

2013-2014

The Parliament of the  
Commonwealth of Australia

THE SENATE

*As passed by both Houses*

**Counter-Terrorism Legislation  
Amendment (Foreign Fighters) Bill 2014**

**No.     , 2014**

**A Bill for an Act to amend the law relating to  
counter-terrorism and other matters, and for  
related purposes**



---

## Contents

1	Short title .....	1
2	Commencement .....	1
3	Schedules .....	3
<b>Schedule 1—Main counter-terrorism amendments</b>		<b>4</b>
Part 1—Amendments		4
<i>Administrative Decisions (Judicial Review) Act 1977</i>		4
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>		4
<i>AusCheck Act 2007</i>		5
<i>Australian Passports Act 2005</i>		5
<i>Australian Security Intelligence Organisation Act 1979</i>		11
<i>Crimes Act 1914</i>		13
<i>Criminal Code Act 1995</i>		62
<i>Customs Act 1901</i>		96
<i>Foreign Evidence Act 1994</i>		97
<i>Foreign Passports (Law Enforcement and Security) Act 2005</i>		104
<i>Independent National Security Legislation Monitor Act 2010</i>		106
<i>Intelligence Services Act 2001</i>		107
<i>National Health Security Act 2007</i>		108
<i>Parliamentary Joint Committee on Law Enforcement Act 2010</i>		109
<i>Proceeds of Crime Act 2002</i>		109
<i>Sea Installations Act 1987</i>		109
<i>Telecommunications (Interception and Access) Act 1979</i>		109
<i>Terrorism Insurance Act 2003</i>		110
Part 2—Repeals		111
<i>Crimes (Foreign Incursions and Recruitment) Act 1978</i>		111
<b>Schedule 2—Stopping welfare payments</b>		<b>112</b>
Part 1—Main amendments		112
<i>A New Tax System (Family Assistance) Act 1999</i>		112
<i>Paid Parental Leave Act 2010</i>		118

---

<i>Social Security Act 1991</i>	123
<i>Social Security (Administration) Act 1999</i>	127
Part 3—Application provisions	128
<b>Schedule 3—Customs’ detention powers</b>	129
<i>Customs Act 1901</i>	129
<b>Schedule 4—Cancelling visas on security grounds</b>	133
Part 1—Amendment of the Migration Act 1958	133
Division 1—Amendments	133
Division 2—Application of amendments made by Part 1	136
Part 2—Amendment of the Australian Security Intelligence Organisation Act 1979	137
<b>Schedule 5—Identifying persons in immigration clearance</b>	138
Part 1—Amendment of the Migration Act 1958	138
Part 2—Application of amendments	147
<b>Schedule 6—Identifying persons entering or leaving Australia     through advance passenger processing</b>	148
Part 1—Amendment of the Migration Act 1958	148
Division 1—Amendments	148
Division 2—Application of amendments made by Part 1	152
Part 2—Amendment of the Customs Act 1901	154
<b>Schedule 7—Seizing bogus documents</b>	155
Part 1—Amendment of the Migration Act 1958	155
Division 1—Main amendments	155
Division 2—Contingent amendments	158
Division 3—Application of amendments made by Part 1	158
Part 2—Amendment of the Australian Citizenship Act 2007	159
Division 1—Main amendments	159
Division 2—Contingent amendments	161

---





1     **A Bill for an Act to amend the law relating to**  
2     **counter-terrorism and other matters, and for**  
3     **related purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6                     This Act may be cited as the *Counter-Terrorism Legislation*  
7                     *Amendment (Foreign Fighters) Act 2014*.

8     **2 Commencement**

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

<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.	
2. Schedules 1 and 2	The 28th day after this Act receives the Royal Assent.	
3. Schedules 3 to 5	The day after this Act receives the Royal Assent.	
4. Schedule 6	1 July 2015.	1 July 2015
5. Schedule 7, items 1 to 3	The day after this Act receives the Royal Assent.	
6. Schedule 7, item 4	Immediately after the commencement of the provisions covered by table item 1. However, if item 2 of Schedule 1 to the <i>Migration Amendment (Protection and Other Measures) Act 2014</i> commences before that time, the provisions do not commence at all.	
7. Schedule 7, item 5	Immediately after the commencement of item 2 of Schedule 1 to the <i>Migration Amendment (Protection and Other Measures) Act 2014</i> (the <b>related item</b> ). However, if the related item commences before the commencement of the provisions covered by table item 1, the provisions do not commence at all.	
8. Schedule 7, item 6	The day after this Act receives the Royal Assent.	
9. Schedule 7, item 7	The day after this Act receives the Royal Assent. However, if item 2 of Schedule 1 to the <i>Migration Amendment (Protection and Other Measures) Act 2014</i> has not	



<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>
	commenced before that day, the provisions do not commence at all.	
10. Schedule 7, item 8	The day after this Act receives the Royal Assent.	
11. Schedule 7, item 9	The day after this Act receives the Royal Assent. However, if item 2 of Schedule 1 to the <i>Migration Amendment (Protection and Other Measures) Act 2014</i> has commenced before that day, the provisions do not commence at all.	
12. Schedule 7, item 10	Immediately after the commencement of item 2 of Schedule 1 to the <i>Migration Amendment (Protection and Other Measures) Act 2014</i> (the <b>related item</b> ). However, if the related item commences before the commencement of the provisions covered by table item 6, the provisions do not commence at all.	
13. Schedule 7, item 11	The day after this Act receives the Royal Assent.	

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

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

### 7 **3 Schedules**

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

1 **Schedule 1—Main counter-terrorism**  
2 **amendments**

3 **Part 1—Amendments**

4 *Administrative Decisions (Judicial Review) Act 1977*

5 **1 After paragraph (db) of Schedule 1**

6 Insert:

7 (dc) decisions under section 22A or 24A of the *Australian*  
8 *Passports Act 2005*;

9 (dd) decisions under section 15A or 16A of the *Foreign Passports*  
10 *(Law Enforcement and Security) Act 2005*;

11 *Anti-Money Laundering and Counter-Terrorism Financing*  
12 *Act 2006*

13 **2 Section 5**

14 Insert:

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

17 **3 Section 5 (after paragraph (ha) of the definition of**  
18 ***designated agency*)**

19 Insert:

20 (hb) the Attorney-General's Department; or

21 **4 Application of amendments**

22 (1) The amendments of section 5 of the *Anti-Money Laundering and*  
23 *Counter-Terrorism Financing Act 2006* made by this Schedule apply in  
24 relation to disclosures of, and access to, information after this item  
25 commences, whether the information was obtained before, on or after  
26 that commencement.

27 (2) For the purposes of the *Anti-Money Laundering and Counter-Terrorism*  
28 *Financing Act 2006*, if information is disclosed in accordance with a

1 provision of that Act to an official of the Attorney-General's  
2 Department before this item commences, the information is taken to  
3 have been disclosed to an official of a designated agency.

4 **5 Paragraph 121(2)(a)**

5 Omit "section 49 or".

6 **6 Paragraphs 122(1)(a), (b), (c) and (d)**

7 Repeal the paragraphs.

8 **7 Paragraphs 122(3)(a), (c) and (d)**

9 Repeal the paragraphs.

10 **8 Application of amendments**

11 The amendments of sections 121 and 122 of the *Anti-Money*  
12 *Laundering and Counter-Terrorism Financing Act 2006* made by this  
13 Schedule apply in relation to disclosures of information after this item  
14 commences, whether the information was obtained before, on or after  
15 that commencement.

16 ***AusCheck Act 2007***

17 **9 Paragraph 8(2)(d)**

18 After "5.3", insert "or 5.5".

19 **10 Paragraph 8(2)(d)**

20 Omit "deals with terrorism", substitute "deal with terrorism, foreign  
21 incursions and recruitment".

22 ***Australian Passports Act 2005***

23 **11 Subsection 6(1)**

24 Insert:

25 *ASIO* means the Australian Security Intelligence Organisation.

1 **12 Section 17 (heading)**

2 Repeal the heading, substitute:

3 **17 Reasons relating to concurrently valid or suspended Australian**  
4 **travel document**

5 **13 At the end of subsection 17(1)**

6 Add “or is suspended under section 22A”.

7 **14 Division 3 of Part 2 (heading)**

8 Repeal the heading, substitute:

9 **Division 3—When Australian travel documents are not**  
10 **valid**

11 **15 Section 20 (heading)**

12 Repeal the heading, substitute:

13 **20 When Australian passports are not valid**

14 *Cessation of validity*

15 **16 At the end of section 20**

16 Add:

17 *Suspension of validity*

18 (3) An Australian passport is not valid while it is suspended under  
19 section 22A.

20 **17 Section 21 (heading)**

21 Repeal the heading, substitute:

1 **21 When travel-related documents are not valid**

2 *Cessation of validity*

3 **18 Section 21**

4 Before “A travel-related document”, insert “(1)”.

5 **19 At the end of section 21**

6 Add:

7 *Suspension of validity*

8 (2) A travel-related document is not valid while it is suspended under  
9 section 22A.

10 **20 At the end of section 22**

11 Add:

12 (3) To avoid doubt, the suspension of an Australian travel document  
13 does not prevent the Minister from cancelling it.

14 **21 At the end of Division 3 of Part 2**

15 Add:

16 **22A Suspension of Australian travel document**

17 (1) The Minister may, on request under subsection (2), suspend for 14  
18 days all Australian travel documents that have been issued to a  
19 person.

20 (2) The Director-General of Security may request the Minister to  
21 suspend all Australian travel documents issued to a person if the  
22 Director-General suspects on reasonable grounds that:

23 (a) the person may leave Australia to engage in conduct that  
24 might prejudice the security of Australia or a foreign country;  
25 and

26 (b) all the person’s Australian travel documents should be  
27 suspended in order to prevent the person from engaging in  
28 the conduct.

- 1 (3) If an Australian travel document of a person has been suspended  
2 under subsection (1), another request under subsection (2) relating  
3 to the person must not be made unless the grounds for suspicion  
4 mentioned in subsection (2) include information first obtained by  
5 the Director-General of Security or an officer or employee of ASIO  
6 after the end of the suspension.
- 7 (4) The Director-General of Security may, in writing, delegate his or  
8 her power under subsection (2) to a Deputy Director-General of  
9 Security (within the meaning of the *Australian Security*  
10 *Intelligence Organisation Act 1979*).
- 11 (5) In exercising power under a delegation, the delegate must comply  
12 with any directions of the Director-General of Security.

13 **22 At the end of paragraph 24(1)(b)**

14 Add “except because of a suspension under section 22A”.

15 **23 After section 24**

16 Insert:

17 **24A Demand for surrender of suspended Australian travel**  
18 **document**

- 19 (1) An officer may demand that a person surrender an Australian travel  
20 document to the officer if the document is suspended under  
21 section 22A.
- 22 (2) A person commits an offence if:  
23 (a) an officer demands under subsection (1) that the person  
24 surrender an Australian travel document; and  
25 (b) the officer informs the person that the officer is authorised to  
26 demand that document; and  
27 (c) the officer informs the person that it may be an offence not to  
28 comply with the demand; and  
29 (d) the person has possession or control of the document; and  
30 (e) the person fails to surrender the document to the officer  
31 immediately.

32 Penalty: Imprisonment for 6 months or 10 penalty units, or both.

---

- 1 (3) An Australian travel document obtained by an officer under this  
2 section must be returned, to the person to whom it was issued, at  
3 the end of the period for which it is suspended, unless it is  
4 cancelled.

5 **24 Section 48 (note)**

6 Omit “Under section 27A”, substitute “Except in cases described in  
7 section 48A of this Act, under section 27A”.

8 **25 After section 48**

9 Insert:

10 **48A When notice of refusal or cancellation of Australian travel**  
11 **document is not required**

12 *Application*

13 (1) This section sets out when the Minister is not required to notify a  
14 person of a decision by the Minister to do either of the following  
15 because of a refusal/cancellation request made under  
16 subsection 14(1):

- 17 (a) refuse to issue an Australian passport to the person;  
18 (b) cancel an Australian travel document issued to the person.

19 Note: This section applies to a delegate of the Minister in the same way as it  
20 applies to the Minister: see paragraph 34AB(1)(c) of the *Acts*  
21 *Interpretation Act 1901*.

22 *Request by ASIO*

- 23 (2) The Minister is not required to notify the person if:  
24 (a) the request was made by ASIO or the Director-General of  
25 Security; and  
26 (b) there is in force a certificate under paragraph 38(2)(a) of the  
27 *Australian Security Intelligence Organisation Act 1979*  
28 relating to notice to the person of the making of the security  
29 assessment that constituted the request.

30 *Request by Australian Federal Police*

- 31 (3) The Minister is not required to notify the person if:
-

**Schedule 1** Main counter-terrorism amendments

**Part 1** Amendments

---

- 1 (a) the request was made by a member or a special member of  
2 the Australian Federal Police; and  
3 (b) there is in force a certificate under subsection (4).
- 4 (4) If the Minister administering the *Australian Federal Police Act*  
5 *1979* is satisfied that notifying the person of the decision would  
6 adversely affect a current investigation of any of the following  
7 offences, that Minister may, by signed writing, certify accordingly:  
8 (a) an offence against Subdivision A of Division 72 of the  
9 *Criminal Code*;  
10 (b) an offence against Subdivision B of Division 80 of the  
11 *Criminal Code*;  
12 (c) an offence against Part 5.3 or 5.5 of the *Criminal Code*;  
13 (d) an offence against either of the following provisions of the  
14 *Charter of the United Nations Act 1945*:  
15 (i) Part 4 of that Act;  
16 (ii) Part 5 of that Act, to the extent that it relates to the  
17 *Charter of the United Nations (Sanctions—Al-Qaida)*  
18 *Regulations 2008*.
- 19 (5) A certificate under subsection (4) is not a legislative instrument.
- 20 (6) If the Minister administering the *Australian Federal Police Act*  
21 *1979* issues a certificate under subsection (4) or revokes a  
22 certificate under that subsection, he or she must give a copy of the  
23 certificate or revocation to the Minister administering this Act.
- 24 (6A) Before the end of the following periods, the Minister administering  
25 the *Australian Federal Police Act 1979* must consider whether to  
26 revoke a certificate under subsection (4) (if the certificate remains  
27 in force):  
28 (a) 12 months after it was issued;  
29 (b) 12 months after that Minister last considered whether to  
30 revoke it.
- 31 *Overriding the Administrative Appeals Tribunal Act 1975*
- 32 (7) This section has effect despite section 27A of the *Administrative*  
33 *Appeals Tribunal Act 1975*.
-



1 Note: If subsection (2) or (3) ceases to apply because a certificate mentioned  
2 in that subsection ceases to be in force, section 27A of the  
3 *Administrative Appeals Tribunal Act 1975* (about notification) will  
4 apply in relation to the decision (unless the other of those subsections  
5 still applies).

6 **26 After subsection 51(1)**

7 Insert:

8 (1A) The Minister may, in writing, delegate to the Secretary of the  
9 Department the Minister's power under subsection 22A(1).

10 ***Australian Security Intelligence Organisation Act 1979***

11 **27 Section 4 (paragraph (c) of the definition of *politically***  
12 ***motivated violence*)**

13 Omit "the *Crimes (Foreign Incursions and Recruitment) Act 1978*",  
14 substitute "Division 119 of the *Criminal Code*".

15 **28 Paragraph 34D(4)(b)**

16 Repeal the paragraph, substitute:

17 (b) that, having regard to other methods (if any) of collecting the  
18 intelligence that are likely to be as effective, it is reasonable  
19 in all the circumstances for the warrant to be issued; and

20 **29 Application of amendment**

21 The amendment of subsection 34D(4) of the *Australian Security*  
22 *Intelligence Organisation Act 1979* made by this Schedule applies to the  
23 giving of consent where that consent was sought on or after the  
24 commencement of the amendment.

25 **30 At the end of section 34L**

26 Add:

27 (10) A person commits an offence if:  
28 (a) the person has, in accordance with a warrant issued under this  
29 Division, been requested to produce a record or thing; and  
30 (b) the person engages in conduct; and

1 (c) as a result of the conduct, the record or thing is unable to be  
2 produced, or to be produced in wholly legible or usable form.

3 Penalty: Imprisonment for 5 years.

4 **31 Application of subsection 34L(10) of the *Australian***  
5 ***Security Intelligence Organisation Act 1979***

6 Subsection 34L(10) of the *Australian Security Intelligence*  
7 *Organisation Act 1979* applies to conduct occurring on or after the  
8 commencement of the subsection, whether the warrant was or is issued  
9 under Division 3 of Part III of that Act before, on or after that  
10 commencement.

11 **32 Subsection 34V(3)**

12 Repeal the subsection, substitute:

13 (3) Without limiting the operation of subsection (2), a police officer  
14 must not, in the course of an act described in subsection (1) in  
15 relation to a person, do anything that is likely to cause the death of,  
16 or grievous bodily harm to, the person unless the officer believes  
17 on reasonable grounds that doing that thing is necessary to protect  
18 life or to prevent serious injury to another person (including the  
19 officer).

20 **33 Section 34ZZ**

21 Omit “22 July 2016”, substitute “7 September 2018”.

22 **34 After paragraph 36(b)**

23 Insert:

24 (ba) a security assessment that is a request under section 22A of  
25 the *Australian Passports Act 2005* for suspension of all  
26 Australian travel documents issued to a person; or

27 **34A At the end of section 38**

28 Add:

29 (7) Before the end of the following periods, the Attorney-General must  
30 consider whether to revoke a certificate certifying in accordance  
31 with paragraph (2)(a) (if the certificate remains in force):

32 (a) 12 months after it was issued;

---

1 (b) 12 months after the Attorney-General last considered whether  
2 to revoke it.

3 **34B Application**

4 Subsection 38(7) of the *Australian Security Intelligence Organisation*  
5 *Act 1979* applies to certificates issued on or after the commencement of  
6 that subsection.

7 ***Crimes Act 1914***

8 **35 Subsection 3(1) (after paragraph (a) of the definition of**  
9 ***terrorism offence*)**

10 Insert:

11 (aa) an offence against Subdivision B of Division 80 of the  
12 *Criminal Code*; or

13 **36 Subsection 3(1) (paragraph (b) of the definition of**  
14 ***terrorism offence*)**

15 After “Part 5.3”, insert “or 5.5”.

16 **37 Subsection 3(1) (at the end of the definition of *terrorism***  
17 ***offence*)**

18 Add:

19 ; or (c) an offence against either of the following provisions of the  
20 *Charter of the United Nations Act 1945*:

21 (i) Part 4 of that Act;

22 (ii) Part 5 of that Act, to the extent that it relates to the  
23 *Charter of the United Nations (Sanctions—Al-Qaida)*  
24 *Regulations 2008*.

25 **38 Application of amendments**

26 The amendments of the definition of *terrorism offence* in  
27 subsection 3(1) of the *Crimes Act 1914* made by this Schedule apply in  
28 relation to any terrorism offence, whether the offence occurs before, on  
29 or after the commencement of this item.

30 **39 Part IAA (heading)**

31 Repeal the heading, substitute:

---

1 **Part IAA—Search, information gathering, arrest**  
2 **and related powers (other than powers**  
3 **under delayed notification search**  
4 **warrants)**

5 **40 Subsection 3C(1) (at the end of the definition of *issuing***  
6 ***officer*)**

7 Add:

8 Note: Under section 3ZZBJ, an eligible issuing officer (within the meaning  
9 of Part IAAA) may, as specified in that section, consider and deal with  
10 an application for a warrant as if the eligible issuing officer were an  
11 issuing officer within the meaning of this Part.

12 **41 Subsections 3D(1) and (2)**

13 After “another law of the Commonwealth”, insert “(including other  
14 provisions of this Act)”.

15 **42 After subsection 3E(1)**

16 Insert:

17 Note: For the issue of delayed notification search warrants, see Part IAAA.

18 **43 Subsection 3UK(1)**

19 Omit “the end of 10 years after the day on which the Division  
20 commences”, substitute “7 September 2018”.

21 **44 Subsection 3UK(2)**

22 Omit “10 years after the day on which this Division commences”,  
23 substitute “7 September 2018”.

24 **45 Subsection 3UK(3)**

25 Omit “the end of 10 years after the day on which this Division  
26 commences”, substitute “7 September 2018”.

27 **46 Subsection 3W(1)**

28 After “offence” (first occurring), insert “(other than a terrorism offence  
29 and an offence against section 80.2C of the *Criminal Code*)”.

1 **47 After section 3W**

2 Insert:

3 **3WA Constables' power of arrest without warrant for a terrorism**  
4 **offence or offence of advocating terrorism**

5 (1) A constable may, without warrant, arrest a person for a terrorism  
6 offence or an offence against section 80.2C of the *Criminal Code* if  
7 the constable suspects on reasonable grounds that:

- 8 (a) the person has committed or is committing the offence; and  
9 (b) proceedings by summons against the person would not  
10 achieve one or more of the following purposes:  
11 (i) ensuring the appearance of the person before a court in  
12 respect of the offence;  
13 (ii) preventing a repetition or continuation of the offence or  
14 the commission of another offence;  
15 (iii) preventing the concealment, loss or destruction of  
16 evidence relating to the offence;  
17 (iv) preventing harassment of, or interference with, a person  
18 who may be required to give evidence in proceedings in  
19 respect of the offence;  
20 (v) preventing the fabrication of evidence in respect of the  
21 offence;  
22 (vi) preserving the safety or welfare of the person.

23 (2) If:

- 24 (a) a person has been arrested for an offence under  
25 subsection (1); and  
26 (b) before the person is charged with the offence, the constable  
27 in charge of the investigation ceases to suspect on reasonable  
28 grounds:  
29 (i) that the person committed the offence; or  
30 (ii) that holding the person in custody is necessary to  
31 achieve a purpose referred to in paragraph (1)(b);  
32 the person must be released.

1 **48 Application of amendments**

2 The amendment of section 3W of the *Crimes Act 1914* made by this  
3 Schedule, and section 3WA of that Act, apply to an arrest made after  
4 this item commences (whether the alleged offence in relation to which  
5 the arrest is made is believed or suspected of having been committed  
6 before, on or after that commencement).

