paragraph 104.20(1)(b) of the *Criminal Code*

Omit “obligations, prohibitions or restrictions”, substitute “conditions”.

22 After subsection 104.21(1) of the *Criminal Code*

Insert:

- (1A) If a control order in relation to a person is varied under section 104.22, the person’s lawyer may request a copy of the order.

23 Paragraph 104.21(2)(a) of the *Criminal Code*

Omit “the order”, substitute “an order mentioned in subsection (1) or (1A)”.

24 Section 104.22 of the *Criminal Code*

Repeal the section.

25 After Subdivision E of Division 104 of Part 5.3 of the *Criminal Code*

Insert:

Subdivision EA—Varying a control order by consent

104.22 Varying control order by consent

- (1) Any of the following persons (the *applicant*) may apply to the issuing court to vary a control order in relation to a person:
- (a) a senior AFP member or a legal representative of the senior AFP member;
 - (b) the person or a legal representative of the person.
- (2) The variation may consist of:
- (a) varying or removing one or more of the conditions imposed on the person by the order; or
 - (b) imposing one or more additional conditions on the person by the order.
- (3) The application may be withdrawn at any time before the issuing court decides whether or not to vary the order.
- (4) If the person is 14 to 17 years of age, a senior AFP member or a legal representative of the senior AFP member must cause written

notice of the application to be given to at least one parent or guardian of the person.

- (5) If the person is 14 to 17 years of age, the issuing court may vary the order if the court is satisfied that:
- (a) written consent to the variation has been given (and not withdrawn) by:
 - (i) if the applicant is a senior AFP member or a legal representative of the senior AFP member—a parent or guardian of the person notified of the variation in accordance with subsection (4); or
 - (ii) if the applicant is the person or a legal representative of the person—a senior AFP member; and
 - (b) the variation is in the best interests of the person, having regard to any representations the person makes about the variation and any other matter the court considers relevant; and
 - (c) the variation is appropriate in the circumstances.
- (6) If the person is 18 years of age or older, the issuing court may vary the order if the court is satisfied that:
- (a) written consent to the variation has been given (and not withdrawn) by:
 - (i) if the applicant is a senior AFP member or a legal representative of the senior AFP member—the person; or
 - (ii) if the applicant is the person or a legal representative of the person—a senior AFP member; and
 - (b) the variation is appropriate in the circumstances.
- (7) If the issuing court varies the order, the varied order must:
- (a) state that the court is satisfied of the matters mentioned in subsection (5) or (6) as applicable; and
 - (b) specify the variations to the conditions that are to be made; and
 - (c) state the period during which the order, as varied, is in force; and
 - (d) state that the person's lawyer may request a copy of the order.

- (8) If the issuing court varies the order and the person is 14 to 17 years of age, an AFP member must take reasonable steps to serve a copy of the varied order personally on each parent or guardian of the person notified of the variation in accordance with subsection (4).

26 Subdivision F of Division 104 of Part 5.3 of the *Criminal Code* (heading)

Omit “obligations, prohibitions or restrictions”, substitute “conditions”.

27 Section 104.23 of the *Criminal Code* (heading)

Omit “obligations, prohibitions or restrictions”, substitute “conditions”.

28 Subsection 104.23(1) of the *Criminal Code*

Omit “obligations, prohibitions or restrictions mentioned in subsection 104.5(3)”, substitute “conditions, in accordance with section 104.5A.”.

29 Paragraph 104.23(2)(a) of the *Criminal Code*

Omit “obligations, prohibitions and restrictions”, substitute “conditions”.

30 Subparagraph 104.23(2)(b)(i) of the *Criminal Code*

Omit “obligations, prohibitions and restrictions”, substitute “conditions”.

31 Subparagraph 104.23(2)(b)(ii) of the *Criminal Code*

Omit “obligations, prohibitions or restrictions”, substitute “conditions”.

32 Paragraph 104.24(1)(b) of the *Criminal Code*

Omit “obligations, prohibitions and restrictions”, substitute “conditions”.

33 Subsection 104.24(2) of the *Criminal Code*

Omit “obligations, prohibitions and restrictions”, substitute “conditions”.

34 Paragraph 104.24(2)(c) of the *Criminal Code*

Omit “obligation, prohibition or restriction”, substitute “condition”.

35 Paragraph 104.25(b) of the *Criminal Code*

Omit “obligations, prohibitions and restrictions”, substitute “conditions”.

36 Paragraph 104.26(1)(b) of the *Criminal Code*

Omit “obligations, prohibitions and restrictions”, substitute “conditions”.

37 Subparagraph 104.26(1)(c)(i) of the *Criminal Code*

Omit “obligations, prohibitions and restrictions”, substitute “conditions”.

38 Subparagraph 104.26(1)(c)(ii) of the *Criminal Code*

Omit “section 104.22”, substitute “section 104.5C”.

39 Paragraph 104.28C(1)(a) of the *Criminal Code*

Omit “paragraph 104.5(3)(d)”, substitute “paragraph 104.5A(2)(d)”.

40 Paragraph 104.28C(1)(b) of the *Criminal Code*

Omit “section 104.5A”, substitute “section 104.5D”.

41 Paragraph 104.28D(1)(b) of the *Criminal Code*

Omit “section 104.5A”, substitute “section 104.5D”.

42 Subsections 104.32(1) and (2) of the *Criminal Code*

Omit “7 December 2023”, substitute “7 December 2026”.

43 Paragraph 105.2(1)(b) of the *Criminal Code*

Omit “or of the Federal Circuit and Family Court of Australia (Division 2)”.

44 Subparagraph 105.2(1)(d)(ii) of the *Criminal Code*

Omit “superior court; or”, substitute “superior court.”.