7 **49 Paragraph 3ZB(2)(a)**

8 After “section 3W”, insert “or 3WA”.

9 **50 Paragraph 3ZQN(3)(e)**

10 Repeal the paragraph, substitute:

- 11 (e) specify the day by which the person must comply with the  
12 notice, being a day that is at least:
- 13 (i) 14 days after the giving of the notice; or
  - 14 (ii) if the officer believes that it is appropriate, having  
15 regard to the urgency of the situation, to specify an  
16 earlier day—3 days after the giving of the notice; and

17 **51 After Part IAA**

18 Insert:

19 **Part IAAA—Delayed notification search warrants**

20 **Division 1—Preliminary**

21 **3ZZAA Object of this Part**

- 22 (1) The object of this Part is to provide for eligible agencies to obtain  
23 search warrants:
- 24 (a) that relate to eligible offences; and
  - 25 (b) that authorise the entry and search of premises without  
26 having to produce the warrant at the time of entry and search.
- 27 (2) A warrant issued under this Part is a *delayed notification search*  
28 *warrant*.
- 29 (3) An *eligible agency* is the Australian Federal Police.

- 1 (4) An *eligible offence* is a terrorism offence that is punishable on  
2 conviction by imprisonment for 7 years or more.

3 **3ZZAB Application of Part**

- 4 (1) This Part is not intended to limit or exclude the operation of  
5 another law of the Commonwealth (including other provisions of  
6 this Act) relating to:  
7 (a) the search of premises; or  
8 (b) the seizure of things; or  
9 (c) the use of an assumed identity; or  
10 (d) the installation of surveillance devices (within the meaning of  
11 the *Surveillance Devices Act 2004*).
- 12 (2) To avoid doubt, it is declared that even though another law of the  
13 Commonwealth provides power to do one or more of the things  
14 referred to in subsection (1), a similar power conferred by this Part  
15 may be used despite the existence of the power under the other  
16 law.

17 **3ZZAC Definitions**

18 In this Part:

19 *adjoining premises*, in relation to particular premises, means  
20 premises adjoining, or providing access, to the premises.

21 *adjoining premises occupier's notice*: see section 3ZZDB.

22 *applicable normal search warrant regime*: see  
23 subsection 3ZZBJ(2).

24 *authorised agency* means the Australian Federal Police.

25 *chief officer*, in relation to an authorised agency or eligible agency,  
26 means the Commissioner.

27 *conditions for issue*: see section 3ZZBA.

28 *damage*, in relation to data, includes damage by erasure of data or  
29 addition of other data.





1            ***nominated AAT member*** means a person in relation to whom a  
2 nomination is in force under section 3ZZAF.

3            ***person assisting***, in relation to a delayed notification search  
4 warrant, means:

- 5            (a) a person who is an eligible officer of the authorised agency  
6            and who is assisting in the execution of the warrant; or  
7            (b) another person who has been authorised by the executing  
8            officer to assist in executing the warrant.

9            ***premises*** includes a place and a conveyance.

10           ***relevant eligible agency***, in relation to a thing seized under this  
11 Part, is the eligible agency whose chief officer authorised the  
12 application for the delayed notification search warrant under which  
13 the thing was seized.

14           ***staff member*** of an authorised agency or eligible agency means a  
15 person referred to in paragraph (a) of the definition of ***law***  
16 ***enforcement officer*** in subsection 3(1).

17           ***State or Territory agency***: see section 3ZZGF.

18           ***State or Territory inspecting authority***: see section 3ZZGF.

19           ***State or Territory law enforcement agency*** means:

- 20           (a) the police force or police service of a State or Territory; or  
21           (b) the New South Wales Crime Commission constituted by the  
22           *Crime Commission Act 2012* (NSW); or  
23           (c) the Independent Commission Against Corruption constituted  
24           by the *Independent Commission Against Corruption Act 1988*  
25           (NSW); or  
26           (d) the Police Integrity Commission constituted by the *Police*  
27           *Integrity Commission Act 1996* (NSW); or  
28           (e) the Independent Broad-based Anti-corruption Commission  
29           established by the *Independent Broad-based Anti-corruption*  
30           *Commission Act 2011* (Vic.); or  
31           (f) the Crime and Corruption Commission established by the  
32           *Crime and Corruption Act 2001* (Qld); or  
33           (g) the Corruption and Crime Commission established by the  
34           *Corruption and Crime Commission Act 2003* (WA); or

- 1 (h) the Independent Commissioner Against Corruption  
2 established by the *Independent Commissioner Against*  
3 *Corruption Act 2012* (SA); or  
4 (i) the Integrity Commission established by the *Integrity*  
5 *Commission Act 2009* (Tas.).

6 **thing** includes a thing in electronic form.

7 **warrant premises** means premises in relation to which a delayed  
8 notification search warrant is in force, but does not include any  
9 adjoining premises that are also authorised to be entered under the  
10 warrant.

11 **warrant premises occupier's notice**: see section 3ZZDA.

### 12 **3ZZAD Eligible issuing officers**

- 13 (1) An **eligible issuing officer** is:  
14 (a) a person:  
15 (i) who is a Judge of the Federal Court of Australia, or a  
16 Judge of the Supreme Court of a State or Territory; and  
17 (ii) in relation to whom a consent under  
18 subsection 3ZZAE(1), and a declaration under  
19 subsection 3ZZAE(2), are in force; or  
20 (b) a nominated AAT member.
- 21 (2) A function or power conferred on a Judge by this Part is conferred  
22 on the Judge in a personal capacity and not as a court or a member  
23 of a court.
- 24 (3) A Judge has, in relation to the performance or exercise of a  
25 function or power conferred on an eligible issuing officer by this  
26 Part, the same protection and immunity as if he or she were  
27 performing that function, or exercising that power, as, or as a  
28 member of, a court (being the court of which the Judge is a  
29 member).
- 30 Note: A member of the Administrative Appeals Tribunal has the same  
31 protection and immunity as a Justice of the High Court (see  
32 subsection 60(1) of the *Administrative Appeals Tribunal Act 1975*).

1 **3ZZAE Consent of Judges**

- 2 (1) A Judge of the Federal Court of Australia, or of the Supreme Court  
3 of a State or Territory, may, by writing, consent to be declared an  
4 eligible issuing officer by the Minister under subsection (2).
- 5 (2) The Minister may, by writing, declare a Judge in relation to whom  
6 a consent under subsection (1) is in force to be an eligible issuing  
7 officer for the purposes of this Part.
- 8 (3) A consent or declaration under this section is not a legislative  
9 instrument.

10 **3ZZAF Nominated AAT members**

- 11 (1) The Minister may, by writing, nominate a person who holds one of  
12 the following appointments to the Administrative Appeals Tribunal  
13 to issue delayed notification search warrants and perform related  
14 functions under this Act:  
15 (a) Deputy President;  
16 (b) full-time senior member.
- 17 (2) Despite subsection (1), the Minister must not nominate a person  
18 who holds an appointment as a full-time senior member of the  
19 Tribunal unless the person:  
20 (a) is enrolled as a legal practitioner of the High Court, of  
21 another federal court or of the Supreme Court of a State or of  
22 the Australian Capital Territory; and  
23 (b) has been so enrolled for not less than 5 years.
- 24 (3) A nomination ceases to be in force if:  
25 (a) the nominated AAT member ceases to hold an appointment  
26 described in subsection (1); or  
27 (b) the Minister, by writing, withdraws the nomination.

1 **Division 2—Issue of delayed notification search warrants**

2 **Subdivision A—The normal process for applying for and**  
3 **issuing delayed notification search warrants**

4 **3ZZBA The *conditions for issue* of a delayed notification search**  
5 **warrant**

6 A person is satisfied that the *conditions for issue* of a delayed  
7 notification search warrant are met in respect of particular premises  
8 if the person:

- 9 (a) suspects, on reasonable grounds, that one or more eligible  
10 offences have been, are being, are about to be or are likely to  
11 be committed; and  
12 (b) suspects, on reasonable grounds, that entry and search of the  
13 premises will substantially assist in the prevention or  
14 investigation of one or more of those offences; and  
15 (c) believes, on reasonable grounds, that it is necessary for the  
16 entry and search of the premises to be conducted without the  
17 knowledge of the occupier of the premises or any other  
18 person present at the premises.

19 **3ZZBB Authorisation to apply for a delayed notification search**  
20 **warrant**

- 21 (1) The chief officer of an eligible agency may, in writing, authorise  
22 an eligible officer of the agency to apply for a delayed notification  
23 search warrant in respect of particular premises if the chief officer  
24 is satisfied that the conditions for issue are met.
- 25 (2) The chief officer of an eligible agency may orally (in person or by  
26 telephone or other means of voice communication) authorise an  
27 eligible officer of the agency to apply for a delayed notification  
28 search warrant in respect of particular premises if the chief officer  
29 is satisfied that:
- 30 (a) the conditions for issue are met; and  
31 (b) either:  
32 (i) it is an urgent case; or

1 (ii) the delay that would occur if the authorisation were in  
2 writing would frustrate the effective execution of the  
3 delayed notification search warrant.

4 (3) If the chief officer of an eligible agency gives an authorisation  
5 under subsection (2), he or she must make a written record of the  
6 authorisation within 7 days.

7 **3ZZBC Applying for a delayed notification search warrant**

8 (1) An eligible officer of an eligible agency may apply to an eligible  
9 issuing officer for a delayed notification search warrant in respect  
10 of particular premises if the officer is authorised under  
11 section 3ZZBB to apply for the warrant.

12 Note 1: The application will need to address:  
13 (a) why the conditions for issue are met (see section 3ZZBA); and  
14 (b) other matters the eligible issuing officer must have regard to (see  
15 subsection 3ZZBD(2)); and  
16 (c) matters that must be specified in the warrant (see  
17 subsection 3ZZBE(1)).

18 Note 2: In urgent cases or certain other cases, an application may be made by  
19 telephone, fax or other electronic means: see section 3ZZBF.

20 (2) The eligible officer must provide the eligible issuing officer with:  
21 (a) a copy of, or details of, the authorisation under  
22 section 3ZZBB; and  
23 (b) particulars of any applications, and the outcomes, so far as  
24 known to the eligible officer, of any previous applications, in  
25 respect of the premises, for a warrant under this Part or  
26 Division 2 of Part IAA.

27 (3) The application must be supported by an affidavit setting out the  
28 grounds on which the warrant is sought.

29 (4) The eligible issuing officer may request further information  
30 relating to the application, and may require that the information be  
31 provided on oath or affirmation.

32 **3ZZBD Issuing a delayed notification search warrant**

33 (1) If:

---

**Schedule 1** Main counter-terrorism amendments

**Part 1** Amendments

---

- 1 (a) an eligible officer applies to an eligible issuing officer, in  
2 accordance with section 3ZZBC, for a delayed notification  
3 search warrant in respect of particular premises (the *main*  
4 *premises*); and
- 5 (b) the eligible issuing officer is satisfied, by information on oath  
6 or affirmation, that the conditions for issue are met;  
7 the eligible issuing officer may issue a delayed notification search  
8 warrant in respect of the premises.
- 9 (2) In determining whether the delayed notification search warrant  
10 should be issued, the eligible issuing officer must have regard to  
11 the following:
- 12 (a) the extent to which the exercise of the powers under the  
13 warrant would assist the prevention or investigation of the  
14 eligible offence to which the application for the warrant  
15 relates;
- 16 (b) the existence of alternative means of obtaining the evidence  
17 or information sought to be obtained;
- 18 (c) the extent to which the privacy of any person is likely to be  
19 affected;
- 20 (d) the nature and seriousness of that offence;
- 21 (e) if it is proposed that adjoining premises be entered for the  
22 purpose of entering the main premises—whether allowing  
23 entry to the adjoining premises is reasonably necessary:
- 24 (i) to enable entry to the main premises; and  
25 (ii) to avoid compromising the prevention or investigation  
26 of that offence;
- 27 (f) any conditions to which the warrant should be subject;
- 28 (g) the outcome, so far as known to the eligible issuing officer,  
29 of any previous application, in respect of the main premises,  
30 for a warrant under this Part or Division 2 of Part IAA.
- 31 (3) An eligible issuing officer of the Federal Court of Australia or the  
32 Administrative Appeals Tribunal may issue a delayed notification  
33 search warrant in relation to premises located anywhere in the  
34 Commonwealth or an external Territory.
- 35 (4) An eligible issuing officer of the Supreme Court of a State or  
36 Territory may issue a delayed notification search warrant only in  
37 relation to premises located in that State or Territory.
-

1 **3ZZBE Contents of a delayed notification search warrant**

- 2 (1) A delayed notification search warrant must specify the following:
- 3 (a) the name of the applicant;
- 4 (b) the name of the authorised agency;
- 5 (c) the name of the eligible officer of that agency who, unless he
- 6 or she inserts the name of another such eligible officer in the
- 7 warrant, is to be responsible for executing the warrant;
- 8 (d) the address, location or other description of the warrant
- 9 premises;
- 10 (e) the eligible offence to which the warrant relates;
- 11 (f) whether the warrant authorises the entry of adjoining
- 12 premises, and if it does, the address, location or other
- 13 description of the adjoining premises;
- 14 (g) the day on which, and the time at which, the warrant is
- 15 issued;
- 16 (h) the day on which, and the time at which, the warrant expires
- 17 (which must be a time on a day that is not more than 30 days
- 18 after the day on which the warrant is issued);
- 19 (i) the time by which notice of entry of premises under the
- 20 warrant is to be given (expressed as a time on a specified day
- 21 that is not more than 6 months after the day on which the
- 22 warrant is issued);
- 23 (j) a description of the kinds of things that may be searched for,
- 24 seized, copied, photographed, recorded, marked, tagged,
- 25 operated, printed, tested or sampled;
- 26 (k) whether the warrant authorises a thing to be placed in
- 27 substitution for a thing seized under the warrant or moved
- 28 under subsection 3ZZCE(2);
- 29 (l) whether the warrant authorises the re-entry of the warrant
- 30 premises, and any adjoining premises authorised to be
- 31 entered, to:
- 32 (i) return to the warrant premises any thing seized under
- 33 the warrant or moved under subsection 3ZZCE(2); or
- 34 (ii) retrieve any thing substituted at the warrant premises for
- 35 a thing seized under the warrant or moved under
- 36 subsection 3ZZCE(2);

- 1 (m) if the warrant authorises such re-entry—that the re-entry  
2 must be within:  
3 (i) 14 days of the day of execution of the warrant; or  
4 (ii) if a thing is moved under subsection 3ZZCE(2) and the  
5 time for which it may be examined or processed is more  
6 than 14 days because of an extension under  
7 section 3ZZCE—that time as extended under that  
8 section;  
9 (n) any conditions to which the warrant is subject;  
10 (o) that the eligible issuing officer is satisfied as mentioned in  
11 paragraph 3ZZBD(1)(b), and has had regard to the matters  
12 specified in subsection 3ZZBD(2).

- 13 Note 1: Regarding paragraph (i):  
14 (a) the specified time is the time by which a warrant premises  
15 occupier's notice, and any adjoining premises occupier's notice,  
16 must be given (subject to subsections 3ZZDA(4), 3ZZDB(4) and  
17 3ZZDC(3)); and  
18 (b) the specified time can be extended (see subsection 3ZZDC(5)).  
19 Note 2: Regarding the period described in paragraph (m), see also  
20 subsection 3ZZCA(3).

- 21 (2) The warrant must be signed by the eligible issuing officer who  
22 issued it and include his or her name.

23 **Subdivision B—Delayed notification search warrants by**  
24 **telephone, fax etc.**

25 **3ZZBF Delayed notification search warrants by telephone, fax etc.**

26 *When this section applies*

- 27 (1) This section applies if the requirements specified in  
28 subsection 3ZZBC(1) for when an eligible officer of an eligible  
29 agency may apply for a delayed notification search warrant in  
30 respect of particular premises are satisfied.

31 Note: This section sets out an alternative method of applying for and issuing  
32 delayed notification search warrants.



1                                    *Application for delayed notification search warrant*

- 2                    (2) The eligible officer may apply to an eligible issuing officer by  
3                    telephone, fax or other electronic means for a delayed notification  
4                    search warrant in respect of the premises:  
5                    (a) if it is an urgent case; or  
6                    (b) if the delay that would occur if the application were made in  
7                    person would frustrate the effective execution of the delayed  
8                    notification search warrant.
- 9                    (3) The eligible issuing officer:  
10                    (a) may require communication by voice to the extent that it is  
11                    practicable in the circumstances; and  
12                    (b) may make a recording of the whole or any part of any such  
13                    communication by voice.
- 14                    (4) The application must:  
15                    (a) include all information required to be provided in an ordinary  
16                    application for a delayed notification search warrant, but the  
17                    application may, if necessary, be made before the  
18                    information is sworn or affirmed; and  
19                    (b) include details of, or be accompanied by a copy of, the  
20                    authorisation under section 3ZZBB.

21                                    *Eligible issuing officer may complete and sign warrant*

- 22                    (5) The eligible issuing officer may complete and sign the same  
23                    delayed notification search warrant that would have been issued  
24                    under section 3ZZBD if, after:  
25                    (a) considering the information and having received and  
26                    considered such further information (if any) as the eligible  
27                    issuing officer required; and  
28                    (b) having regard to the matters specified in  
29                    subsection 3ZZBD(2);  
30                    the eligible issuing officer is satisfied:  
31                    (c) that the conditions for issue are met; and  
32                    (d) that:  
33                    (i) a delayed notification search warrant in the terms of the  
34                    application should be issued urgently; or

1 (ii) the delay that would occur if an application were made  
2 in person would frustrate the effective execution of the  
3 delayed notification search warrant.

4 (6) After completing and signing the delayed notification search  
5 warrant, the eligible issuing officer must inform the applicant, by  
6 telephone, fax or other electronic means, of:

7 (a) the terms of the warrant; and

8 (b) the day on which, and the time at which, the warrant was  
9 signed.

10 *Obligations on applicant*

11 (7) The applicant must then do the following:

12 (a) complete a form of delayed notification search warrant in the  
13 same terms as the warrant completed and signed by the  
14 eligible issuing officer;

15 (b) state on the form the following:

16 (i) the name of the eligible issuing officer;

17 (ii) the day and time of signing of the warrant;

18 (c) send the following to the eligible issuing officer:

19 (i) the form of warrant completed by the applicant;

20 (ii) the information referred to in subsection (4), which  
21 must have been duly sworn or affirmed.

22 (8) The applicant must comply with paragraph (7)(c) by the end of the  
23 day after the earlier of the following:

24 (a) the day on which the delayed notification search warrant  
25 expires;

26 (b) the day of execution of the warrant.

27 *Eligible issuing officer to attach documents together*

28 (9) The eligible issuing officer must attach the documents provided  
29 under paragraph (7)(c) to the delayed notification search warrant  
30 signed by the eligible issuing officer.

1 **3ZZBG Authority of delayed notification search warrant by**  
2 **telephone, fax etc.**

- 3 (1) A form of delayed notification search warrant duly completed  
4 under subsection 3ZZBF(7) is authority for the same powers as are  
5 authorised by the warrant signed by the eligible issuing officer  
6 under subsection 3ZZBF(5).
- 7 (2) In any proceedings, a court is to assume (unless the contrary is  
8 proved) that an exercise of power was not authorised by a delayed  
9 notification search warrant under section 3ZZBF if:
- 10 (a) it is material, in those proceedings, for the court to be  
11 satisfied that the exercise of power was duly authorised by  
12 the warrant; and
- 13 (b) the delayed notification search warrant signed by the eligible  
14 issuing officer authorising the exercise of the power is not  
15 produced in evidence.

16 **Subdivision C—Offences relating to applying for warrants etc.**

17 **3ZZBH Offence for making false statement in application for**  
18 **delayed notification search warrant**

19 A person must not make, in an application for a delayed  
20 notification search warrant, a statement that the person knows to be  
21 false or misleading in a material particular.

22 Penalty: Imprisonment for 2 years.

23 **3ZZBI Offence relating to delayed notification search warrant by**  
24 **telephone, fax etc.**

25 A person must not:

- 26 (a) state in a document that purports to be a form of delayed  
27 notification search warrant under section 3ZZBF the name of  
28 an eligible issuing officer unless that eligible issuing officer  
29 issued the warrant; or
- 30 (b) state on a form of delayed notification search warrant under  
31 that section a matter that, to the person's knowledge, departs

- 1 in a material particular from the form authorised by the  
2 eligible issuing officer; or
- 3 (c) purport to execute, or present to a person, a document that  
4 purports to be a form of delayed notification search warrant  
5 under that section that the person knows:
- 6 (i) has not been approved by an eligible issuing officer  
7 under that section; or
- 8 (ii) departs in a material particular from the terms  
9 authorised by an eligible issuing officer under that  
10 section; or
- 11 (d) give to an eligible issuing officer a form of delayed  
12 notification search warrant under that section that is not the  
13 form of warrant that the person purported to execute.

14 Penalty: Imprisonment for 2 years.

15 **Subdivision D—Interaction with other provisions under which**  
16 **search warrants may be issued**

17 **3ZZBJ Issue of warrants under other provisions as well as or**  
18 **instead of delayed notification search warrants**

19 *When this section applies*

- 20 (1) This section applies if an eligible officer of an eligible agency,  
21 under an authorisation under section 3ZZBB from the chief officer  
22 of the agency, makes an application (the *delayed notification*  
23 *search warrant application*) to an eligible issuing officer for a  
24 delayed notification search warrant:
- 25 (a) in respect of particular premises; and  
26 (b) in relation to a particular eligible offence.
- 27 (2) The *applicable normal search warrant regime* is Division 2 of  
28 Part IAA.

29 *Application may be made to eligible issuing officer for normal*  
30 *search warrant*

- 31 (3) The eligible officer may, at the same time or subsequently, make  
32 an application to the eligible issuing officer for the issue of a

1 warrant, under the applicable normal search warrant regime, to  
2 search the premises or other premises for evidential material  
3 relevant to the eligible offence or to another offence connected to  
4 the eligible offence.

- 5 (4) If the eligible issuing officer is not a person who is authorised to  
6 issue warrants under the applicable normal search warrant regime,  
7 the eligible issuing officer may consider and deal with an  
8 application made as mentioned in subsection (3) as if the eligible  
9 issuing officer were such a person.

10 *Eligible issuing officer may instead treat application as if it were*  
11 *made under applicable normal search warrant regime*

- 12 (5) If the eligible issuing officer is not satisfied that a delayed  
13 notification search warrant in respect of the premises should be  
14 issued, the eligible issuing officer may:  
15 (a) treat the delayed notification search warrant application as if  
16 it were an application for a warrant under the applicable  
17 normal search warrant regime (even if such an application  
18 has not been made); and  
19 (b) consider and deal with the application under that regime:  
20 (i) as if the application had been validly made under that  
21 regime; and  
22 (ii) if the eligible issuing officer is not a person who is  
23 authorised to issue warrants under the applicable normal  
24 search warrant regime—as if the eligible issuing officer  
25 were such a person.

### 26 **Division 3—Exercise of powers under delayed notification** 27 **search warrants**

#### 28 **3ZZCA What is authorised by a delayed notification search warrant**

- 29 (1) A delayed notification search warrant authorises the executing  
30 officer or a person assisting to do any of the following:  
31 (a) to enter the warrant premises;  
32 (b) if the warrant authorises the entry of adjoining premises—to  
33 enter the adjoining premises solely for the purpose of  
34 entering or leaving the warrant premises;

**Schedule 1** Main counter-terrorism amendments

**Part 1** Amendments

---

- 1 (c) to impersonate another person to the extent reasonably  
2 necessary for executing the warrant;
- 3 (d) to search the warrant premises for the kinds of things (if any)  
4 specified in the warrant as the kinds of things that may be  
5 searched for;
- 6 (e) to seize any thing of a kind specified in the warrant as a kind  
7 of thing that may be seized;
- 8 (f) to seize other things found in the course of executing the  
9 warrant at the warrant premises that the executing officer or a  
10 person assisting believes on reasonable grounds to be  
11 evidential material, if the executing officer or a person  
12 assisting believes on reasonable grounds that the seizure of  
13 the things is necessary to prevent their concealment, loss or  
14 destruction or their use in committing any offence;
- 15 (g) to seize any thing found in the course of executing the  
16 warrant at the warrant premises that the executing officer or a  
17 person assisting believes on reasonable grounds:  
18 (i) would present a danger to a person; or  
19 (ii) could be used to assist a person to escape from lawful  
20 custody;
- 21 (h) to search for and record fingerprints found at the premises  
22 and to take samples of things found at the premises for  
23 forensic purposes;
- 24 (i) if specified in the warrant—to place a thing in substitution  
25 for a thing seized or moved under subsection 3ZZCE(2);
- 26 (j) to do any of the following acts to a thing found in the course  
27 of executing the warrant at the warrant premises that is of a  
28 kind specified in the warrant as the kind of thing to which the  
29 act may be done, or that the executing officer or a person  
30 assisting believes on reasonable grounds to be evidential  
31 material:  
32 (i) copy the thing;  
33 (ii) photograph or otherwise record the thing;  
34 (iii) mark or tag the thing (whether or not the mark or tag  
35 can be detected only with the use of a device);  
36 (iv) operate the thing;  
37 (v) print the thing;  
38 (vi) test the thing;
-

- 1 (vii) sample the thing;  
2 (k) to do anything reasonably necessary to conceal the fact that  
3 any thing has been done under the warrant;  
4 (l) if specified in the warrant—to re-enter:  
5 (i) the warrant premises; and  
6 (ii) if the warrant authorises the entry of adjoining  
7 premises—the adjoining premises solely for the purpose  
8 of entering or leaving the warrant premises;  
9 within the period described in paragraph 3ZZBE(1)(m), for  
10 the purpose of returning any thing seized from the warrant  
11 premises or moved under subsection 3ZZCE(2), or retrieving  
12 any thing substituted at the premises for a thing seized or  
13 moved under that subsection;  
14 (m) to exercise the other powers conferred on the executing  
15 officer, or a person assisting, by the other provisions of this  
16 Division.

17 Note: Paragraph (c) does not authorise the acquisition or use of an assumed  
18 identity (see Part IAC). The protection provided by Part IAC only  
19 applies if the requirements of that Part have been complied with.

- 20 (2) The entry of premises under a paragraph of subsection (1) may be  
21 effected without the knowledge of the occupier of the premises or  
22 any other person present at the premises.  
23 (3) If the period referred to in paragraph (1)(l) ends after the delayed  
24 notification search warrant expires, the powers referred to in that  
25 paragraph may be exercised during that period as if the warrant  
26 were still in force.

27 **3ZZCB Specific powers available to person executing warrant**

28 *Photography*

- 29 (1) In executing a delayed notification search warrant, the executing  
30 officer or a person assisting may, for a purpose incidental to the  
31 execution of the warrant, take photographs (including video  
32 recordings) of the warrant premises or of things at the warrant  
33 premises.

*Completion of execution of warrant after brief interruption*

- 1  
2 (2) If a delayed notification search warrant in relation to premises is  
3 being executed, the executing officer and the persons assisting  
4 may, if the warrant is still in force, complete the execution of the  
5 warrant after all of them temporarily cease its execution and leave  
6 the premises:  
7 (a) for not more than one hour; or  
8 (b) for not more than 24 hours, or such longer period as allowed  
9 by an eligible issuing officer under section 3ZZCC, if they  
10 leave the premises:  
11 (i) because of an emergency situation; or  
12 (ii) to reduce the risk of discovery of the fact that a law  
13 enforcement officer has been on the premises.

*Completion of execution of warrant after court proceedings*

- 14  
15 (3) If:  
16 (a) the execution of a delayed notification search warrant is  
17 stopped by an order of a court; and  
18 (b) the order is later revoked or reversed on appeal; and  
19 (c) the warrant is still in force;  
20 the execution of the warrant may be completed.

**3ZZCC Extension of time to re-enter premises left in emergency  
situation or to avoid discovery of law enforcement officer**

- 21  
22  
23 (1) If:  
24 (a) a delayed notification search warrant in relation to premises  
25 is being executed; and  
26 (b) the executing officer and the persons assisting (if any) leave  
27 the premises for a reason described in  
28 subparagraph 3ZZCB(2)(b)(i) or (ii); and  
29 (c) the executing officer or a person assisting believes on  
30 reasonable grounds that the executing officer and the persons  
31 assisting will not be able to return to the premises within the  
32 24-hour period mentioned in paragraph 3ZZCB(2)(b);  
33 he or she may apply to an eligible issuing officer for an extension  
34 of that period.



- 1 (2) If an application mentioned in subsection (1) has been made, an  
2 eligible issuing officer may extend the period during which the  
3 executing officer and persons assisting may be away from the  
4 premises if:  
5 (a) the eligible issuing officer is satisfied, by information on oath  
6 or affirmation, that there are circumstances that justify the  
7 extension; and  
8 (b) the extension would not result in the period ending after the  
9 expiry of the warrant.

10 **3ZZCD Executing a warrant—assistance, use of force and related**  
11 **matters**

- 12 (1) In executing a delayed notification search warrant:  
13 (a) the executing officer may obtain such assistance; and  
14 (b) the executing officer, or an eligible officer who is a person  
15 assisting, may use such force against persons and things; and  
16 (c) a person assisting who is not an eligible officer may use such  
17 force against things;  
18 as is necessary and reasonable in the circumstances.
- 19 (2) At any time when the executing officer is at warrant premises, or  
20 adjoining premises, under a delayed notification search warrant,  
21 the executing officer must have in his or her possession, or be in a  
22 position to produce without delay:  
23 (a) a copy of the warrant; or  
24 (b) if the warrant was issued under section 3ZZBF—a copy of  
25 the form of warrant completed under subsection 3ZZBF(7).
- 26 (3) To avoid doubt, subsection (2) does not require the executing  
27 officer to produce a copy of the warrant or the form of warrant.

28 **3ZZCE Use of equipment to examine or process things**

29 *Equipment may be brought onto warrant premises*

- 30 (1) In executing a delayed notification search warrant, the executing  
31 officer or a person assisting may bring to the warrant premises any  
32 equipment reasonably necessary for the examination or processing

1 of a thing found at the premises in order to determine whether it is  
2 a thing that may be seized under the warrant.

3 *Thing may be moved for examination or processing*

- 4 (2) A thing found at the warrant premises may be moved to another  
5 place for examination or processing in order to determine whether  
6 it may be seized under the delayed notification search warrant if:  
7 (a) it is significantly more practicable to do so having regard to  
8 the timeliness and cost of examining or processing the thing  
9 at another place and the availability of expert assistance; and  
10 (b) the executing officer or a person assisting suspects on  
11 reasonable grounds that the thing contains or constitutes a  
12 thing that may be seized under the warrant.

13 Note: Sections 3ZZCG and 3ZZCH authorise operation of electronic  
14 equipment moved under this section.

15 *Time limit on moving a thing*

- 16 (3) The thing may be moved to another place for examination or  
17 processing for no longer than 14 days.  
18 (4) An executing officer may apply to an eligible issuing officer for  
19 one or more extensions of that time if the executing officer  
20 believes on reasonable grounds that the thing cannot be examined  
21 or processed within 14 days or that time as previously extended.  
22 (5) A single extension cannot exceed 7 days.

23 *Equipment at warrant premises may be operated*

- 24 (6) The executing officer or a person assisting may operate equipment  
25 already at the warrant premises to carry out the examination or  
26 processing of a thing found at the premises, if the executing officer  
27 or person believes on reasonable grounds that:  
28 (a) the equipment is suitable for the examination or processing;  
29 and  
30 (b) the examination or processing can be carried out without  
31 damage to the equipment or the thing.

1 **3ZZCF Use of electronic equipment at warrant premises**

2 *Use of electronic equipment to access data*

- 3 (1) In executing a delayed notification search warrant, the executing  
4 officer or a person assisting may operate electronic equipment at  
5 the warrant premises to access data (including data not held at the  
6 premises) if he or she suspects on reasonable grounds that the data  
7 constitutes a thing that may be seized under the warrant.

8 *Copy of data onto disk, tape or other device*

- 9 (2) If the executing officer or person assisting suspects on reasonable  
10 grounds that any data accessed by operating the electronic  
11 equipment constitutes a thing that may be seized under the warrant,  
12 he or she may copy the data to a disk, tape or other associated  
13 device and take the disk tape or device from the warrant premises.

- 14 (3) If:

15 (a) under subsection (2), the executing officer or person assisting  
16 copies data to a disk, tape or device; and

17 (b) the chief officer of the authorised agency is satisfied that the  
18 data is not required, is no longer required, or is not likely to  
19 be required, for a purpose mentioned in section 3ZZEA;

20 the chief officer must arrange for:

21 (c) the removal of the data from any device in the control of the  
22 authorised agency; and

23 (d) the destruction of any other reproduction of the data in the  
24 control of the authorised agency.

25 *Powers if thing that may be seized is accessible by operating*  
26 *equipment*

- 27 (4) If the executing officer or a person assisting, after operating the  
28 electronic equipment, finds that a thing that may be seized under  
29 the warrant is accessible by doing so, he or she may:

30 (a) seize the equipment and any disk, tape or other associated  
31 device; or

32 (b) if the thing can, by using facilities at the warrant premises, be  
33 put in documentary form—operate the facilities to put the  
34 thing in that form and seize the documents so produced.

---

- 1 (5) The executing officer or a person assisting may seize equipment  
2 under paragraph (4)(a) only if:  
3 (a) it is not practicable to copy the data as mentioned in  
4 subsection (2) or to put the thing that may be seized in  
5 documentary form as mentioned in paragraph (4)(b); or  
6 (b) possession of the equipment, by the occupier of the warrant  
7 premises, could constitute an offence.

8 **3ZZCG Use of moved electronic equipment at other place**

- 9 (1) If electronic equipment is moved to another place under  
10 subsection 3ZZCE(2), the executing officer or a person assisting  
11 may operate the equipment to access data (including data held at  
12 another place).
- 13 (2) If the executing officer or person assisting suspects on reasonable  
14 grounds that any data accessed by operating the electronic  
15 equipment constitutes a thing that may be seized under the warrant,  
16 he or she may copy any or all of the data accessed by operating the  
17 electronic equipment to a disk, tape or other associated device.
- 18 (3) If the chief officer of the authorised agency is satisfied that the data  
19 is not required, is no longer required, or is not likely to be required,  
20 for a purpose mentioned in section 3ZZEA, the chief officer must  
21 arrange for:  
22 (a) the removal of the data from any device in the control of the  
23 authorised agency; and  
24 (b) the destruction of any other reproduction of the data in the  
25 control of the authorised agency.
- 26 (4) If the executing officer or a person assisting, after operating the  
27 equipment, finds that a thing that may be seized under the warrant  
28 is accessible by doing so, he or she may:  
29 (a) seize the equipment and any disk, tape or other associated  
30 device; or  
31 (b) if the thing can be put in documentary form—put the thing in  
32 that form and seize the documents so produced.
- 33 (5) The executing officer or a person assisting may seize equipment  
34 under paragraph (4)(a) only if:
-

- 1 (a) it is not practicable to copy the data as mentioned in  
2 subsection (2) or to put the thing that may be seized in  
3 documentary form as mentioned in paragraph (4)(b); or  
4 (b) possession of the equipment, by the occupier of the warrant  
5 premises, could constitute an offence.

6 **3ZZCH Operating seized or moved electronic equipment**

- 7 (1) This section applies to electronic equipment seized under this Part  
8 or moved under section 3ZZCE.
- 9 (2) The electronic equipment may be operated at any location after it  
10 has been seized or moved, for the purpose of determining whether  
11 data that is a thing that may be seized under the relevant delayed  
12 notification search warrant is held on or accessible from the  
13 electronic equipment, and obtaining access to such data.
- 14 (3) The data referred to in subsection (2) includes, but is not limited to,  
15 the following:
- 16 (a) data held on the electronic equipment, including data held on  
17 the electronic equipment when operated under this section  
18 that was not held on the electronic equipment at the time the  
19 electronic equipment was seized;
- 20 (b) data not held on the electronic equipment but accessible by  
21 using it, including data that was not accessible at the time the  
22 electronic equipment was seized.
- 23 (4) The electronic equipment may be operated before or after the  
24 expiry of the relevant delayed notification search warrant.
- 25 (5) This section does not limit the operation of other provisions of this  
26 Part that relate to dealing with items seized under this Part or  
27 moved under section 3ZZCE.
- 28 Note: For example, this section does not affect the operation of the time  
29 limits in section 3ZZCE on examination or processing of a thing  
30 moved under that section.

31 **3ZZCI Compensation for damage to electronic equipment**

- 32 (1) This section applies if:
-

- 1 (a) as a result of equipment being operated as mentioned in  
2 section 3ZZCE, 3ZZCF, 3ZZCG or 3ZZCH:  
3 (i) damage is caused to the equipment; or  
4 (ii) damage is caused to data recorded on the equipment or  
5 data access to which was obtained from the operation of  
6 the equipment; or  
7 (iii) programs associated with the use of the equipment, or  
8 with the use of the data, are damaged or corrupted; and  
9 (b) the damage or corruption occurs because:  
10 (i) insufficient care was exercised in selecting the person  
11 who was to operate the equipment; or  
12 (ii) insufficient care was exercised by the person operating  
13 the equipment.
- 14 (2) The Commonwealth must pay the owner of the equipment, or the  
15 user of the data or programs, such reasonable compensation for the  
16 damage or corruption as the Commonwealth and the owner or user  
17 agree on.
- 18 (3) However, if the owner or user and the Commonwealth fail to  
19 agree, the owner or user may institute proceedings in the Federal  
20 Court of Australia for such reasonable amount of compensation as  
21 the court determines.

## 22 **Division 4—Notice to occupiers**

### 23 **3ZZDA Warrant premises occupier’s notice must be prepared and** 24 **given**

- 25 (1) As soon as practicable after the exercise of powers under a delayed  
26 notification search warrant has been completed, the executing  
27 officer must prepare a written notice (the *warrant premises*  
28 *occupier’s notice*) that complies with subsection (2).
- 29 (2) The warrant premises occupier’s notice must:  
30 (a) specify the name of the authorised agency; and  
31 (b) specify the day on which, and the time at which, the warrant  
32 was issued; and  
33 (c) specify the day of execution of the warrant; and

- 1 (d) specify the address, location or other description of the  
2 warrant premises; and
- 3 (e) specify the number of persons who entered the warrant  
4 premises for the purposes of executing, or assisting in the  
5 execution of, the warrant; and
- 6 (f) include a summary of:
- 7 (i) the purpose of delayed notification search warrants  
8 (including a statement to the effect that they are to  
9 authorise entry and search of premises to be conducted  
10 without the knowledge of the occupier of the premises  
11 or any other person present at the premises); and
- 12 (ii) the things done under the warrant; and
- 13 (g) describe any thing seized from the warrant premises and state  
14 whether a thing was placed in substitution for the seized  
15 thing; and
- 16 (h) state whether any thing was returned to, or retrieved from,  
17 the warrant premises and the date on which this occurred.
- 18 (3) Subject to subsection (4), a staff member of the authorised agency  
19 must give the warrant premises occupier's notice, and a copy of the  
20 warrant (or the form of warrant completed under  
21 subsection 3ZZBF(7)), to the person (the *occupier*) who was the  
22 occupier of the warrant premises when they were entered under the  
23 warrant. The notice, and the copy of the warrant (or form of  
24 warrant), must be given to the occupier by the time applicable  
25 under section 3ZZDC.
- 26 (4) If the occupier cannot be identified or located, a staff member of  
27 the authorised agency must report back to an eligible issuing  
28 officer, and the eligible issuing officer may give such directions as  
29 the eligible issuing officer thinks fit.
- 30 (5) A notice and a direction under this section are not legislative  
31 instruments.

32 **3ZZDB Adjoining premises occupier's notice must be prepared and**  
33 **given**

- 34 (1) As soon as practicable after adjoining premises are entered under a  
35 delayed notification search warrant, the executing officer must





1 **3ZZDC Time for giving warrant premises occupier's notice or**  
2 **adjoining premises occupier's notice**

3 *Section determines time by which notice must be given*

- 4 (1) This section:  
5 (a) applies if a warrant premises occupier's notice, or an  
6 adjoining premises occupier's notice, is prepared in relation  
7 to a delayed notification search warrant; and  
8 (b) determines the time by which the notice (and a copy of the  
9 warrant, or the form of warrant) must be given in accordance  
10 with subsection 3ZZDA(3) or 3ZZDB(3).

11 Note: This section has effect subject to any directions given under  
12 subsection 3ZZDA(4) or 3ZZDB(4).

13 *General rule*

- 14 (2) Subject to subsection (3), the notice (and the copy of the warrant or  
15 form of warrant) must be given by:  
16 (a) the time specified under paragraph 3ZZBE(1)(i); or  
17 (b) if that time has been extended under subsection (5), that time  
18 as so extended.

19 *Rule if person is charged with an offence relying on evidence*  
20 *obtained under the warrant*

- 21 (3) If:  
22 (a) a person is charged with an offence; and  
23 (b) the prosecution proposes to rely on evidence obtained under  
24 the warrant;  
25 the notice (and the copy of the warrant or of the form of the  
26 warrant completed under subsection 3ZZBF(7)) must be given as  
27 soon as practicable after the person is charged with the offence, but  
28 no later than the earlier of the following times:  
29 (c) the time applicable under subsection (2);  
30 (d) the time of service of the brief of evidence by the  
31 prosecution.



1 **Division 5—Using, sharing and returning things seized**

2 **Subdivision A—Using and sharing things seized**

3 **3ZZEA Purposes for which things may be used and shared**

4 *Use and sharing of thing by eligible officer or Commonwealth*  
5 *officer*

- 6 (1) An eligible officer of an eligible agency or a Commonwealth  
7 officer may use, or make available to another eligible officer or  
8 Commonwealth officer to use, a thing seized under this Part for the  
9 purpose of any or all of the following if it is necessary to do so for  
10 that purpose:
- 11 (a) preventing, investigating or prosecuting an offence;
  - 12 (b) proceedings under the *Proceeds of Crime Act 1987* or the  
13 *Proceeds of Crime Act 2002*;
  - 14 (c) proceedings for the forfeiture of the thing under a law of the  
15 Commonwealth;
  - 16 (d) the performance of a function or duty, or the exercise of a  
17 power, by a person, court or other body under, or in relation  
18 to a matter arising under, Division 104 or 105 of the *Criminal*  
19 *Code*;
  - 20 (e) investigating or resolving a complaint or an allegation of  
21 misconduct relating to an exercise of a power or the  
22 performance of a function or duty under this Part;
  - 23 (f) investigating or resolving an AFP conduct or practices issue  
24 (within the meaning of the *Australian Federal Police Act*  
25 *1979*) under Part V of that Act;
  - 26 (g) investigating or resolving a complaint under the *Ombudsman*  
27 *Act 1976* or the *Privacy Act 1988*;
  - 28 (h) investigating or inquiring into a corruption issue under the  
29 *Law Enforcement Integrity Commissioner Act 2006*;
  - 30 (i) proceedings in relation to a complaint, allegation or issue  
31 mentioned in paragraph (e), (f), (g) or (h);
  - 32 (j) deciding whether to institute proceedings, to make an  
33 application or request, or to take any other action, mentioned  
34 in any of the preceding paragraphs of this subsection;
-

**Schedule 1** Main counter-terrorism amendments

**Part 1** Amendments

---

- 1 (k) the performance of the functions of the Australian Federal  
2 Police under section 8 of the *Australian Federal Police Act*  
3 *1979*.
- 4 (2) An eligible officer of an eligible agency or a Commonwealth  
5 officer may use a thing seized under this Part for any other use that  
6 is required or authorised by or under a law of a State or a Territory.
- 7 (3) An eligible officer of an eligible agency may make available to  
8 another eligible officer of an eligible agency or a Commonwealth  
9 officer to use a thing seized under this Part for any purpose for  
10 which the making available of the thing or document is required or  
11 authorised by a law of a State or Territory.
- 12 (4) To avoid doubt, this section does not limit any other law of the  
13 Commonwealth that:  
14 (a) requires or authorises the use of a thing; or  
15 (b) requires or authorises the making available (however  
16 described) of a thing.
- 17 *Sharing thing for use by State, Territory or foreign agency*
- 18 (5) An eligible officer of an eligible agency or a Commonwealth  
19 officer may make a thing seized under this Part available to:  
20 (a) a State or Territory law enforcement agency; or  
21 (b) an agency that has responsibility for:  
22 (i) law enforcement in a foreign country; or  
23 (ii) intelligence gathering for a foreign country; or  
24 (iii) the security of a foreign country;  
25 to be used by that agency for a purpose mentioned in  
26 subsection (1), (2) or (3) and the purpose of any or all of the  
27 following (but not for any other purpose):  
28 (c) preventing, investigating or prosecuting an offence against a  
29 law of a State or Territory;  
30 (d) proceedings under a corresponding law (within the meaning  
31 of the *Proceeds of Crime Act 1987* or the *Proceeds of Crime*  
32 *Act 2002*);  
33 (e) proceedings for the forfeiture of the thing under a law of a  
34 State or Territory;
-

- 1 (f) deciding whether to institute proceedings or to take any other  
2 action mentioned in any of paragraphs (1)(a) to (k)  
3 (inclusive), subsection (2) or (3) or paragraph (c), (d) or (e)  
4 of this subsection.