45 Paragraph 105.2(1)(e) of the *Criminal Code*

Repeal the paragraph.

46 Subsection 105.11(1) of the *Criminal Code* (note)

Omit “, AAT members”.

47 Section 105.12 of the *Criminal Code* (heading)

Omit “, AAT member”.

48 Subsection 105.12(1) of the *Criminal Code* (note)

Omit “, AAT members”.

49 Subsection 105.18(2) of the *Criminal Code*

Omit “or a member of the Administrative Appeals Tribunal”.

50 Subsection 105.18(2) of the *Criminal Code*

Omit “or member of the Administrative Appeals Tribunal”.

51 Subsections 105.53(1) and (2) of the *Criminal Code*

Omit “7 December 2023”, substitute “7 December 2026”.

52 Subsection 105A.2(1) of the *Criminal Code* (definition of exemption condition)

Repeal the definition.

53 Subsection 105A.7F(1) of the *Criminal Code*

Omit “under section 105.7A”.

54 After subsection 105A.22(1) of the *Criminal Code*

Insert:

Information to be included in report

55 After subsection 105A.22(2) of the *Criminal Code*

Insert:

(2A) Without limiting subsection (1), a report relating to a year must also include information about:

- (a) the detention arrangements that applied, during the year, to terrorist offenders who were subject to a continuing detention order at any time during the year; and
- (b) the rehabilitation or treatment programs that were made available, during the year, to terrorist offenders who were subject to a post-sentence order at any time during the year; and
- (c) funding for the administration of this Division during the year.

Limitations

- (2B) Despite subsection (2A), a report under this section must not include information of a kind mentioned in that subsection if:
 - (a) the information is given to the AFP Minister, or an officer or employee of the Commonwealth, by a person who is a Minister, or an officer or employee, of a State or Territory; and
 - (b) that person has not consented, in writing, to the information being included in the report.
- (2C) If information is not included in a report under this section because of subsection (2B), the report must include a statement to that effect.

Report to be tabled in Parliament

56 In the appropriate position in Division 106 of the *Criminal Code*

Insert:

106.13 Application and transitional—*Counter-Terrorism and Other Legislation Amendment Act 2023*

Control orders

- (1) The amendments of Division 104 of Part 5.3 made by the *Counter-Terrorism and Other Legislation Amendment Act 2023* do not apply in relation to:

- (a) an interim control order made before the commencement of this section; or
- (b) a confirmed control order made before the commencement of this section; or
- (c) a confirmed control order made on or after the commencement of this section if the interim control order that is confirmed by the confirmed control order was made before the commencement of this section.

Issuing court

- (2) The amendment of subsection 100.1(1) made by the *Counter-Terrorism and Other Legislation Amendment Act 2023* does not apply in relation to an order made by the Federal Circuit and Family Court of Australia (Division 2) before the commencement of this section.

Appointment as an issuing authority for continued preventative detention orders

- (3) If:
 - (a) a person held an appointment under subsection 105.2(1) immediately before the commencement of this section; and
 - (b) the person is covered by a paragraph of subsection 105.2(1) immediately after the commencement of this section;the amendments of subsection 105.2(1) made by the *Counter-Terrorism and Other Legislation Amendment Act 2023* do not affect the continuity of the person's appointment.
 - (4) If:
 - (a) a person held an appointment under subsection 105.2(1) immediately before the commencement of this section; and
 - (b) the person is not covered by a paragraph of subsection 105.2(1) immediately after the commencement of this section;then:
 - (c) the person's appointment lapses immediately after the commencement of this section; and
 - (d) the amendments of subsection 105.2(1) made by the *Counter-Terrorism and Other Legislation Amendment Act*
-

2023 do not affect the continuity of an order made by the person under Division 105 before the commencement of this section.

Division 2—Consequential amendments

Administrative Decisions (Judicial Review) Act 1977

57 Paragraph (daba) of Schedule 1

Omit “interim control orders under section 104.11A of the *Criminal Code*”, substitute “control orders under section 104.22 of the *Criminal Code*”.

58 Application—decisions of senior AFP members in relation to consent to vary interim control orders

Despite the amendment of paragraph (daba) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977* made by this Schedule, that paragraph continues to apply, in relation to interim control orders made before the commencement of this item, as if that amendment had not been made.

Australian Security Intelligence Organisation Act 1979

59 Subsection 35(1) (note to the definition of *prescribed administrative action*)

Omit “An obligation, prohibition or restriction”, substitute “A condition”.

60 Paragraph 35(2)(a)

Omit “an obligation, prohibition or restriction”, substitute “a condition”.

Crimes Act 1914

61 Subparagraph 3ZZOD(1)(b)(iv)

Omit “obligations, prohibitions, restrictions or”.

62 Application—execution of monitoring warrants in relation to control orders

Despite the amendment of section 3ZZOD of the *Crimes Act 1914* made by this Schedule, that section continues to apply, in relation to:

- (a) an interim control order made before the commencement of this item; or
- (b) a confirmed control order made before the commencement of this item; or
- (c) a confirmed control order made on or after the commencement of this item if the interim control order that is confirmed by the confirmed control order was made before the commencement of this item;

as if that amendment had not been made.

**Part 2—Unauthorised disclosure of information by
current and former Commonwealth officers
etc.—sunsetting extension**

Criminal Code Act 1995

63 Subsection 122.4(3) of the *Criminal Code*

Omit “5 years after this section commences”, substitute “29 December 2024”.

*[Minister’s second reading speech made in—
House of Representatives on 10 August 2023
Senate on 6 November 2023]*

(101/23)