5 *Ministerial arrangements for sharing*

- 6 (6) This Division does not prevent the Minister from making an  
7 arrangement with a Minister of a State or Territory for:  
8 (a) the making available to a State or Territory law enforcement  
9 agency of that State or Territory, for purposes mentioned in  
10 subsections (1), (3) and (5), of things seized under this Part;  
11 and  
12 (b) the disposal by the agency of such things when they are no  
13 longer of use to that agency for those purposes.

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

16 **Subdivision B—Returning things seized**

17 **3ZZEB When things seized must be returned**

- 18 (1) If the chief officer of the relevant eligible agency is satisfied that a  
19 thing seized under this Part is not required (or is no longer  
20 required) for a purpose mentioned in section 3ZZEA or for other  
21 judicial or administrative review proceedings, the chief officer  
22 must take reasonable steps to return the thing to the person from  
23 whom it was seized, or to the owner if that person is not entitled to  
24 possess it.
- 25 (2) However, the chief officer does not have to take those steps if:  
26 (a) either:  
27 (i) the thing may be retained because of an order under  
28 subsection 3ZZEC(1), or any other order under that  
29 subsection has been made in relation to the thing; or  
30 (ii) the chief officer has applied for such an order and the  
31 application has not been determined; or  
32 (b) the thing may otherwise be retained, destroyed or disposed of  
33 under a law, or an order of a court or tribunal, of the  
34 Commonwealth or of a State or a Territory; or

- 1 (c) the thing is forfeited or forfeitable to the Commonwealth or  
2 is the subject of a dispute as to ownership; or  
3 (d) a warrant premises occupier's notice has not been given in  
4 relation to the occupier of the warrant premises.

5 **3ZZEC Eligible issuing officer may permit a thing seized to be**  
6 **retained, forfeited etc.**

- 7 (1) An eligible issuing officer may, on application by an eligible  
8 officer of an eligible agency, make any of the orders referred to in  
9 subsection (2) in relation to a thing seized under this Part if the  
10 eligible issuing officer is satisfied that there are reasonable grounds  
11 to suspect that, if the thing is returned to the owner of the thing, or  
12 the person from whom the thing was seized, it is likely to be used  
13 by that person or another person in the commission of:  
14 (a) a terrorist act or a terrorism offence; or  
15 (b) a serious offence (within the meaning of Part IAA).
- 16 (2) The orders are as follows:  
17 (a) an order that the thing may be retained for the period  
18 specified in the order;  
19 (b) an order that the thing is forfeited to the Commonwealth;  
20 (c) an order that:  
21 (i) the thing be sold and the proceeds given to the owner of  
22 the thing; or  
23 (ii) the thing be sold in some other way;  
24 (d) an order that the thing is to be destroyed or otherwise  
25 disposed of.
- 26 (3) If the eligible issuing officer is not satisfied as mentioned in  
27 subsection (1), the eligible issuing officer must order that the thing  
28 be returned to:  
29 (a) the person from whom the thing was seized; or  
30 (b) if that person is not entitled to possess the thing—the owner  
31 of the thing.

1 **Division 6—Reporting and record-keeping**

2 **3ZZFA Reporting on delayed notification search warrants**

- 3 (1) The executing officer in relation to a delayed notification search  
4 warrant, or the applicant for the warrant, must give a written report  
5 on the warrant to the chief officer of the authorised agency.
- 6 (2) The report must be given to the chief officer of the authorised  
7 agency as soon as practicable after:  
8 (a) the day of execution of the warrant; or  
9 (b) if the warrant was not executed—the expiry of the warrant.
- 10 (3) The report must:  
11 (a) specify the address, location or other description of the  
12 warrant premises; and  
13 (b) state whether or not the warrant was executed; and  
14 (c) state whether the application for the warrant was made in  
15 person or in accordance with section 3ZZBF.
- 16 (4) If the warrant was executed, the report must also include the  
17 following information:  
18 (a) the day of execution of the warrant;  
19 (b) the name of the executing officer;  
20 (c) the name of any persons assisting and the kind of assistance  
21 provided;  
22 (d) the name of the occupier of the warrant premises, if known to  
23 the executing officer;  
24 (e) whether adjoining premises were entered under the warrant  
25 and, if they were, the name of the occupier of the adjoining  
26 premises, if known to the executing officer;  
27 (f) the things that were done under the warrant;  
28 (g) without limiting paragraph (f)—details of any thing at the  
29 warrant premises:  
30 (i) seized; or  
31 (ii) replaced with a substitute; or  
32 (iii) copied, photographed or otherwise recorded; or  
33 (iv) marked or tagged; or

**Schedule 1** Main counter-terrorism amendments

**Part 1** Amendments

---

- 1 (v) operated, printed, tested or sampled;
- 2 (h) whether or not the execution of the warrant assisted in the
- 3 prevention or investigation of an eligible offence;
- 4 (i) details of compliance with any conditions to which the
- 5 warrant was subject;
- 6 (j) details of any warrant premises occupier's notice given in
- 7 relation to the warrant;
- 8 (k) details of any adjoining premises occupier's notice given in
- 9 relation to the warrant;
- 10 (l) details of any directions given under subsection 3ZZDA(4) or
- 11 3ZZDB(4) in relation to the warrant.
- 12 (5) To avoid doubt, if, at the time a report was given, the details in any
- 13 of paragraphs (4)(j), (k) and (l) were not included because notice or
- 14 directions had not been given at that time, but are given later, the
- 15 person who gave the original report under subsection (1) must give
- 16 a further report under that subsection including those details.
- 17 (6) If the warrant was not executed, the report must state the reason
- 18 why it was not executed.
- 19 (7) If the warrant premises were entered after the warrant was
- 20 executed for the purpose of returning a thing to, or retrieving a
- 21 thing left at, the premises, a written report in relation to that entry
- 22 must be provided to the chief officer of the authorised agency. The
- 23 report must include the following information:
- 24 (a) the address, location or other description of the warrant
- 25 premises;
- 26 (b) the date on which the warrant premises were entered for that
- 27 purpose;
- 28 (c) the name of each person who so entered the warrant
- 29 premises;
- 30 (d) details of the thing returned or retrieved;
- 31 (e) if the thing was not returned or retrieved—the reason why the
- 32 thing was not returned or removed.
- 33 (8) A report under subsection (7) must be given as soon as practicable
- 34 after the warrant premises were entered as mentioned in that
- 35 subsection.
-



1 (9) A report under this section is not a legislative instrument.

2 **3ZZFB Annual reports to Minister**

3 (1) The chief officer of an eligible agency must give a written report to  
4 the Minister that includes the following information in respect of  
5 each financial year:

6 (a) the number of applications for delayed notification search  
7 warrants made in person by eligible officers of the agency;

8 (b) the number of applications for delayed notification search  
9 warrants made under section 3ZZBF by eligible officers of  
10 the agency;

11 (c) the number of delayed notification search warrants issued as  
12 a result of applications referred to in paragraphs (a) and (b)  
13 and the eligible offences to which they related;

14 (d) the number of delayed notification search warrants that were  
15 executed by an eligible officer of the agency;

16 (e) the number of delayed notification search warrants that were  
17 executed by an eligible officer of the agency under which:

18 (i) one or more things were seized from the warrant  
19 premises; or

20 (ii) one or more things were placed in substitution at the  
21 warrant premises for a seized thing; or

22 (iii) one or more things were returned to, or retrieved from,  
23 the warrant premises; or

24 (iv) one or more things were copied, photographed,  
25 recorded, marked, tagged, operated, printed, tested or  
26 sampled at the warrant premises;

27 (f) any other information relating to delayed notification search  
28 warrants and the administration of this Part that the Minister  
29 considers appropriate.

30 (2) The report for a financial year must be given to the Minister as  
31 soon as practicable, and in any event not more than 3 months, after  
32 the end of the financial year.

33 (3) The Minister must cause a copy of the report to be laid before each  
34 House of the Parliament within 15 sitting days of that House after  
35 the Minister receives it.

1 **3ZZFC Regular reports to Ombudsman**

2 As soon as practicable after each 6-month period starting on  
3 1 January or 1 July the chief officer of an eligible agency must give  
4 a written report to the Ombudsman that includes the following  
5 information in respect of the period:

- 6 (a) the number of applications for delayed notification search  
7 warrants made in person by eligible officers of the agency;  
8 (b) the number of applications for delayed notification search  
9 warrants made under section 3ZZBF by eligible officers of  
10 the agency;  
11 (c) the number of delayed notification search warrants issued as  
12 a result of applications referred to in paragraphs (a) and (b)  
13 and the eligible offences to which they related;  
14 (d) the number of delayed notification search warrants that were  
15 executed by an eligible officer of the agency.

16 **3ZZFD Keeping documents connected with delayed notification**  
17 **search warrants**

18 The chief officer of an eligible agency must cause the following to  
19 be kept:

- 20 (a) a copy of each authorisation given in writing by the chief  
21 officer under section 3ZZBB;  
22 (b) a copy of the written record made under section 3ZZBB of  
23 each authorisation given orally by the chief officer under that  
24 section;  
25 (c) a copy of each application for a delayed notification search  
26 warrant made by an eligible officer of the agency, and a  
27 statement of whether the application was granted or refused;  
28 (d) each delayed notification search warrant issued to an eligible  
29 officer of the agency;  
30 (e) a copy of each form of delayed notification search warrant  
31 completed under subsection 3ZZBF(7) by an eligible officer  
32 of the agency;  
33 (f) a copy of the following:  
34 (i) each warrant premises occupier's notice given in  
35 relation to a delayed notification search warrant issued  
36 to an eligible officer of the agency;
-

- 1 (ii) each adjoining premises occupier's notice given in  
2 relation to such a warrant;  
3 (iii) each application made by an eligible officer of the  
4 agency under section 3ZZCC;  
5 (iv) any directions given under subsection 3ZZDA(4) or  
6 3ZZDB(4) in relation to such a warrant;  
7 (v) each authorisation given by the chief officer of the  
8 agency under subsection 3ZZDC(4);  
9 (vi) each application made by an eligible officer of the  
10 agency as mentioned in subsection 3ZZDC(5);  
11 (vii) each extension of time granted under  
12 subsection 3ZZDC(5) in response to such an  
13 application;  
14 (g) each report given to the chief officer of the agency under  
15 section 3ZZFA.

16 **3ZZFE Register of delayed notification search warrants**

- 17 (1) The chief officer of an eligible agency must cause a register of  
18 delayed notification search warrants to be kept.
- 19 (2) The register is to specify, for each delayed notification search  
20 warrant sought by an eligible officer of the eligible agency:  
21 (a) the date the warrant was issued or refused; and  
22 (b) the name of the eligible issuing officer who issued or refused  
23 to issue the warrant; and  
24 (c) if the warrant was issued:  
25 (i) the name of the applicant for the warrant and the  
26 executing officer; and  
27 (ii) the eligible offence to which the warrant relates; and  
28 (iii) if the warrant was executed—the day of execution of the  
29 warrant; and  
30 (iv) the day and time of issue of the warrant, and the time of  
31 expiry of the warrant; and  
32 (v) the time by which notice of entry of premises under the  
33 warrant is to be given; and  
34 (vi) whether a warrant premises occupier's notice has been  
35 given in relation to the warrant and, if such a notice has  
36 been given, the date on which it was given; and
-

- 1 (vii) whether an adjoining premises occupier's notice has  
2 been given in relation to the warrant and, if such a  
3 notice has been given, the date on which it was given;  
4 and  
5 (viii) details of any extension of time granted under  
6 subsection 3ZZDC(5) in relation to the warrant; and  
7 (ix) details of any directions given under  
8 subsection 3ZZDA(4) or 3ZZDB(4) in relation to the  
9 warrant.
- 10 (3) The register is not a legislative instrument.

## 11 **Division 7—Inspections by Ombudsman**

### 12 **3ZZGA Appointment of inspecting officers**

- 13 (1) The Ombudsman may appoint members of the Ombudsman's staff  
14 to be inspecting officers for the purposes of this Division.
- 15 (2) An appointment under subsection (1) must be in writing.

### 16 **3ZZGB Inspection of records by the Ombudsman**

- 17 (1) The Ombudsman must, from time to time and at least once in each  
18 6-month period starting on 1 January or 1 July, inspect the records  
19 of each eligible agency to determine the extent of compliance with  
20 this Part by the agency, and eligible officers of the agency, in  
21 relation to delayed notification search warrants.
- 22 (2) For the purpose of an inspection under this section, the  
23 Ombudsman:
- 24 (a) may, after notifying the chief officer of the eligible agency,  
25 enter at any reasonable time premises occupied by the  
26 agency; and  
27 (b) is entitled to have full and free access at all reasonable times  
28 to all records of the agency that are relevant to the inspection;  
29 and  
30 (c) may require a staff member of the agency to give the  
31 Ombudsman any information that the Ombudsman considers  
32 necessary, being information that is in the member's

- 1 possession, or to which the member has access, and that is  
2 relevant to the inspection.
- 3 (3) The chief officer must ensure that staff members of the agency  
4 give the Ombudsman any assistance the Ombudsman reasonably  
5 requires to enable the Ombudsman to perform functions under this  
6 section.
- 7 (4) Nothing in this section requires the Ombudsman to inspect records  
8 that are relevant to the obtaining or execution of a delayed  
9 notification search warrant if a warrant premises occupier's notice  
10 has not yet been given in relation to the warrant, unless directions  
11 have been made under subsection 3ZZDA(4) or 3ZZDB(4) not  
12 requiring such notice to be given.

13 **3ZZGC Power to obtain relevant information**

- 14 (1) If the Ombudsman has reasonable grounds to believe that a staff  
15 member of an eligible agency is able to give information relevant  
16 to an inspection under this Division of the agency's records,  
17 subsections (2) and (3) have effect.
- 18 (2) The Ombudsman may, by writing given to the staff member,  
19 require the staff member to give the information to the  
20 Ombudsman:  
21 (a) by writing signed by the staff member; and  
22 (b) at a specified place and within a specified period.
- 23 (3) The Ombudsman may, by writing given to the staff member,  
24 require the staff member to attend:  
25 (a) before a specified inspecting officer; and  
26 (b) at a specified place; and  
27 (c) within a specified period or at a specified time on a specified  
28 day;  
29 to answer questions relevant to the inspection.
- 30 (4) If the Ombudsman:  
31 (a) has reasonable grounds to believe that a staff member of an  
32 eligible agency is able to give information relevant to an  
33 inspection under this Division of the agency's records; and  
34 (b) does not know the staff member's identity;

- 1 the Ombudsman may, by writing given to the chief officer of the  
2 agency, require the chief officer, or a person nominated by the  
3 chief officer, to attend:
- 4 (c) before a specified inspecting officer; and
  - 5 (d) at a specified place; and
  - 6 (e) within a specified period or at a specified time on a specified  
7 day;
- 8 to answer questions relevant to the inspection.
- 9 (5) The place, and the period or the time and day, specified in a  
10 requirement under this section, must be reasonable having regard  
11 to the circumstances in which the requirement is made.

### 12 **3ZZGD Offence**

- 13 A person commits an offence if:
- 14 (a) the person is required under section 3ZZGC to attend before  
15 another person, to give information or to answer questions;  
16 and
  - 17 (b) the person refuses or fails to do so.
- 18 Penalty: Imprisonment for 6 months.

### 19 **3ZZGE Ombudsman to be given information etc. despite other laws**

- 20 (1) Despite any other law, a person is not excused from giving  
21 information, answering a question, or giving access to a document,  
22 as and when required under this Division, on the ground that giving  
23 the information, answering the question, or giving access to the  
24 document, as the case may be:
- 25 (a) would contravene a law; or
  - 26 (b) would be contrary to the public interest; or
  - 27 (c) might tend to incriminate the person or make the person  
28 liable to a penalty; or
  - 29 (d) would disclose one of the following:
    - 30 (i) a legal advice given to a Minister or a Department, or a  
31 prescribed authority (within the meaning of the  
32 *Ombudsman Act 1976*);

- 1 (ii) a communication between an officer of a Department or  
2 of a prescribed authority (within the meaning of the  
3 *Ombudsman Act 1976*) and another person or body,  
4 being a communication protected against disclosure by  
5 legal professional privilege.
- 6 (2) However, if the person is a natural person:
- 7 (a) the information, the answer, or the fact that the person has  
8 given access to the document, as the case may be; and  
9 (b) any information or thing (including a document) obtained as  
10 a direct or indirect consequence of giving the information,  
11 answering the question or giving access to the document;  
12 are not admissible in evidence against the person except in a  
13 proceeding by way of a prosecution for an offence against  
14 section 3ZZHA or against Part 7.4 or 7.7 of the *Criminal Code*.
- 15 (3) Nothing in section 3ZZHA or any other law prevents a staff  
16 member of an eligible agency from:
- 17 (a) giving information to the Ombudsman or an inspecting  
18 officer (whether orally or in writing and whether or not in  
19 answer to a question); or  
20 (b) giving access to a record of the agency to the Ombudsman or  
21 an inspecting officer;  
22 for the purposes of an inspection under this Division of the  
23 agency's records.
- 24 (4) Nothing in section 3ZZHA or any other law prevents a staff  
25 member of an eligible agency from making a record of  
26 information, or causing a record of information to be made, for the  
27 purposes of giving the information to a person as permitted by  
28 subsection (3).
- 29 (5) The fact that a person is not excused under subsection (1) from  
30 giving information, answering a question or producing a document  
31 does not otherwise affect a claim of legal professional privilege  
32 that anyone may make in relation to that information, answer or  
33 document.

1 **3ZZGF Exchange of information between Ombudsman and State or**  
2 **Territory inspecting authorities**

- 3 (1) The Ombudsman may give information that:  
4 (a) relates to a State or Territory agency; and  
5 (b) was obtained by the Ombudsman under this Division;  
6 to the State or Territory inspecting authority in relation to the  
7 agency.
- 8 (2) The Ombudsman may only give information to an authority under  
9 subsection (1) if the Ombudsman is satisfied that the giving of the  
10 information is necessary to enable the authority to perform its  
11 functions in relation to the State or Territory agency.
- 12 (3) The Ombudsman may receive from a State or Territory inspecting  
13 authority information relevant to the performance of the  
14 Ombudsman's functions under this Division.
- 15 (4) In this section:

16 *State or Territory agency* means the police force or police service  
17 of a State or Territory.

18 *State or Territory inspecting authority*, in relation to a State or  
19 Territory agency, means the authority that, under the law of the  
20 State or Territory concerned, has the function of making  
21 inspections of a similar kind to those provided for in  
22 section 3ZZGB.

23 **3ZZGG Ombudsman not to be sued**

- 24 (1) The Ombudsman, an inspecting officer, or a person acting under an  
25 inspecting officer's direction or authority, is not liable to an action,  
26 suit or proceeding for or in relation to an act done, or omitted to be  
27 done, in good faith in the performance or exercise, or the purported  
28 performance or exercise, of a function or power conferred by this  
29 Division.
- 30 (2) A reference in this section to the Ombudsman includes a reference  
31 to a Deputy Ombudsman or a delegate of the Ombudsman.



1 **3ZZGH Report on inspection**

- 2 (1) As soon as practicable after each 6-month period starting on  
3 1 January or 1 July the Ombudsman must give a written report to  
4 the Minister on the results of each inspection under section 3ZZGB  
5 in the period.
- 6 (2) If, having regard to information obtained in the course of the  
7 inspection or a previous inspection, the Ombudsman considers that  
8 the requirements of section 3ZZFB or 3ZZFC have not been  
9 properly complied with in relation to an eligible agency, the  
10 Ombudsman may include a comment to that effect in the report.
- 11 (3) The Minister must cause a copy of the report to be laid before each  
12 House of the Parliament within 15 sitting days of that House after  
13 the Minister receives it.

14 **Division 8—Unauthorised disclosure of information**

15 **3ZZHA Unauthorised disclosure of information**

- 16 (1) A person commits an offence if:  
17 (a) the person discloses information; and  
18 (b) the information relates to:  
19 (i) an application for a delayed notification search warrant;  
20 or  
21 (ii) the execution of a delayed notification search warrant;  
22 or  
23 (iii) a report under section 3ZZFA in relation to a delayed  
24 notification search warrant; or  
25 (iv) a warrant premises occupier's notice or an adjoining  
26 premises occupier's notice prepared in relation to a  
27 delayed notification search warrant.

28 Penalty: Imprisonment for 2 years.

- 29 (2) Each of the following is an exception to the offence created by  
30 subsection (1):  
31 (a) the disclosure is in connection with the administration or  
32 execution of this Part;

## Schedule 1 Main counter-terrorism amendments

### Part 1 Amendments

---

- 1 (aa) the disclosure is for the purposes of obtaining or providing  
2 legal advice related to this Part;
- 3 (b) the disclosure is for the purposes of any legal proceeding  
4 arising out of or otherwise related to this Part or of any report  
5 of any such proceedings;
- 6 (c) the disclosure is in accordance with any requirement imposed  
7 by law;
- 8 (d) the disclosure is for the purposes of:
- 9 (i) the performance of duties or functions or the exercise of  
10 powers under or in relation to this Part; or
- 11 (ii) the performance of duties or functions or the exercise of  
12 powers by a law enforcement officer, an officer of the  
13 Australian Security Intelligence Organisation, a staff  
14 member of the Australian Secret Intelligence Service or  
15 a person seconded to either of those bodies;
- 16 (da) the disclosure is made by anyone to the Ombudsman, a  
17 Deputy Commonwealth Ombudsman or a member of the  
18 Ombudsman's staff (whether in connection with the exercise  
19 of powers or performance of functions under Division 7, in  
20 connection with a complaint made to the Ombudsman or in  
21 any other circumstances);
- 22 (e) the disclosure is made after a warrant premises occupier's  
23 notice or an adjoining premises occupier's notice has been  
24 given in relation to the warrant;
- 25 (f) the disclosure is made after a direction has been given under  
26 subsection 3ZZDA(4) or 3ZZDB(4) in relation to the  
27 warrant.

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

## 30 **Division 9—Other matters**

### 31 **3ZZIA Delegation**

#### 32 *Delegation by chief officer*

- 33 (1) The chief officer of an authorised agency or eligible agency may,  
34 in writing, delegate all or any of the chief officer's powers,  
35 functions or duties under this Part to:

- 1 (a) a Deputy Commissioner of the Australian Federal Police; or  
2 (b) a senior executive AFP employee who is a member of the  
3 Australian Federal Police and who is authorised in writing by  
4 the Commissioner for the purposes of this paragraph.

5 (2) The chief officer of an authorised agency or eligible agency may,  
6 in writing, delegate all or any of the chief officer's powers,  
7 functions or duties under Division 5 to the chief executive officer  
8 (however described) of a State or Territory law enforcement  
9 agency.

10 (3) The chief officer of an authorised agency or eligible agency may,  
11 in writing, delegate all or any of the chief officer's powers,  
12 functions or duties under Division 5 to a Commonwealth officer if  
13 the chief officer is satisfied on reasonable grounds that the  
14 Commonwealth officer is able to properly exercise those powers,  
15 functions or duties.

16 *Delegation by Ombudsman*

17 (4) The Ombudsman may, in writing, delegate all or any of the  
18 Ombudsman's powers under this Part, other than a power to report  
19 to the Minister, to an APS employee responsible to the  
20 Ombudsman.

21 *Delegate must produce delegation on request*

22 (5) A delegate must, upon request by a person affected by the exercise  
23 of any power delegated to the delegate, produce the instrument of  
24 delegation, or a copy of the instrument, for inspection by the  
25 person.

26 **3ZZIB Law relating to legal professional privilege not affected**

27 Except as expressly provided, this Part does not affect the law  
28 relating to legal professional privilege.

29 Note: Section 3ZZGE expressly overrides legal professional privilege.

30 **52 Paragraphs 15AA(2)(c) and (d)**

31 After "provision of", insert "Subdivision C of".

1 **53 After paragraph 15YU(1)(f)**

2 Insert:

3 (fa) an offence against Part 5.5 of the *Criminal Code*; or

4 **54 Paragraph 15YU(1)(j)**

5 Repeal the paragraph.

6 **55 Application of amendments**

7 Despite the repeal of paragraph 15YU(1)(j) of the *Crimes Act 1914* by  
8 this Schedule, that paragraph continues to apply after this item  
9 commences in relation to any proceedings for an offence against the  
10 *Crimes (Foreign Incursions and Recruitment) Act 1978* (whether those  
11 proceedings commence before, on or after the commencement of this  
12 item).

13 **56 Subsection 23DB(1) (note)**

14 Omit “3W(2)”, substitute “3WA(2)”.

15 ***Criminal Code Act 1995***

16 **57 Part 5.1 of the *Criminal Code* (heading)**

17 Repeal the heading, substitute:

18 **Part 5.1—Treason, urging violence and advocating**  
19 **terrorism**

20 **58 Division 80 of the *Criminal Code* (heading)**

21 Repeal the heading, substitute:

22 **Division 80—Treason, urging violence and advocating**  
23 **terrorism**

24 **59 Subsection 80.1AA(6) of the *Criminal Code***

25 After “conduct”, insert “solely”.

1 **60 Subdivision C of Division 80 of the *Criminal Code***  
2 **(heading)**

3 Repeal the heading, substitute:

4 **Subdivision C—Urging violence and advocating terrorism**

5 **61 At the end of Subdivision C of Division 80 of the *Criminal***  
6 ***Code***

7 Add:

8 **80.2C Advocating terrorism**

9 (1) A person commits an offence if:

10 (a) the person advocates:

11 (i) the doing of a terrorist act; or

12 (ii) the commission of a terrorism offence referred to in  
13 subsection (2); and

14 (b) the person engages in that conduct reckless as to whether  
15 another person will:

16 (i) engage in a terrorist act; or

17 (ii) commit a terrorism offence referred to in subsection (2).

18 Note: There is a defence in section 80.3 for acts done in good faith.

19 Penalty: Imprisonment for 5 years.

20 (2) A terrorism offence is referred to in this subsection if:

21 (a) the offence is punishable on conviction by imprisonment for  
22 5 years or more; and

23 (b) the offence is not:

24 (i) an offence against section 11.1 (attempt), 11.4  
25 (incitement) or 11.5 (conspiracy) to the extent that it  
26 relates to a terrorism offence; or

27 (ii) a terrorism offence that a person is taken to have  
28 committed because of section 11.2 (complicity and  
29 common purpose), 11.2A (joint commission) or 11.3  
30 (commission by proxy).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

*Definitions*

(3) In this section:

*advocates*: a person *advocates* the doing of a terrorist act or the commission of a terrorism offence if the person counsels, promotes, encourages or urges the doing of a terrorist act or the commission of a terrorism offence.

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

*terrorist act* has the same meaning as in section 100.1.

(4) A reference in this section to advocating the doing of a terrorist act or the commission of a terrorism offence includes a reference to:

- (a) advocating the doing of a terrorist act or the commission of a terrorism offence, even if a terrorist act or terrorism offence does not occur; and
- (b) advocating the doing of a specific terrorist act or the commission of a specific terrorism offence; and
- (c) advocating the doing of more than one terrorist act or the commission of more than one terrorism offence.

**62 Subsection 80.4(2) of the *Criminal Code***

Omit “or 80.2B(2)”, substitute “, 80.2B(2) or 80.2C(1)”.

**62A Subsection 100.1(1) of the *Criminal Code***

Insert:

*engage in a hostile activity* has the meaning given by subsection 117.1(1).

**63 Subsection 102.1(1) of the *Criminal Code* (paragraph (a) of the definition of *terrorist organisation*)**

Omit “(whether or not a terrorist act occurs)”.

**64 Paragraph 102.1(1A)(a) of the *Criminal Code***

After “counsels”, insert “, promotes, encourages”.

1 **65 Subsections 102.1(2), (4) and (17) of the *Criminal Code***

2 Omit “(whether or not a terrorist act has occurred or will occur)”  
3 (wherever occurring).

4 **66 At the end of section 102.1 of the *Criminal Code***

5 Add:

6 (20) In this section, a reference to the doing of a terrorist act includes:

- 7 (a) a reference to the doing of a terrorist act, even if a terrorist  
8 act does not occur; and  
9 (b) a reference to the doing of a specific terrorist act; and  
10 (c) a reference to the doing of more than one terrorist act.

11 **67 After section 102.1 of the *Criminal Code***

12 Insert:

13 **102.1AA Including or removing names of prescribed terrorist**  
14 **organisations**

15 (1) This section applies if the Minister is satisfied on reasonable  
16 grounds that:

- 17 (a) an organisation is specified in regulations made for the  
18 purposes of paragraph (b) of the definition of *terrorist*  
19 *organisation* in subsection 102.1(1); and  
20 (b) the organisation:  
21 (i) is referred to by another name (the *alias*), in addition to,  
22 or instead of, a name used to specify the organisation in  
23 the regulations; or  
24 (ii) no longer uses a name (the *former name*) used in the  
25 regulations to specify the organisation.

26 (2) The Minister may, by legislative instrument, amend the regulations  
27 to do either or both of the following:

- 28 (a) include the alias in the regulations if the Minister is satisfied  
29 as referred to in subparagraph (1)(b)(i);  
30 (b) remove the former name from the regulations if the Minister  
31 is satisfied as referred to in subparagraph (1)(b)(ii).

32 (3) Amendment of regulations under subsection (2) does not:

---

- 1 (a) prevent the further amendment or repeal of the regulations by  
2 regulations made under section 5 of this Act for the purposes  
3 of paragraph (b) of the definition of *terrorist organisation* in  
4 subsection 102.1(1); or  
5 (b) affect when the amended regulations cease to have effect  
6 under section 102.1.
- 7 (4) The Minister may not, by legislative instrument made under this  
8 section, amend the regulations to remove entirely an organisation  
9 that has been prescribed.
- 10 (5) To avoid doubt, this section does not affect the power under  
11 section 5 of this Act to make regulations for the purposes of  
12 paragraph (b) of the definition of *terrorist organisation* in  
13 subsection 102.1(1).

14 **68 Section 102.5 of the *Criminal Code* (heading)**

15 Repeal the heading, substitute:

16 **102.5 Training involving a terrorist organisation**

17 **69 Paragraphs 102.5(1)(a) and 102.5(2)(a) of the *Criminal***  
18 ***Code***

19 Repeal the paragraphs, substitute:

- 20 (a) the person does any of the following:  
21 (i) intentionally provides training to an organisation;  
22 (ii) intentionally receives training from an organisation;  
23 (iii) intentionally participates in training with an  
24 organisation; and

25 **70 Paragraph 104.2(2)(a) of the *Criminal Code***

26 Omit “considers”, substitute “suspects”.

27 **71 Paragraph 104.2(2)(b) of the *Criminal Code***

28 Repeal the paragraph, substitute:

- 29 (b) suspects on reasonable grounds that the person has:  
30 (i) provided training to, received training from or  
31 participated in training with a listed terrorist  
32 organisation; or
-



- 1 (ii) engaged in a hostile activity in a foreign country; or  
2 (iii) been convicted in Australia of an offence relating to  
3 terrorism, a terrorist organisation (within the meaning of  
4 subsection 102.1(1)) or a terrorist act (within the  
5 meaning of section 100.1); or  
6 (iv) been convicted in a foreign country of an offence that is  
7 constituted by conduct that, if engaged in in Australia,  
8 would constitute a terrorism offence (within the  
9 meaning of subsection 3(1) of the *Crimes Act 1914*).

10 **72 At the end of section 104.2 of the *Criminal Code***

11 Add:

- 12 (6) In paragraphs (2)(a) and (b), a reference to a terrorist act includes:  
13 (a) a reference to a terrorist act that does not occur; and  
14 (b) a reference to a specific terrorist act; and  
15 (c) a reference to more than one terrorist act.

16 **73 Subparagraph 104.4(1)(c)(ii) of the *Criminal Code***

17 Repeal the subparagraph, substitute:

- 18 (ii) that the person has provided training to, received  
19 training from or participated in training with a listed  
20 terrorist organisation; or  
21 (iii) that the person has engaged in a hostile activity in a  
22 foreign country; or  
23 (iv) that the person has been convicted in Australia of an  
24 offence relating to terrorism, a terrorist organisation  
25 (within the meaning of subsection 102.1(1)) or a  
26 terrorist act (within the meaning of section 100.1); or  
27 (v) that the person has been convicted in a foreign country  
28 of an offence that is constituted by conduct that, if  
29 engaged in in Australia, would constitute a terrorism  
30 offence (within the meaning of subsection 3(1) of the  
31 *Crimes Act 1914*); and

32 **74 At the end of section 104.4 of the *Criminal Code***

33 Add:

- 34 (4) In paragraphs (1)(c) and (d), a reference to a terrorist act includes:
-

- 1 (a) a reference to a terrorist act that does not occur; and  
2 (b) a reference to a specific terrorist act; and  
3 (c) a reference to more than one terrorist act.

4 **75 At the end of paragraph 104.5(3)(c) of the *Criminal Code***

5 Add “, but for no more than 12 hours within any 24 hours”.

6 **76 Paragraphs 104.6(1)(b) and 104.8(1)(b) of the *Criminal***  
7 ***Code***

8 Omit “either considers or”.

9 **77 Subparagraph 104.12(1)(b)(iii) of the *Criminal Code***

10 Omit “appropriate); and”, substitute “appropriate);”.

11 **78 At the end of paragraph 104.12(1)(b) of the *Criminal Code***

12 Add:

- 13 (iv) that the person may have appeal and review rights in  
14 relation to the decision of the issuing court to make the  
15 order;  
16 (v) the person’s right to attend court on the day specified  
17 for the purposes of paragraph 104.5(1)(e);  
18 (vi) the right of the person or one or more representatives of  
19 the person, and (if relevant) the right of the Queensland  
20 public interest monitor, to adduce evidence or make  
21 submissions under subsection 104.14(1) if the order is  
22 confirmed;  
23 (vii) that the person may have appeal and review rights in  
24 relation to any decision of the issuing court to confirm  
25 the order;  
26 (viii) the person’s right to apply under section 104.18 for an  
27 order revoking or varying the order if it is confirmed;  
28 (ix) the right of the person or one or more representatives of  
29 the person, and (if relevant) the right of the Queensland  
30 public interest monitor, to adduce evidence or make  
31 submissions under subsection 104.19(3) or 104.23(4) in  
32 relation to an application to revoke or vary the order if it  
33 is confirmed; and

1 **79 Section 104.17 of the *Criminal Code***

2 Before “As soon as practicable”, insert “(1)”.

3 **80 Section 104.17 of the *Criminal Code***

4 Omit all the words after “section 104.14,”, substitute:

5 an AFP member must:

6 (a) serve the declaration, the revocation or the confirmed control  
7 order personally on the person; and

8 (b) if the court confirms the interim order (with or without  
9 variation)—inform the person of the following:

10 (i) that the person may have appeal and review rights in  
11 relation to the decision of the issuing court to confirm  
12 the order;

13 (ii) the person’s right to apply under section 104.18 for an  
14 order revoking or varying the order;

15 (iii) the right of the person or one or more representatives of  
16 the person, and (if relevant) the right of the Queensland  
17 public interest monitor, to adduce evidence or make  
18 submissions under subsection 104.19(3) or 104.23(4) in  
19 relation to an application to revoke or vary the order;  
20 and

21 (c) if paragraph (b) applies—ensure that the person understands  
22 the information provided under that paragraph (taking into  
23 account the person’s age, language skills, mental capacity  
24 and any other relevant factor).

25 **81 At the end of section 104.17 of the *Criminal Code***

26 Add:

27 (2) Paragraphs (1)(b) and (c) do not apply if the actions of the person  
28 in relation to whom the interim control order has been declared  
29 void, revoked or confirmed make it impracticable for the AFP  
30 member to comply with those paragraphs.

31 (3) A failure to comply with paragraph (1)(c) does not make the  
32 control order ineffective to any extent.

1 **81A Subsection 104.23(1) of the *Criminal Code***

2 Repeal the subsection, substitute:

- 3 (1) The Commissioner of the Australian Federal Police may cause an  
4 application to be made to an issuing court to vary, under  
5 section 104.24, a confirmed control order, by adding one or more  
6 obligations, prohibitions or restrictions mentioned in  
7 subsection 104.5(3) to the order, if the Commissioner:
- 8 (a) suspects on reasonable grounds that the varied order in the  
9 terms to be sought would substantially assist in preventing a  
10 terrorist act; or
  - 11 (b) suspects on reasonable grounds that the person has:
    - 12 (i) provided training to, received training from or  
13 participated in training with a listed terrorist  
14 organisation; or
    - 15 (ii) engaged in a hostile activity in a foreign country; or
    - 16 (iii) been convicted in Australia of an offence relating to  
17 terrorism, a terrorist organisation (within the meaning of  
18 subsection 102.1(1)) or a terrorist act (within the  
19 meaning of section 100.1); or
    - 20 (iv) been convicted in a foreign country of an offence that is  
21 constituted by conduct that, if engaged in in Australia,  
22 would constitute a terrorism offence (within the  
23 meaning of subsection 3(1) of the *Crimes Act 1914*).

24 **82 At the end of section 104.23 of the *Criminal Code***

25 Add:

- 26 (6) In subsection (1), a reference to a terrorist act includes:  
27 (a) a reference to a terrorist act that does not occur; and  
28 (b) a reference to a specific terrorist act; and  
29 (c) a reference to more than one terrorist act.

30 **83 At the end of section 104.24 of the *Criminal Code***

31 Add:

- 32 (4) In paragraph (1)(b), a reference to a terrorist act includes:  
33 (a) a reference to a terrorist act that does not occur; and  
34 (b) a reference to a specific terrorist act; and
-

1 (c) a reference to more than one terrorist act.

2 **84 Subparagraph 104.26(1)(c)(ii) of the *Criminal Code***

3 Omit “appropriate); and”, substitute “appropriate);”.

4 **85 At the end of paragraph 104.26(1)(c) of the *Criminal Code***

5 Add:

- 6 (iii) that the person may have appeal and review rights in  
7 relation to the decision of the issuing court to vary the  
8 order;
- 9 (iv) the person’s right to apply under section 104.18 for an  
10 order revoking or varying the order;
- 11 (v) the right of the person or one or more representatives of  
12 the person, and (if relevant) the right of the Queensland  
13 public interest monitor, to adduce evidence or make  
14 submissions under subsection 104.19(3) or 104.23(4) in  
15 relation to an application to revoke or vary the order;  
16 and

17 **86 Subsection 104.32(1) of the *Criminal Code***

18 Omit “10 years after the day on which this Division commences”,  
19 substitute “7 September 2018”.

20 **87 Subsection 104.32(2) of the *Criminal Code***

21 Omit “the end of 10 years after the day on which this Division  
22 commences”, substitute “7 September 2018”.

23 **88 Subsection 105.4(4) of the *Criminal Code***

24 Repeal the subsection, substitute:

- 25 (4) A person meets the requirements of this subsection if:
- 26 (a) in the case of an AFP member—the member suspects, on  
27 reasonable grounds, that the subject:
- 28 (i) will engage in a terrorist act; or  
29 (ii) possesses a thing that is connected with the preparation  
30 for, or the engagement of a person in, a terrorist act; or  
31 (iii) has done an act in preparation for, or planning, a  
32 terrorist act; and

- 1 (b) in the case of an issuing authority—the issuing authority is  
2 satisfied there are reasonable grounds to suspect that the  
3 subject:  
4 (i) will engage in a terrorist act; or  
5 (ii) possesses a thing that is connected with the preparation  
6 for, or the engagement of a person in, a terrorist act; or  
7 (iii) has done an act in preparation for, or planning, a  
8 terrorist act; and  
9 (c) the person is satisfied that making the order would  
10 substantially assist in preventing a terrorist act occurring; and  
11 (d) the person is satisfied that detaining the subject for the period  
12 for which the person is to be detained under the order is  
13 reasonably necessary for the purpose referred to in  
14 paragraph (c).

15 **89 Paragraph 105.4(6)(b) of the *Criminal Code***

16 Before “necessary”, insert “reasonably”.

17 **90 Paragraph 105.7(2)(a) of the *Criminal Code***

18 Repeal the paragraph, substitute:

- 19 (a) be made either:  
20 (i) in writing (other than writing by means of an electronic  
21 communication); or  
22 (ii) if the AFP member considers it necessary because of  
23 urgent circumstances—orally in person or by telephone,  
24 or by fax, email or other electronic means of  
25 communication; and

26 **91 After subsection 105.7(2A) of the *Criminal Code***

27 Insert:

- 28 (2B) If the application is made orally, information given by the AFP  
29 member to the issuing authority in connection with the application  
30 must be verified or given on oath or affirmation, unless the issuing  
31 authority is satisfied that it is not practical to administer an oath or  
32 affirmation to the member.

1 **92 Subsection 105.8(1) of the *Criminal Code***

2 After “authority may”, insert “, subject to subsection (1A),”.

3 **93 After subsection 105.8(1) of the *Criminal Code***

4 Insert:

5 (1A) If the application is made orally in person or by telephone, or by  
6 fax, email or other electronic means of communication, the issuing  
7 authority must not make the order unless the issuing authority is  
8 satisfied that it is necessary, because of urgent circumstances, to  
9 apply for the order by such means.

10 **94 Paragraph 105.8(6)(a) of the *Criminal Code***

11 Repeal the paragraph, substitute:

12 (a) any of the following:

- 13 (i) the true name of the person in relation to whom the  
14 order is made;
- 15 (ii) if, after reasonable inquiries have been made, the  
16 person’s true name is not known but an alias is known  
17 for the person—the alias of the person in relation to  
18 whom the order is made;
- 19 (iii) if, after reasonable inquiries have been made, the  
20 person’s true name is not known and no alias is known  
21 for the person—a description sufficient to identify the  
22 person in relation to whom the order is made; and

23 **95 After subsection 105.8(7) of the *Criminal Code***

24 Insert:

25 (7A) If the order is made on an application that was made orally (see  
26 subparagraph 105.7(2)(a)(ii)), the issuing authority must either:  
27 (a) ensure that there is an audio, or audio-visual, recording of the  
28 application; or  
29 (b) as soon as practicable after the order is made, make a written  
30 record of the details of the application, including any  
31 information given in support of it.

1 **95A Subsection 105.8(8) of the *Criminal Code***

2 After “must”, insert “, as soon as reasonably practicable after the order  
3 is made”.

4 **96 Paragraph 105.12(6)(a) of the *Criminal Code***

5 Repeal the paragraph, substitute:

6 (a) any of the following:

7 (i) the true name of the person in relation to whom the  
8 order is made;

9 (ii) if, after reasonable inquiries have been made, the  
10 person’s true name is not known but an alias is known  
11 for the person—the alias of the person in relation to  
12 whom the order is made;

13 (iii) if, after reasonable inquiries have been made, the  
14 person’s true name is not known and no alias is known  
15 for the person—a description sufficient to identify the  
16 person in relation to whom the order is made; and

17 **96A Subsection 105.12(8) of the *Criminal Code***

18 After “must”, insert “, as soon as reasonably practicable after the order  
19 is made”.

20 **97 After subsection 105.15(1) of the *Criminal Code***

21 Insert:

22 (1A) The application for the prohibited contact order may be made  
23 either:

24 (a) in writing (other than writing by means of an electronic  
25 communication); or

26 (b) if the AFP member considers it necessary because of urgent  
27 circumstances—orally in person or by telephone, or by fax,  
28 email or other electronic means of communication.

29 **98 Subsection 105.15(3) of the *Criminal Code***

30 Repeal the subsection, substitute:

31 (3) If:

---



- 1 (a) a continued preventative detention order is being applied for;  
2 and  
3 (b) the application for the prohibited contact order is made in  
4 accordance with paragraph (1A)(a);  
5 the information in the application for the prohibited contact order  
6 must be sworn or affirmed by the AFP member.

- 7 (3A) If:  
8 (a) a continued preventative detention order is being applied for;  
9 and  
10 (b) the application for the prohibited contact order is made in  
11 accordance with paragraph (1A)(b);  
12 the information in the application for the prohibited contact order  
13 must be sworn or affirmed by the AFP member unless the issuing  
14 authority is satisfied that it is not practical to administer an oath or  
15 affirmation to the member.

16 **99 Subsection 105.15(4) of the *Criminal Code***

17 After “authority may”, insert “, subject to subsection (4A),”.

18 **100 After subsection 105.15(4) of the *Criminal Code***

19 Insert:

- 20 (4A) If the application for the prohibited contact order is made orally in  
21 person or by telephone, or by fax, email or other electronic means  
22 of communication, the issuing authority must not make the order  
23 unless the issuing authority is satisfied that it was necessary,  
24 because of urgent circumstances, to apply for the order by such  
25 means.

26 **101 At the end of section 105.15 of the *Criminal Code***

27 Add:

- 28 (7) If the prohibited contact order is made on an application that was  
29 made orally, the issuing authority must either:  
30 (a) ensure that there is an audio, or audio-visual, recording of the  
31 application; or

- 1 (b) as soon as practicable after the order is made, make a written  
2 record of the details of the application, including any  
3 information given in support of it.

4 **102 After subsection 105.16(1) of the *Criminal Code***

5 Insert:

6 (1A) The application may be made either:

- 7 (a) in writing (other than writing by means of an electronic  
8 communication); or  
9 (b) if the AFP member considers it necessary because of urgent  
10 circumstances—orally in person or by telephone, or by fax,  
11 email or other electronic means of communication.

12 **103 Subsection 105.16(3) of the *Criminal Code***

13 Repeal the subsection, substitute:

14 (3) If:

- 15 (a) the preventative detention order is a continued preventative  
16 detention order; and  
17 (b) the application for the prohibited contact order is made in  
18 accordance with paragraph (1A)(a);  
19 the information in the application for the prohibited contact order  
20 must be sworn or affirmed by the AFP member.

21 (3A) If:

- 22 (a) the preventative detention order is a continued preventative  
23 detention order; and  
24 (b) the application for the prohibited contact order is made in  
25 accordance with paragraph (1A)(b);  
26 the information in the application for the prohibited contact order  
27 must be sworn or affirmed by the AFP member unless the issuing  
28 authority is satisfied that it is not practical to administer an oath or  
29 affirmation to the member.

30 **104 Subsection 105.16(4) of the *Criminal Code***

31 After “authority may”, insert “, subject to subsection (4A),”.

1 **105 After subsection 105.16(4) of the *Criminal Code***

2 Insert:

- 3 (4A) If the application for the prohibited contact order is made orally in  
4 person or by telephone, or by fax, email or other electronic means  
5 of communication, the issuing authority must not make the order  
6 unless the issuing authority is satisfied that it was necessary,  
7 because of urgent circumstances, to apply for the order by such  
8 means.

9 **106 At the end of section 105.16 of the *Criminal Code***

10 Add:

- 11 (7) If the prohibited contact order is made on an application that was  
12 made orally, the issuing authority must either:  
13 (a) ensure there is an audio, or audio-visual, recording of the  
14 application; or  
15 (b) as soon as practicable after the order is made, make a written  
16 record of the details of the application, including any  
17 information given in support of it.

18 **107 Subsection 105.53(1) of the *Criminal Code***

19 Omit “10 years after the day on which this Division commences”,  
20 substitute “7 September 2018”.

21 **108 Subsection 105.53(2) of the *Criminal Code***

22 Omit “the end of 10 years after the day on which this Division  
23 commences”, substitute “7 September 2018”.

24 **109 At the end of Division 106 of the *Criminal Code***

25 Add:

26 **106.5 Application provisions for certain amendments in the**  
27 ***Counter-Terrorism Legislation Amendment (Foreign***  
28 ***Fighters) Act 2014***

- 29 (1) The amendments of section 102.1, made by Schedule 1 to the  
30 *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act*  
31 *2014*, do not affect the continuity of any regulations that are in

**Schedule 1** Main counter-terrorism amendments

**Part 1** Amendments

---

- 1 force for the purposes of that section immediately before the  
2 commencement of this section.
- 3 (2) Section 104.2, as amended by Schedule 1 to the *Counter-Terrorism*  
4 *Legislation Amendment (Foreign Fighters) Act 2014*, applies to  
5 requests for interim control orders made after the commencement  
6 of this section, where the conduct in relation to which the request is  
7 made occurs before or after that commencement.
- 8 (3) Section 104.4, as amended by Schedule 1 to the *Counter-Terrorism*  
9 *Legislation Amendment (Foreign Fighters) Act 2014*, applies to the  
10 making of orders requested after the commencement of this  
11 section, where the conduct in relation to which the request is made  
12 occurs before or after that commencement.
- 13 (4) Sections 104.6 and 104.8, as amended by Schedule 1 to the  
14 *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act*  
15 *2014*, apply to the making of requests after the commencement of  
16 this section, where the conduct in relation to which the request is  
17 made occurs before or after that commencement.
- 18 (4A) Section 104.23, as amended by Schedule 1 to the  
19 *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act*  
20 *2014*, applies to variations of control orders, where the relevant  
21 interim control order is requested after that commencement.
- 22 (5) Section 105.4, as amended by Schedule 1 to the *Counter-Terrorism*  
23 *Legislation Amendment (Foreign Fighters) Act 2014*, applies in  
24 relation to applications for preventative detention orders made after  
25 the commencement of this section.
- 26 (6) Section 105.7, as amended by Schedule 1 to the *Counter-Terrorism*  
27 *Legislation Amendment (Foreign Fighters) Act 2014*, applies in  
28 relation to applications for initial preventative detention orders  
29 made after the commencement of this section.
- 30 (7) Section 105.8, as amended by Schedule 1 to the *Counter-Terrorism*  
31 *Legislation Amendment (Foreign Fighters) Act 2014*, applies in  
32 relation to initial preventative detention orders made after the  
33 commencement of this section.
- 34 (8) Section 105.12, as amended by Schedule 1 to the  
35 *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act*
-

1                   2014, applies in relation to continued preventative detention orders  
2                   made after the commencement of this section, regardless of when  
3                   the initial preventative detention order to which the continued  
4                   order relates was made.

5                   (9) Section 105.15, as amended by Schedule 1 to the  
6                   *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act*  
7                   2014, applies in relation to applications for prohibited contact  
8                   orders made after the commencement of this section, regardless of  
9                   when the application for the preventative detention order to which  
10                  the prohibited contact order relates was made.

11                  (10) Section 105.16, as amended by Schedule 1 to the  
12                  *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act*  
13                  2014, applies in relation to applications for prohibited contact  
14                  orders made after the commencement of this section, regardless of  
15                  when the preventative detention order to which the prohibited  
16                  contact order relates was made.

## 17   **110 At the end of Chapter 5 of the *Criminal Code***

18                  Add:

## 19   **Part 5.5—Foreign incursions and recruitment**

### 20   **Division 117—Preliminary**

#### 21   **117.1 Definitions**

22                  (1) In this Part:

23                         *armed force* does not include an armed force forming part of the  
24                         Australian Defence Force.

25                         *Defence Minister* means the Minister administering the *Defence*  
26                         *Force Discipline Act 1982*.

27                         *engage in a hostile activity*: a person *engages in a hostile activity*  
28                         in a foreign country if the person engages in conduct in that  
29                         country with the intention of achieving one or more of the  
30                         following objectives (whether or not such an objective is  
31                         achieved):

**Schedule 1** Main counter-terrorism amendments

**Part 1** Amendments

---

- 1 (a) the overthrow by force or violence of the government of that  
2 or any other foreign country (or of a part of that or any other  
3 foreign country);  
4 (b) the engagement, by that or any other person, in action that:  
5 (i) falls within subsection 100.1(2) but does not fall within  
6 subsection 100.1(3); and  
7 (ii) if engaged in in Australia, would constitute a serious  
8 offence;  
9 (c) intimidating the public or a section of the public of that or  
10 any other foreign country;  
11 (d) causing the death of, or bodily injury to, a person who is the  
12 head of state of that or any other foreign country, or holds, or  
13 performs any of the duties of, a public office of that or any  
14 other foreign country (or of a part of that or any other foreign  
15 country);  
16 (e) unlawfully destroying or damaging any real or personal  
17 property belonging to the government of that or any other  
18 foreign country (or of a part of that or any other foreign  
19 country).

20 **Foreign Affairs Minister** means the Minister administering the  
21 *Diplomatic Privileges and Immunities Act 1967*.

22 **government** of a foreign country or a part of a foreign country  
23 means the authority exercising effective governmental control in  
24 that foreign country or that part of that foreign country.

25 **listed terrorist organisation** has the meaning given by  
26 subsection 100.1(1).

27 **military training** means training in the use of arms or explosives,  
28 or the practice of military exercises or movements.

29 **prescribed organisation** is:

- 30 (a) an organisation that is prescribed by the regulations for the  
31 purposes of this paragraph; or  
32 (b) an organisation referred to in paragraph (b) of the definition  
33 of **terrorist organisation** in subsection 102.1(1).

34 **recruit** includes induce, incite or encourage.

---

1            *serious offence* means an offence against a law of the  
2            Commonwealth, a State or a Territory that is punishable by  
3            imprisonment for 2 years or more.

4            *Prescribing organisations*

- 5            (2) Before the Governor-General makes a regulation prescribing an  
6            organisation for the purposes of paragraph (a) of the definition of  
7            *prescribed organisation* in subsection (1), the Minister must be  
8            satisfied on reasonable grounds that the organisation is directly or  
9            indirectly engaged in, preparing, planning, assisting in or fostering:  
10           (a) a serious violation of human rights; or  
11           (b) the engagement, in Australia or a foreign country allied or  
12           associated with Australia, in action that falls within  
13           subsection 100.1(2) but does not fall within  
14           subsection 100.1(3); or  
15           (c) a terrorist act (within the meaning of section 100.1); or  
16           (d) an act prejudicial to the security, defence or international  
17           relations (within the meaning of section 10 of the *National*  
18           *Security Information (Criminal and Civil Proceedings) Act*  
19           *2004*) of Australia.

20           **117.2 Extended geographical jurisdiction—category D**

21           Section 15.4 (extended geographical jurisdiction—category D)  
22           applies (subject to this Part) to an offence against this Part.

23           **Division 119—Foreign incursions and recruitment**

24           **119.1 Incursions into foreign countries with the intention of**  
25           **engaging in hostile activities**

26           *Offence for entering foreign countries with the intention of*  
27           *engaging in hostile activities*

- 28           (1) A person commits an offence if:  
29           (a) the person enters a foreign country with the intention of  
30           engaging in a hostile activity in that or any other foreign  
31           country; and  
32           (b) when the person enters the country, the person:
-

**Schedule 1** Main counter-terrorism amendments  
**Part 1** Amendments

---

- 1 (i) is an Australian citizen; or  
2 (ii) is a resident of Australia; or  
3 (iii) is a holder under the *Migration Act 1958* of a visa; or  
4 (iv) has voluntarily put himself or herself under the  
5 protection of Australia.

6 Penalty: Imprisonment for life.

7 *Offence for engaging in a hostile activity in a foreign country*

- 8 (2) A person commits an offence if:  
9 (a) the person engages in a hostile activity in a foreign country;  
10 and  
11 (b) when the person engages in the activity, the person:  
12 (i) is an Australian citizen; or  
13 (ii) is a resident of Australia; or  
14 (iii) is a holder under the *Migration Act 1958* of a visa; or  
15 (iv) has voluntarily put himself or herself under the  
16 protection of Australia.

17 Penalty: Imprisonment for life.

18 *Absolute liability element*

- 19 (3) Absolute liability applies to paragraphs (1)(b) and (2)(b).

20 Note: For absolute liability, see section 6.2.

21 *Exception*

- 22 (4) Subsections (1) and (2) do not apply to an act done by a person in  
23 the course of, and as part of, the person's service in any capacity in  
24 or with:  
25 (a) the armed forces of the government of a foreign country; or  
26 (b) any other armed force if a declaration under  
27 subsection 119.8(1) covers the person and the circumstances  
28 of the person's service in or with the force.

29 Note 1: A defendant bears an evidential burden in relation to the matter in  
30 subsection (4): see subsection 13.3(3).

31 Note 2: For conduct for the defence or international relations of Australia, see  
32 section 119.9.



- 1 (5) Paragraph (4)(a) does not apply if:  
2 (a) the person intends to engage, or engages, in a hostile activity  
3 in a foreign country while in or with an organisation; and  
4 (b) the organisation is a prescribed organisation at the following  
5 time:  
6 (i) for subsection (1)—the time of the entry referred to in  
7 that subsection;  
8 (ii) for subsection (2)—the time the person engages in the  
9 hostile activity referred to in that subsection.

## 10 **119.2 Entering, or remaining in, declared areas**

- 11 (1) A person commits an offence if:  
12 (a) the person enters, or remains in, an area in a foreign country;  
13 and  
14 (b) the area is an area declared by the Foreign Affairs Minister  
15 under section 119.3; and  
16 (c) when the person enters the area, or at any time when the  
17 person is in the area, the person:  
18 (i) is an Australian citizen; or  
19 (ii) is a resident of Australia; or  
20 (iii) is a holder under the *Migration Act 1958* of a visa; or  
21 (iv) has voluntarily put himself or herself under the  
22 protection of Australia.

23 Penalty: Imprisonment for 10 years.

### 24 *Absolute liability element*

- 25 (2) Absolute liability applies to paragraph (1)(c).

26 Note: For absolute liability, see section 6.2.

### 27 *Exception—entering or remaining solely for legitimate purposes*

- 28 (3) Subsection (1) does not apply if the person enters, or remains in,  
29 the area solely for one or more of the following purposes:  
30 (a) providing aid of a humanitarian nature;  
31 (b) satisfying an obligation to appear before a court or other  
32 body exercising judicial power;

**Schedule 1** Main counter-terrorism amendments

**Part 1** Amendments

---

- 1 (c) performing an official duty for the Commonwealth, a State or  
2 a Territory;
- 3 (d) performing an official duty for the government of a foreign  
4 country or the government of part of a foreign country  
5 (including service in the armed forces of the government of a  
6 foreign country), where that performance would not be a  
7 violation of the law of the Commonwealth, a State or a  
8 Territory;
- 9 (e) performing an official duty for the United Nations or an  
10 agency of the United Nations;
- 11 (f) making a news report of events in the area, where the person  
12 is working in a professional capacity as a journalist or is  
13 assisting another person working in a professional capacity as  
14 a journalist;
- 15 (g) making a bona fide visit to a family member;
- 16 (h) any other purpose prescribed by the regulations.

17 Note: A defendant bears an evidential burden in relation to the matter in  
18 subsection (3): see subsection 13.3(3).

19 *Exception—entering or remaining solely for service with armed*  
20 *force other than prescribed organisation*

- 21 (4) Subsection (1) does not apply if the person enters, or remains in,  
22 the area solely in the course of, and as part of, the person's service  
23 in any capacity in or with:
- 24 (a) the armed forces of the government of a foreign country; or  
25 (b) any other armed force if a declaration under  
26 subsection 119.8(1) covers the person and the circumstances  
27 of the person's service in or with the force.

28 Note: A defendant bears an evidential burden in relation to the matter in  
29 subsection (4): see subsection 13.3(3).

- 30 (5) However, subsection (4) does not apply if:
- 31 (a) the person enters, or remains in, an area in a foreign country  
32 while in or with an organisation; and  
33 (b) the organisation is a prescribed organisation at the time the  
34 person enters or remains in the area as referred to in  
35 paragraph (1)(a).

1 Note 1: For conduct for the defence or international relations of Australia, see  
2 section 119.9.

3 Note 2: Sections 10.1 and 10.3 also provide exceptions to subsection (1) of  
4 this section (relating to intervening conduct or event and sudden or  
5 extraordinary emergency respectively).

6 *Sunset provision*

7 (6) This section ceases to have effect at the end of 7 September 2018.

8 **119.3 Declaration of areas for the purposes of section 119.2**

9 (1) The Foreign Affairs Minister may, by legislative instrument,  
10 declare an area in a foreign country for the purposes of  
11 section 119.2 if he or she is satisfied that a listed terrorist  
12 organisation is engaging in a hostile activity in that area of the  
13 foreign country.

14 (2) A single declaration may cover areas in 2 or more foreign countries  
15 if the Foreign Affairs Minister is satisfied that one or more listed  
16 terrorist organisations are engaging in a hostile activity in each of  
17 those areas.

18 (2A) A declaration must not cover an entire country.

19 *Requirement to brief Leader of the Opposition*

20 (3) Before making a declaration, the Foreign Affairs Minister must  
21 arrange for the Leader of the Opposition in the House of  
22 Representatives to be briefed in relation to the proposed  
23 declaration.

24 *Cessation of declaration*

25 (4) A declaration ceases to have effect on the third anniversary of the  
26 day on which it takes effect. To avoid doubt, this subsection does  
27 not prevent:  
28 (a) the revocation of the declaration; or  
29 (b) the making of a new declaration the same in substance as the  
30 previous declaration (whether the new declaration is made or  
31 takes effect before or after the previous declaration ceases to  
32 have effect because of this subsection).

## Schedule 1 Main counter-terrorism amendments

### Part 1 Amendments

---

1 Note: An offence committed in relation to the declared area before the  
2 cessation can be prosecuted after the cessation: see section 7 of the  
3 *Acts Interpretation Act 1901* as it applies because of  
4 paragraph 13(1)(a) of the *Legislative Instruments Act 2003*.

- 5 (5) If:  
6 (a) an area is declared under subsection (1); and  
7 (b) the Foreign Affairs Minister ceases to be satisfied that a  
8 listed terrorist organisation is engaging in a hostile activity in  
9 the area;  
10 the Foreign Affairs Minister must revoke the declaration.

11 Note: The Foreign Affairs Minister may, for example, cease to be satisfied  
12 that a listed terrorist organisation is engaging in a hostile activity in  
13 the area if the organisation ceases to be specified in the regulations.

- 14 (6) To avoid doubt, subsection (5) does not prevent an area from being  
15 subsequently declared if the Foreign Affairs Minister becomes  
16 satisfied as mentioned in subsection (1).

#### 17 *Review of declaration*

- 18 (7) The Parliamentary Joint Committee on Intelligence and Security  
19 may review a declaration before the end of the period during which  
20 the declaration may be disallowed under section 42 of the  
21 *Legislative Instruments Act 2003*.

## 22 **119.4 Preparations for incursions into foreign countries for purpose** 23 **of engaging in hostile activities**

#### 24 *Preparatory acts*

- 25 (1) A person commits an offence if:  
26 (a) the person engages in conduct (whether within or outside  
27 Australia); and  
28 (b) the conduct is preparatory to the commission of an offence  
29 against section 119.1 (whether by that or any other person);  
30 and  
31 (c) when the person engages in the conduct, the person:  
32 (i) is an Australian citizen; or  
33 (ii) is a resident of Australia; or  
34 (iii) is a holder under the *Migration Act 1958* of a visa; or
-

- 1 (iv) has voluntarily put himself or herself under the  
2 protection of Australia; or  
3 (v) is a body corporate incorporated by or under a law of  
4 the Commonwealth or of a State or Territory.

5 Penalty: Imprisonment for life.

6 *Accumulating weapons etc.*

- 7 (2) A person commits an offence if:  
8 (a) the person (whether within or outside Australia) accumulates,  
9 stockpiles or otherwise keeps arms, explosives, munitions,  
10 poisons or weapons; and  
11 (b) the person engages in that conduct with the intention that an  
12 offence against section 119.1 will be committed (whether by  
13 that or any other person); and  
14 (c) when the person engages in the conduct, the person:  
15 (i) is an Australian citizen; or  
16 (ii) is a resident of Australia; or  
17 (iii) is a holder under the *Migration Act 1958* of a visa; or  
18 (iv) has voluntarily put himself or herself under the  
19 protection of Australia; or  
20 (v) is a body corporate incorporated by or under a law of  
21 the Commonwealth or of a State or Territory.

22 Penalty: Imprisonment for life.

23 *Providing or participating in training*

- 24 (3) A person commits an offence if:  
25 (a) the person engages in any of the following conduct (whether  
26 within or outside Australia):  
27 (i) providing military training to another person;  
28 (ii) participating in providing military training to another  
29 person;  
30 (iii) being present at a meeting or assembly of persons,  
31 where the person intends at that meeting or assembly to  
32 provide, or participate in providing, military training to  
33 another person; and

- 1 (b) the person engages in the conduct intending to prepare the  
2 other person to commit an offence against section 119.1; and  
3 (c) when the person engages in the conduct, the person:  
4 (i) is an Australian citizen; or  
5 (ii) is a resident of Australia; or  
6 (iii) is a holder under the *Migration Act 1958* of a visa; or  
7 (iv) has voluntarily put himself or herself under the  
8 protection of Australia; or  
9 (v) is a body corporate incorporated by or under a law of  
10 the Commonwealth or of a State or Territory.

11 Penalty: Imprisonment for life.

- 12 (4) A person commits an offence if:  
13 (a) the person engages in conduct of either of the following  
14 kinds (whether within or outside Australia):  
15 (i) allowing military training to be provided to himself or  
16 herself;  
17 (ii) allowing himself or herself to be present at a meeting or  
18 assembly of persons intending to allow military training  
19 to be provided to himself or herself; and  
20 (b) the person engages in the conduct with the intention of  
21 committing an offence against section 119.1; and  
22 (c) when the person engages in the conduct, the person:  
23 (i) is an Australian citizen; or  
24 (ii) is a resident of Australia; or  
25 (iii) is a holder under the *Migration Act 1958* of a visa; or  
26 (iv) has voluntarily put himself or herself under the  
27 protection of Australia; or  
28 (v) is a body corporate incorporated by or under a law of  
29 the Commonwealth or of a State or Territory.

30 Penalty: Imprisonment for life.

31 *Giving or receiving goods and services to promote the commission*  
32 *of an offence*

- 33 (5) A person commits an offence if:
-

- 1 (a) the person engages in any of the following conduct (whether  
2 within or outside Australia):  
3 (i) giving money or goods to, or performing services for,  
4 any other person, body or association;  
5 (ii) receiving or soliciting money or goods, or the  
6 performance of services; and  
7 (b) the person engages in the conduct with the intention of  
8 supporting or promoting the commission of an offence  
9 against section 119.1; and  
10 (c) when the person engages in the conduct, the person:  
11 (i) is an Australian citizen; or  
12 (ii) is a resident of Australia; or  
13 (iii) is a holder under the *Migration Act 1958* of a visa; or  
14 (iv) has voluntarily put himself or herself under the  
15 protection of Australia; or  
16 (v) is a body corporate incorporated by or under a law of  
17 the Commonwealth or of a State or Territory.

18 Penalty: Imprisonment for life.

19 *Absolute liability element*

- 20 (6) Absolute liability applies to paragraphs (1)(c), (2)(c), (3)(c), (4)(c)  
21 and (5)(c).

22 Note: For absolute liability, see section 6.2.

23 *Exception*

- 24 (7) This section does not apply if the person engages in conduct solely  
25 by way of, or for the purposes of, the provision of aid of a  
26 humanitarian nature.

27 Note 1: A defendant bears an evidential burden in relation to the matter in  
28 subsection (7): see subsection 13.3(3).

29 Note 2: For conduct for the defence or international relations of Australia, see  
30 section 119.9.

31 *Disregarding paragraphs 119.1(1)(b) and (2)(b)*

- 32 (8) A reference in this section to the commission of an offence against  
33 section 119.1 includes a reference to doing an act that would
-





- 1 (b) the person permits the vessel or aircraft to be used (whether  
2 the person, vessel or aircraft is within or outside Australia);  
3 and  
4 (c) by permitting the use, the person intends to commit, or  
5 support or promote the commission of, an offence against  
6 section 119.4; and  
7 (d) when the person permits the use, the person:  
8 (i) is an Australian citizen; or  
9 (ii) is a resident of Australia; or  
10 (iii) is a holder under the *Migration Act 1958* of a visa; or  
11 (iv) has voluntarily put himself or herself under the  
12 protection of Australia; or  
13 (v) is a body corporate incorporated by or under a law of  
14 the Commonwealth or of a State or Territory.

15 Penalty: Imprisonment for life.

16 *Absolute liability element*

17 (3) Absolute liability applies to paragraphs (1)(d) and (2)(d).

18 Note: For absolute liability, see section 6.2.

19 *Exception*

20 (4) This section does not apply if the person engages in conduct solely  
21 by way of, or for the purposes of, the provision of aid of a  
22 humanitarian nature.

23 Note 1: A defendant bears an evidential burden in relation to the matter in  
24 subsection (4): see subsection 13.3(3).

25 Note 2: For conduct for the defence or international relations of Australia, see  
26 section 119.9.

27 **119.6 Recruiting persons to join organisations engaged in hostile**  
28 **activities against foreign governments**

29 A person commits an offence if:

- 30 (a) the person recruits, in Australia, another person to become a  
31 member of, or to serve in any capacity with, a body or  
32 association of persons; and

1 (b) the objectives of the body or association include any one or  
2 more of the objectives referred to in the definition of *engage*  
3 *in a hostile activity* in subsection 117.1(1).

4 Note: For conduct for the defence or international relations of Australia, see  
5 section 119.9.

6 Penalty: Imprisonment for 25 years.

7 **119.7 Recruiting persons to serve in or with an armed force in a**  
8 **foreign country**

9 *Recruiting others to serve with foreign armed forces*

10 (1) A person commits an offence if the person recruits, in Australia,  
11 another person to serve in any capacity in or with an armed force in  
12 a foreign country.

13 Penalty: Imprisonment for 10 years.

14 *Publishing recruitment advertisements*

15 (2) A person commits an offence if:

16 (a) the person publishes in Australia:

17 (i) an advertisement; or

18 (ii) an item of news that was procured by the provision or  
19 promise of money or any other consideration; and

20 (b) the person is reckless as to the fact that the publication of the  
21 advertisement or item of news is for the purpose of recruiting  
22 persons to serve in any capacity in or with an armed force in  
23 a foreign country.

24 Penalty: Imprisonment for 10 years.

25 (3) A person commits an offence if:

26 (a) the person publishes in Australia:

27 (i) an advertisement; or

28 (ii) an item of news that was procured by the provision or  
29 promise of money or any other consideration; and

30 (b) the advertisement or item of news contains information:

- 1 (i) relating to the place at which, or the manner in which,  
2 persons may make applications to serve, or obtain  
3 information relating to service, in any capacity in or  
4 with an armed force in a foreign country; or  
5 (ii) relating to the manner in which persons may travel to a  
6 foreign country for the purpose of serving in any  
7 capacity in or with an armed force in a foreign country.

8 Penalty: Imprisonment for 10 years.

9 *Facilitating recruitment*

- 10 (4) A person commits an offence if:  
11 (a) the person engages in conduct in Australia; and  
12 (b) the person engages in the conduct intending to facilitate or  
13 promote the recruitment of persons to serve in any capacity  
14 in or with an armed force in a foreign country.

15 Penalty: Imprisonment for 10 years.

16 *Exception*

- 17 (5) This section does not apply in relation to service of a person in or  
18 with an armed force in circumstances if a declaration under  
19 subsection 119.8(2) covers the person and the circumstances of the  
20 person's service in or with the armed force.

21 Note 1: A defendant bears an evidential burden in relation to the matter in  
22 subsection (5): see subsection 13.3(3).

23 Note 2: For conduct for the defence or international relations of Australia, see  
24 section 119.9.

25 *Armed forces that are not part of the government of a foreign*  
26 *country*

- 27 (6) A reference in this section to an armed force in a foreign country  
28 includes any armed force in a foreign country, whether or not the  
29 armed force forms part of the armed forces of the government of  
30 that foreign country.  
31 (7) Without limiting this section, a person recruits another person to  
32 serve in or with an armed force in a foreign country if the other  
33 person enters a commitment or engagement to serve in any
-

1 capacity in or with an armed force, whether or not the commitment  
2 or engagement is legally enforceable or constitutes legal or formal  
3 enlistment in that force.

4 **119.8 Declaration in relation to specified armed forces**

5 *Service*

- 6 (1) The Minister may, by legislative instrument, declare that  
7 section 119.1 or 119.2 does not apply to a specified person or class  
8 of persons in any circumstances or specified circumstances if the  
9 Minister is satisfied that it is in the interests of the defence or  
10 international relations of Australia to permit the service of that  
11 person or class of persons in those circumstances in or with:  
12 (a) a specified armed force in a foreign country; or  
13 (b) a specified armed force in a foreign country in a specified  
14 capacity.

15 *Recruitment*

- 16 (2) The Minister may, by legislative instrument, declare that  
17 section 119.7 does not apply to a specified person or class of  
18 persons in any circumstances or specified circumstances if the  
19 Minister is satisfied that it is in the interests of the defence or  
20 international relations of Australia to permit the recruitment in  
21 Australia of that person or class of persons to serve in those  
22 circumstances in or with:  
23 (a) a specified armed force in a foreign country; or  
24 (b) a specified armed force in a foreign country in a specified  
25 capacity.

26 **119.9 Exception—conduct for defence or international relations of**  
27 **Australia**

28 This Division does not apply in relation to conduct engaged in by a  
29 person acting in the course of the person's duty to the  
30 Commonwealth in relation to the defence or international relations  
31 of Australia.

32 Note 1: A defendant bears an evidential burden in relation to the matter in this  
33 section: see subsection 13.3(3).



- 1 (3) Nothing in subsection (2) prevents the discharge of the accused if  
2 proceedings are not continued within a reasonable time.

3 **119.12 Declarations for the purposes of proceedings**

- 4 (1) The Foreign Affairs Minister may, in writing, declare that:  
5 (a) a specified authority is in effective governmental control in a  
6 specified foreign country or part of a foreign country; or  
7 (b) a specified organisation is not an armed force, or part of an  
8 armed force, of the government of a foreign country.
- 9 (2) The Defence Minister may, in writing, declare that if a specified  
10 person had done a specified act (being an act alleged to constitute  
11 an offence) the person would not have been acting in the course of  
12 the person's duty to the Commonwealth in relation to the defence  
13 or international relations of Australia.
- 14 (3) Without limiting subsection (1) or (2), a declaration under that  
15 subsection may be made in relation to a specified day or period.
- 16 (4) In proceedings for an offence referred to in paragraph 119.11(1)(a),  
17 a certificate under this section is prima facie evidence of the  
18 matters stated in the certificate.

19 ***Customs Act 1901***

20 **111 Subsection 183UA(1) (definition of *terrorist act*)**

21 Repeal the definition, substitute:

22 *terrorist act* has the meaning given by section 100.1 of the  
23 *Criminal Code*.

24 **112 Subsections 183UA(4), (4A) and (5)**

25 Repeal the subsections.

26 **113 Subsection 228(7) (definition of *terrorist act*)**

27 Repeal the definition, substitute:

28 *terrorist act* has the meaning given by section 100.1 of the  
29 *Criminal Code*.

1 **114 Application of amendments**

2 The amendments of sections 183UA and 228 of the *Customs Act 1901*  
3 made by this Schedule apply in relation to any terrorist act (whether  
4 occurring before, on or after the commencement of this item).

5 ***Foreign Evidence Act 1994***

6 **115 Subsection 3(1) (paragraph (c) of the definition of**  
7 ***designated offence*)**

8 Repeal the paragraph, substitute:

9 (c) an offence against either of the following provisions of the  
10 *Charter of the United Nations Act 1945*:

11 (i) Part 4 of that Act;

12 (ii) Part 5 of that Act, to the extent that it relates to the  
13 *Charter of the United Nations (Sanctions—Al-Qaida)*  
14 *Regulations 2008*; or

15 **116 Subsection 3(1) (after paragraph (d) of the definition of**  
16 ***designated offence*)**

17 Insert:

18 (da) an offence against Subdivision B of Division 80 of the  
19 *Criminal Code*; or

20 **117 Subsection 3(1) (after paragraph (f) of the definition of**  
21 ***designated offence*)**

22 Insert:

23 (fa) an offence against Part 5.5 of the *Criminal Code*; or

24 **118 Subsection 3(1) (paragraph (j) of the definition of**  
25 ***designated offence*)**

26 Repeal the paragraph.

27 **119 Subsection 3(1)**

28 Insert:

29 ***duress*** has the meaning given by subsection 27D(3).

1                    *foreign authority* means an authority of a foreign country or of  
2                    part of a foreign country.

3                    *foreign government material* means material provided by a foreign  
4                    authority to an authority of the Commonwealth.

5                    **120 Subsection 3(1) (paragraph (a) of the definition of *foreign***  
6                    ***material*)**

7                    Omit “Part 3”, substitute “Parts 3 and 3A”.

8                    **121 Subsection 3(1)**

9                    Insert:

10                    *member of the Australian Federal Police* has the same meaning as  
11                    in the *Australian Federal Police Act 1979*.

12                    *senior AFP member* means:

- 13                    (a) the Commissioner of the Australian Federal Police; or  
14                    (b) a Deputy Commissioner of the Australian Federal Police; or  
15                    (c) a senior executive AFP employee (within the meaning of the  
16                    *Australian Federal Police Act 1979*) who is a member of the  
17                    Australian Federal Police; or  
18                    (d) a member of the Australian Federal Police occupying a  
19                    position in the Australian Federal Police that is equivalent to  
20                    or higher than one of the positions mentioned in  
21                    paragraphs (a), (b) and (c), whether or not a declaration under  
22                    section 25 of that Act is in force in respect of the person.

23                    *substantial adverse effect* means an effect that is adverse and not  
24                    insubstantial, insignificant or trivial.

25                    *terrorism-related proceeding* means:

- 26                    (a) a criminal proceeding for a designated offence; or  
27                    (b) a proceeding under the *Proceeds of Crime Act 2002* relating  
28                    to a designated offence; or  
29                    (c) a proceeding under Division 104 of the *Criminal Code*.

30                    *torture* has the meaning given by subsection 27D(3).



1 **122 After subsection 20(1)**

2 Insert:

3 (1A) However, this Part does not apply to a terrorism-related  
4 proceeding. This does not prevent testimony or an exhibit from  
5 being foreign material for the purposes of Part 3A.

6 Note: Part 3A deals with use of foreign material in terrorism-related  
7 proceedings.

8 **123 Subsection 25(1) (note)**

9 Repeal the note.

10 **124 Section 25A**

11 Repeal the section.

12 **125 After Part 3**

13 Insert:

14 **Part 3A—Use of foreign material and foreign**  
15 **government material in terrorism-related**  
16 **proceedings**  
17

18 **27A Foreign material may be adduced as evidence**

19 (1) Foreign material may be adduced in a terrorism-related proceeding.

20 Note 1: The court has a discretion to direct that foreign material not be  
21 adduced if it would have a substantial adverse effect on the right of a  
22 party to the proceeding to receive a fair hearing (see section 27C).

23 Note 2: Section 27D deals with admissibility of foreign material adduced.

24 (2) However, foreign material is not to be adduced as evidence if it  
25 appears to the court's satisfaction at the hearing of the proceeding  
26 that the person who gave the testimony concerned is in Australia  
27 and is able to attend the hearing.

1 **27B Foreign government material may be adduced as evidence**

2 *Adducing foreign government material*

- 3 (1) Foreign government material may be adduced in a  
4 terrorism-related proceeding if the material is:  
5 (a) annexed to a written statement by a senior AFP member that:  
6 (i) is verified on oath or affirmation by the member; and  
7 (ii) meets the requirements in subsection (2); and  
8 (b) accompanied by a certificate of the Attorney-General given  
9 under subsection (3).

10 Note 1: The court has a discretion to direct that foreign government material  
11 not be adduced if it would have a substantial adverse effect on the  
12 right of a party to the proceeding to receive a fair hearing (see  
13 section 27C).

14 Note 2: Section 27D deals with admissibility of foreign government material  
15 adduced.

16 *Content of statement by senior AFP member*

- 17 (2) A statement by a senior AFP member for the purposes of  
18 paragraph (1)(a) must:  
19 (a) relate only to foreign government material annexed to the  
20 statement; and  
21 (b) state what the material is; and  
22 (c) state, to the best of the senior AFP member's knowledge:  
23 (i) how the material, and any information contained in the  
24 material, was obtained by the first foreign authority to  
25 obtain or produce the material or information; and  
26 (ii) each step in the process by which the material or  
27 information came from that foreign authority into the  
28 possession of the Australian Federal Police.

29 *Attorney-General's certificate*

- 30 (3) The Attorney-General may certify, in a form prescribed under  
31 subsection (4), that he or she is satisfied that it was not practicable  
32 to obtain the foreign government material or the information in the  
33 foreign government material as foreign material.

1 (4) The Attorney-General may by legislative instrument prescribe a  
2 form for a certificate to be given under subsection (3).

3 (5) A certificate given under subsection (3) is not a legislative  
4 instrument.

5 **27C Discretion to prevent material being adduced**

6 (1) This section applies in relation to a terrorism-related proceeding  
7 described in an item of the following table if a person described in  
8 that item seeks to adduce foreign material or foreign government  
9 material in the proceeding.  
10

---

**Persons seeking to adduce material in proceedings**

<b>Item</b>	<b>Proceeding</b>	<b>Person seeking to adduce material</b>
1	Criminal proceeding for a designated offence	Prosecutor
2	Proceeding under the <i>Proceeds of Crime Act 2002</i> relating to a designated offence	The responsible authority under that Act in relation to the proceeding
3	Proceeding under Division 104 of the <i>Criminal Code</i>	A member of the Australian Federal Police or a special member (within the meaning of the <i>Australian Federal Police Act 1979</i> )

11 (2) The court may direct that the material not be adduced as evidence  
12 in the proceeding if the court is satisfied that adducing the material  
13 would have a substantial adverse effect on the right of another  
14 party to the proceeding to receive a fair hearing.

15 **27D Admissibility of material adduced**

16 (1) The following are admissible in a terrorism-related proceeding,  
17 subject to subsection (2) but despite any other Australian law about  
18 evidence:

19 (a) foreign material adduced under subsection 27A(1) in the  
20 proceeding;

21 (b) foreign government material adduced under  
22 subsection 27B(1) in the proceeding;

**Schedule 1** Main counter-terrorism amendments

**Part 1** Amendments

---

- 1 (c) the statement to which the foreign government material was  
2 annexed as described in paragraph 27B(1)(a);  
3 (d) the certificate that accompanied the foreign government  
4 material as described in paragraph 27B(1)(b).

5 *Exception to admissibility*

6 (2) Foreign material or foreign government material is not admissible  
7 if the court is satisfied that the material, or information contained  
8 in the material, was obtained directly as a result of torture or  
9 duress.

10 (3) In subsection (2):

11 *duress* means a threat that:

- 12 (a) is made explicitly or implicitly to a person; and  
13 (b) is a threat to imminently cause one or both of the following  
14 unless material or information is provided:  
15 (i) death or serious injury of the person, a member of the  
16 person's family or a third party;  
17 (ii) damage to, or loss by the person of, the person's  
18 significant assets; and  
19 (c) is a threat to which a reasonable person would respond by  
20 providing the material or information.

21 *torture* means an act or omission by which severe pain or  
22 suffering, whether physical or mental, is intentionally inflicted on a  
23 person:

- 24 (a) for the purpose of obtaining from the person or from a third  
25 person information or a confession; or  
26 (b) for the purpose of punishing the person for an act that the  
27 person or a third person has committed or is suspected of  
28 having committed; or  
29 (c) for the purpose of intimidating or coercing the person or a  
30 third person; or  
31 (d) for a purpose related to a purpose mentioned in paragraph (a),  
32 (b) or (c); or  
33 (e) for any reason based on discrimination that is inconsistent  
34 with the Articles of the International Covenant on Civil and  
35 Political Rights done at New York on 16 December 1966;
-

1 but does not include an act or omission arising only from, inherent  
2 in or incidental to lawful sanctions that are not inconsistent with  
3 the Articles of the Covenant.

4 Note: The International Covenant on Civil and Political Rights is in  
5 Australian Treaty Series 1980 No. 23 ([1980] ATS 23) and could in  
6 2014 be viewed in the Australian Treaties Library on the AustLII  
7 website (<http://www.austlii.edu.au>).

8 (4) If foreign government material is not admissible, neither of the  
9 following is admissible, so far as it relates to the inadmissible  
10 foreign government material:

- 11 (a) the statement described in paragraph (1)(c);  
12 (b) the certificate described in paragraph (1)(d).

### 13 **27DA Warning and informing jury**

14 (1) If foreign material or foreign government material is admitted in a  
15 terrorism-related proceeding conducted before a jury, and a party  
16 to the proceeding so requests, the judge is to:

- 17 (a) warn the jury that the material may be unreliable; and  
18 (b) inform the jury of matters that may cause it to be unreliable;  
19 and  
20 (c) warn the jury of the need for caution in determining whether  
21 to accept the material and the weight to be given to it.

22 (2) The judge need not comply with subsection (1) if there are good  
23 reasons for not doing so.

24 (3) It is not necessary that a particular form of words be used in giving  
25 the warning or information.

26 (4) This section does not affect any other power of the judge to give a  
27 warning to, or to inform, the jury.

### 28 **27E Operation of other laws**

29 This Part does not limit the ways in which a matter may be proved,  
30 or evidence may be adduced, under this Act (other than this Part)  
31 or any other Australian law.

1 **126 Application of amendments**

- 2 (1) The amendments of the *Foreign Evidence Act 1994* made by this  
3 Schedule apply in relation to adducing evidence in proceedings  
4 instituted on or after the commencement of the amendments, whether  
5 the evidence was obtained before, on or after that commencement.
- 6 (2) However, the repeal of paragraph (j) of the definition of *designated*  
7 *offence* in subsection 3(1) of the *Foreign Evidence Act 1994* by this  
8 Schedule does not prevent an offence against the *Crimes (Foreign*  
9 *Incursions and Recruitment) Act 1978* from being a designated offence  
10 for the purposes of proceedings instituted on or after that repeal.

11 ***Foreign Passports (Law Enforcement and Security) Act 2005***

12 **127 Subsection 5(1)**

13 Omit “(1)”.

14 **128 Subsection 5(1)**

15 Insert:

16 *ASIO* means the Australian Security Intelligence Organisation.

17 **129 At the end of Division 1 of Part 2**

18 Add:

19 **15A Request for 14-day surrender relating to security risk**

- 20 (1) The Director-General of Security may request the Minister to make  
21 an order under section 16A in relation to a person’s foreign travel  
22 documents if the Director-General suspects on reasonable grounds  
23 that:
- 24 (a) the person may leave Australia to engage in conduct that  
25 might prejudice the security of Australia or a foreign country;  
26 and
- 27 (b) the person should be required to surrender the person’s  
28 foreign travel documents in order to prevent the person from  
29 engaging in the conduct.

- 1 (2) If the Minister has made an order under section 16A in relation to a  
2 person's foreign travel documents, another request under  
3 subsection (1) of this section relating to the person must not be  
4 made unless the grounds for suspicion mentioned in that subsection  
5 include information first obtained by the Director-General of  
6 Security or an officer or employee of ASIO more than 14 days  
7 after the Minister made the order.
- 8 (3) The Director-General of Security may, in writing, delegate his or  
9 her power under subsection (1) to a Deputy Director-General of  
10 Security (within the meaning of the *Australian Security*  
11 *Intelligence Organisation Act 1979*).
- 12 (4) In exercising power under a delegation, the delegate must comply  
13 with any directions of the Director-General of Security.

14 **130 Section 16 (heading)**

15 Repeal the heading, substitute:

16 **16 Demand for surrender of foreign travel document ordered by**  
17 **Minister on request under section 13, 14 or 15**

18 **131 After section 16**

19 Insert:

20 **16A Demand for 14-day surrender of foreign travel document**  
21 **ordered by Minister on request under section 15A**

- 22 (1) The Minister may, on request under section 15A relating to a  
23 person's foreign travel documents, order the surrender of the  
24 documents.
- 25 (2) If the Minister has made an order under subsection (1), an  
26 enforcement officer may demand that the person surrender to the  
27 officer the person's foreign travel documents.
- 28 (3) If the person does not immediately surrender the person's foreign  
29 travel documents, the officer may:  
30 (a) seize the person's foreign travel documents; and

1 (b) seize any foreign travel document of the person that is not in  
2 the possession or control of any person.

3 (4) Subsection (3) does not authorise an enforcement officer to enter  
4 premises that the officer would not otherwise be authorised to  
5 enter.

6 (5) A person commits an offence if:

7 (a) an enforcement officer demands under subsection (2) that the  
8 person surrender the person's foreign travel documents; and

9 (b) the officer informs the person that the Minister has ordered  
10 the surrender of the person's foreign travel documents and  
11 that the officer is authorised to make the demand; and

12 (c) the officer informs the person that it may be an offence not to  
13 comply with the demand; and

14 (d) the person has possession or control of one or more of the  
15 person's foreign travel documents; and

16 (e) the person fails to surrender those documents to the officer  
17 immediately.

18 Penalty: Imprisonment for 6 months or 10 penalty units, or both.

19 (6) A foreign travel document obtained by an enforcement officer  
20 under this section must be returned, to the person to whom it was  
21 issued, 14 days after the Minister made the order under  
22 subsection (1) relating to the document.

23 (7) However, subsection (6) does not apply if, within the 14 days  
24 described in that subsection, the Minister makes an order under  
25 subsection 16(1). In that case, subsections 16(6) and (7) apply in  
26 relation to the foreign travel document as if it had been obtained by  
27 an enforcement officer under section 16.

## 28 ***Independent National Security Legislation Monitor Act 2010***

### 29 **131A After subsection 6(1A)**

30 Insert:

31 (1B) The Independent National Security Legislation Monitor must  
32 complete the review under paragraph (1)(a) of the following



1 counter-terrorism and national security legislation by 7 September  
2 2017:

- 3 (a) Division 3 of Part III of the *Australian Security Intelligence*  
4 *Organisation Act 1979* and any other provision of that Act as  
5 far as it relates to that Division;  
6 (b) Division 3A of Part IAA of the *Crimes Act 1914* and any  
7 other provision of that Act as far as it relates to that Division;  
8 (c) Divisions 104 and 105 of the *Criminal Code* and any other  
9 provision of the *Criminal Code Act 1995* as far as it relates to  
10 those Divisions;  
11 (d) sections 119.2 and 119.3 of the *Criminal Code* and any other  
12 provision of the *Criminal Code Act 1995* as far as it relates to  
13 those sections.

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

### 15 **131B Section 3**

16 Insert:

17 *AFP* means the Australian Federal Police.

### 18 **132 Paragraph 29(1)(ba)**

19 Repeal the paragraph, substitute:

- 20 (baa) to monitor and to review the performance by the AFP of its  
21 functions under Part 5.3 of the *Criminal Code*; and  
22 (bab) to report to both Houses of the Parliament, with such  
23 comments as it thinks fit, upon any matter appertaining to the  
24 AFP or connected with the performance of its functions  
25 under Part 5.3 of the *Criminal Code* to which, in the opinion  
26 of the Committee, the attention of the Parliament should be  
27 directed; and  
28 (bac) to inquire into any question in connection with its functions  
29 under paragraph (baa) or (bab) that is referred to it by either  
30 House of the Parliament, and to report to that House upon  
31 that question; and

### 32 **133 Paragraph 29(1)(bb)**

33 Omit “22 January 2016”, substitute “7 March 2018”.

1 **133A Paragraph 29(3)(g)**

2 Omit “or ONA”, substitute “, ONA or AFP”.

3 **133B At the end of subsection 29(3)**

4 Add:

5 ; or (j) reviewing sensitive operational information or operational  
6 methods available to the AFP; or

7 (k) reviewing particular operations or investigations that have  
8 been, are being or are proposed to be undertaken by the AFP.

9 **133C At the end of section 30**

10 Add:

11 ; (d) the Commissioner of the AFP.

12 **133D Clause 1A of Schedule 1 (definition of agency)**

13 Omit “or ONA”, substitute “, ONA or AFP”.

14 **133E Clause 1A of Schedule 1 (at the end of the definition of  
15 agency head)**

16 Add:

17 ; or (e) the Commissioner of the AFP.

18 **133F Clause 1A of Schedule 1 (definition of staff member)**

19 After “employee of the agency,”, insert “a member or special member  
20 of the agency (within the meaning of the *Australian Federal Police Act*  
21 *1979)*”.

22 **133G Application of amendments**

23 The amendments of the *Intelligence Services Act 2001* made by this  
24 Schedule apply in relation to the performance of the AFP of its  
25 functions under Part 5.3 of the *Criminal Code*, whether those functions  
26 are performed before or after this item commences.

27 ***National Health Security Act 2007***

28 **134 Paragraph 89(1)(c)**

29 After “5.3”, insert “or 5.5”.

---

1 **135 Paragraph 92(c)**

2 After “5.3”, insert “or 5.5”.

3 ***Parliamentary Joint Committee on Law Enforcement Act***  
4 ***2010***

5 **135A At the end of subsection 7(2)**

6 Add:

7 ; or (g) monitoring, reviewing or reporting on the performance by the  
8 AFP of its functions under Part 5.3 of the *Criminal Code*.

9 **135B Application of amendment**

10 The amendment of the *Parliamentary Joint Committee on Law*  
11 *Enforcement Act 2010* made by this Schedule applies in relation to the  
12 monitoring, reviewing, or reporting on, after this item commences, of  
13 the performance of the AFP of its functions under Part 5.3 of the  
14 *Criminal Code* (whether those functions are performed before or after  
15 this item commences).

16 ***Proceeds of Crime Act 2002***

17 **136 Section 338 (definition of terrorism offence)**

18 Repeal the definition, substitute:

19 *terrorism offence* has the same meaning as in the *Crimes Act 1914*.

20 ***Sea Installations Act 1987***

21 **137 Schedule**

22 Omit “*Crimes (Foreign Incursions and Recruitment) Act 1978*”.

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

24 **138 After subparagraph 5D(1)(e)(i)**

25 Insert:

- 26 (ia) Subdivision B of Division 80 of the *Criminal Code*; or  
27 (ib) section 80.2C of the *Criminal Code*; or
-

1 **139 At the end of paragraph 5D(1)(e)**

2 Add:

3 (v) section 104.27 of the *Criminal Code*; or

4 (vi) Division 119 of the *Criminal Code*; or

5 ***Terrorism Insurance Act 2003***

6 **140 Section 3 (definition of *terrorist act*)**

7 Repeal the definition, substitute:

8 *terrorist act* has the meaning given by section 100.1 of the  
9 *Criminal Code*.

10 **141 Section 5**

11 Repeal the section.

12 **142 Paragraph 8(2)(b)**

13 Omit “section 5”, substitute “section 100.1 of the *Criminal Code*”.

14 **143 Application of amendments**

15 The amendments of the *Terrorism Insurance Act 2003* made by this  
16 Schedule apply in relation to any terrorist act (whether occurring before,  
17 on or after the commencement of this item).

1 **Part 2—Repeals**

2 ***Crimes (Foreign Incursions and Recruitment) Act 1978***

3 **144 The whole of the Act**

4 Repeal the Act.

5 **145 Transitional provision**

6 Despite the repeal of section 11 of the *Crimes (Foreign Incursions and*  
7 *Recruitment) Act 1978*, that section continues to apply after this item  
8 commences in relation to any certificate that is in force under that  
9 section immediately before that repeal.

1 **Schedule 2—Stopping welfare payments**

2 **Part 1—Main amendments**

3 *A New Tax System (Family Assistance) Act 1999*

4 **1 Subsection 3(1)**

5 Insert:

6 *Attorney-General's Secretary* means the Secretary of the  
7 Department administered by the Minister administering the  
8 *Australian Security Intelligence Organisation Act 1979*.

9 *Foreign Affairs Minister* means the Minister administering the  
10 *Australian Passports Act 2005*.

11 *Human Services Secretary* means the Secretary of the Department  
12 administered by the Minister administering the *Human Services*  
13 *(Centrelink) Act 1997*.

14 *Immigration Minister* means the Minister administering the  
15 *Migration Act 1958*.

16 *security notice* means a notice under section 57GJ.

17 **2 At the end of Part 3**

18 Add:

19 **Division 7—Loss of family assistance for individuals on**  
20 **security grounds**

21 **57GH Simplified outline of this Division**

22 

Individuals who might prejudice the security of Australia or a 23 foreign country may lose family assistance.
--

1 **57GI Loss of family assistance for individuals on security grounds**

2 *Security notice for recipient of family assistance*

- 3 (1) If a security notice is given to the Minister in relation to an  
4 individual, then while the notice is in force:  
5 (a) no family assistance is to be paid to the individual; and  
6 (b) the individual is not eligible for family assistance.

7 Note 1: A security notice is a notice under section 57GJ.

8 Note 2: This Division does not apply in relation to child care benefit or child  
9 care rebate: see section 57GQ.

- 10 (2) If a security notice is given to the Minister in relation to an  
11 individual, then any determination that the individual is entitled to  
12 be paid family assistance, that is in force immediately before the  
13 day the notice comes into force, ceases to be in force on that day.
- 14 (3) If a security notice given to the Minister in relation to an individual  
15 ceases to be in force, then the individual is not eligible for family  
16 assistance for any day while the notice was in force.
- 17 (4) However, if:  
18 (a) a security notice given to the Minister in relation to an  
19 individual recommends that payments of family assistance of  
20 the individual be paid to a payment nominee of the individual  
21 under Part 8B of the Family Assistance Administration Act;  
22 and  
23 (b) apart from subsections (1) to (3), the individual would be  
24 eligible for the whole or a part of that family assistance;  
25 then that whole or part may be paid to a payment nominee of the  
26 individual under that Part.
- 27 (5) For the purposes of subsection (4), paragraph 219TD(2)(b) of the  
28 Family Assistance Administration Act does not apply.
- 29 (6) For the purposes of subsection (4), section 219TN of the Family  
30 Assistance Administration Act does not apply. Instead, any amount  
31 paid to a payment nominee of the individual is to be applied by the  
32 nominee in accordance with a written direction given by the  
33 Secretary under this subsection.





- 1 (a) the extent (if any) that any payments of family assistance of  
2 the individual are being, or may be, used for a purpose that  
3 might prejudice the security of Australia or a foreign country,  
4 if the Attorney-General is aware of that extent;
- 5 (b) the likely effect of the operation of section 57GI on the  
6 individual's dependants, if the Attorney-General is aware of  
7 those dependants.
- 8 (4) The Attorney-General's Secretary must:
- 9 (a) seek the advice of the Human Services Secretary in relation  
10 to paragraph (3)(b); and  
11 (b) inform the Attorney-General of that advice.
- 12 (5) Subsection (3) does not limit the matters to which regard may be  
13 had.

14 **57GK Notice from Foreign Affairs Minister**

- 15 If:
- 16 (a) either:
- 17 (i) under subsection 14(2) of the *Australian Passports Act*  
18 *2005*, the Foreign Affairs Minister refuses to issue an  
19 individual an Australian passport; or  
20 (ii) under section 22 of that Act, the Foreign Affairs  
21 Minister cancels an individual's Australian passport;  
22 and
- 23 (b) the refusal or cancellation was because of a  
24 refusal/cancellation request made in relation to the individual  
25 under subsection 14(1) of that Act; and
- 26 (c) the request was made on the basis of the circumstance  
27 mentioned in subparagraph 14(1)(a)(i) of that Act;
- 28 the Foreign Affairs Minister may give the Attorney-General a  
29 written notice setting out those matters.

30 **57GL Notice from Immigration Minister**

- 31 If:
- 32 (a) the Immigration Minister cancels an individual's visa under  
33 section 116 or 128 of the *Migration Act 1958* because of an  
34 assessment by the Australian Security Intelligence
-

## Schedule 2 Stopping welfare payments

### Part 1 Main amendments

---

- 1 Organisation that the individual is directly or indirectly a risk  
2 to security (within the meaning of section 4 of the *Australian*  
3 *Security Intelligence Organisation Act 1979*); or  
4 (b) the Immigration Minister cancels an individual's visa under  
5 section 134B of the *Migration Act 1958* (emergency  
6 cancellation on security grounds) and decides not to revoke  
7 that cancellation under subsection 134C(3) of that Act; or  
8 (c) the Immigration Minister cancels an individual's visa under  
9 section 501 of the *Migration Act 1958* and there is an  
10 assessment by the Australian Security Intelligence  
11 Organisation that the individual is directly or indirectly a risk  
12 to security (within the meaning of section 4 of the *Australian*  
13 *Security Intelligence Organisation Act 1979*);  
14 the Immigration Minister may give the Attorney-General a written  
15 notice setting out those matters.

#### 16 **57GM Copy of security notice to be given to Secretaries**

- 17 The Minister must give a copy of a security notice to:  
18 (a) the Secretary of the Department; and  
19 (b) the Secretary of the Human Services Department.

#### 20 **57GN Period security notice is in force**

- 21 A security notice comes into force on the day it is given to the  
22 Minister, and remains in force until it is revoked.

#### 23 **57GNA Annual review of security notice**

- 24 Before the end of the following periods, the Attorney-General must  
25 consider whether to revoke a security notice (if it has not already  
26 been revoked):  
27 (a) 12 months after it came into force;  
28 (b) 12 months after the Attorney-General last considered whether  
29 to revoke it.

#### 30 **57GO Revoking a security notice**

- 31 (1) The Attorney-General may, by written notice given to the Minister,  
32 revoke a security notice.
-

- 1 (2) The revocation takes effect on the day it is made.
- 2 (3) The Minister must give a copy of a notice under subsection (1) to:
- 3 (a) the Secretary of the Department; and
- 4 (b) the Secretary of the Human Services Department.
- 5 (4) If:
- 6 (a) a determination in relation to an individual ceases to be in
- 7 force because of subsection 57GI(2); and
- 8 (b) the Attorney-General revokes the security notice concerned;
- 9 the Secretary of the Department must cause reasonable steps to be
- 10 taken to notify the individual of the revocation.

11 **57GP Notices may contain personal information**

12 A notice under this Division in relation to an individual may

13 contain personal information about the individual.

14 **57GQ This Division does not apply to child care benefit or child care**

15 **rebate**

16 This Division does not apply in relation to child care benefit or

17 child care rebate.

18 **57GR Certain decisions not decisions of officers**

19 For the purposes of Part 5 of the Family Assistance Administration

20 Act, the following decisions are taken not to be decisions of an

21 officer under the family assistance law:

- 22 (a) any decision under this Division;
- 23 (b) any decision under Part 8B of that Act to pay, or not to pay,
- 24 an amount of family assistance as mentioned in
- 25 subsection 57GI(4) of this Act;
- 26 (c) any decision under Part 8B of that Act that is related to a
- 27 decision mentioned in paragraph (b).

28 **57GS Instruments not legislative instruments**

29 The following are not legislative instruments:

- 30 (a) a notice under this Division;
-

1 (b) a direction under subsection 57GI(6).

2 ***Paid Parental Leave Act 2010***

3 **3 Section 6**

4 Insert:

5 *Attorney-General's Secretary* means the Secretary of the  
6 Department administered by the Minister administering the  
7 *Australian Security Intelligence Organisation Act 1979*.

8 *Foreign Affairs Minister* means the Minister administering the  
9 *Australian Passports Act 2005*.

10 *Human Services Secretary* means the Secretary of the Department  
11 administered by the Minister administering the *Human Services*  
12 (*Centrelink*) *Act 1997*.

13 *Immigration Minister* means the Minister administering the  
14 *Migration Act 1958*.

15 *security notice* means a notice under section 278C.

16 **4 At the end of Part 6-1**

17 Add:

18 **Division 5—Loss of parental leave pay or dad and partner**  
19 **pay for persons on security grounds**

20 **278A Simplified outline of this Division**

21 

Persons who might prejudice the security of Australia or a foreign 22 country may lose parental leave pay or dad and partner pay.
--

23 **278B Loss of parental leave pay or dad and partner pay for persons**  
24 **on security grounds**

25 (1) If a security notice is given to the Minister in relation to a person,  
26 then while the notice is in force:

- 1 (a) no parental leave pay or dad and partner pay is to be paid to  
2 the person; and  
3 (b) the person is not eligible for parental leave pay or dad and  
4 partner pay; and  
5 (c) parental leave pay or dad and partner pay is not payable to  
6 the person.

7 Note: A security notice is a notice under section 278C.

8 (2) If:

- 9 (a) a security notice is given to the Minister in relation to a  
10 person; and  
11 (b) a payability determination that parental leave pay or dad and  
12 partner pay is payable to the person is in force at the end of  
13 the day (the *relevant day*) before the day the notice is given;  
14 and  
15 (c) the day the notice is given is in the person's PPL period, or  
16 DAPP period, that is specified in that determination;  
17 then that determination is taken to be varied so that the person's  
18 PPL period or DAPP period, as the case requires, ends at the end of  
19 the relevant day.

20 (3) If a security notice given to the Minister in relation to a person  
21 ceases to be in force, then for any day while the notice was in  
22 force:

- 23 (a) the person is not eligible for parental leave pay or dad and  
24 partner pay; and  
25 (b) parental leave pay or dad and partner pay is not payable to  
26 the person.

27 (4) Subsections (1) to (3) have effect despite any other provision of  
28 this Act.

29 (5) If a payability determination for a person is varied by  
30 subsection (2), the Secretary must cause reasonable steps to be  
31 taken to notify the person of the variation.

1 **278C Security notice from Attorney-General**

- 2 (1) The Attorney-General may give the Minister a written notice  
3 requiring that this Division apply in relation to a specified person  
4 if:  
5 (a) the Foreign Affairs Minister gives the Attorney-General a  
6 notice under section 278D in relation to the person; or  
7 (b) the Immigration Minister gives the Attorney-General a notice  
8 under section 278E in relation to the person.
- 9 (2) Before giving a notice under this section, the Attorney-General  
10 must have regard to the following:  
11 (a) the extent (if any) that any payments of parental leave pay or  
12 dad and partner pay of the person are being, or may be, used  
13 for a purpose that might prejudice the security of Australia or  
14 a foreign country, if the Attorney-General is aware of that  
15 extent;  
16 (b) the likely effect of the operation of section 278B on the  
17 person's dependants, if the Attorney-General is aware of  
18 those dependants.
- 19 (3) The Attorney-General's Secretary must:  
20 (a) seek the advice of the Human Services Secretary in relation  
21 to paragraph (2)(b); and  
22 (b) inform the Attorney-General of that advice.
- 23 (4) Subsection (2) does not limit the matters to which regard may be  
24 had.

25 **278D Notice from Foreign Affairs Minister**

- 26 If:  
27 (a) either:  
28 (i) under subsection 14(2) of the *Australian Passports Act*  
29 *2005*, the Foreign Affairs Minister refuses to issue a  
30 person an Australian passport; or  
31 (ii) under section 22 of that Act, the Foreign Affairs  
32 Minister cancels a person's Australian passport; and

- 1 (b) the refusal or cancellation was because of a  
2 refusal/cancellation request made in relation to the person  
3 under subsection 14(1) of that Act; and  
4 (c) the request was made on the basis of the circumstance  
5 mentioned in subparagraph 14(1)(a)(i) of that Act;  
6 the Foreign Affairs Minister may give the Attorney-General a  
7 written notice setting out those matters.

8 **278E Notice from Immigration Minister**

- 9 If:  
10 (a) the Immigration Minister cancels a person's visa under  
11 section 116 or 128 of the *Migration Act 1958* because of an  
12 assessment by the Australian Security Intelligence  
13 Organisation that the person is directly or indirectly a risk to  
14 security (within the meaning of section 4 of the *Australian*  
15 *Security Intelligence Organisation Act 1979*); or  
16 (b) the Immigration Minister cancels a person's visa under  
17 section 134B of the *Migration Act 1958* (emergency  
18 cancellation on security grounds) and decides not to revoke  
19 that cancellation under subsection 134C(3) of that Act; or  
20 (c) the Immigration Minister cancels a person's visa under  
21 section 501 of the *Migration Act 1958* and there is an  
22 assessment by the Australian Security Intelligence  
23 Organisation that the person is directly or indirectly a risk to  
24 security (within the meaning of section 4 of the *Australian*  
25 *Security Intelligence Organisation Act 1979*);  
26 the Immigration Minister may give the Attorney-General a written  
27 notice setting out those matters.

28 **278F Copy of security notice to be given to Secretaries**

- 29 The Minister must give a copy of a security notice to:  
30 (a) the Secretary of the Department; and  
31 (b) the Secretary of the Human Services Department.

32 **278G Period security notice is in force**

- 33 A security notice comes into force on the day it is given to the  
34 Minister, and remains in force until it is revoked.
-

1 **278GA Annual review of security notice**

2 Before the end of the following periods, the Attorney-General must  
3 consider whether to revoke a security notice (if it has not already  
4 been revoked):

- 5 (a) 12 months after it came into force;  
6 (b) 12 months after the Attorney-General last considered whether  
7 to revoke it.

8 **278H Revoking a security notice**

9 (1) The Attorney-General may, by written notice given to the Minister,  
10 revoke a security notice.

11 (2) The revocation takes effect on the day it is made.

12 (3) The Minister must give a copy of a notice under subsection (1) to:

- 13 (a) the Secretary of the Department; and  
14 (b) the Secretary of the Human Services Department.

15 (4) If:

- 16 (a) a payability determination for a person is varied by  
17 subsection 278B(2); and  
18 (b) the Attorney-General revokes the security notice concerned;  
19 the Secretary of the Department must cause reasonable steps to be  
20 taken to notify the person of the revocation.

21 **278J Notices may contain personal information**

22 A notice under this Division in relation to a person may contain  
23 personal information (within the meaning of the *Privacy Act 1988*)  
24 about the person.

25 **278K Decisions under Division not decisions of officers**

26 For the purposes of Chapter 5, a decision under this Division is  
27 taken not to be a decision of an officer under this Act.

28 **278L Notices not legislative instruments**

29 A notice under this Division is not a legislative instrument.

---



1 ***Social Security Act 1991***

2 **5 Subsection 23(1)**

3 Insert:

4 *Attorney-General's Secretary* means the Secretary of the  
5 Department administered by the Minister administering the  
6 *Australian Security Intelligence Organisation Act 1979*.

7 *Foreign Affairs Minister* means the Minister administering the  
8 *Australian Passports Act 2005*.

9 *Human Services Secretary* means the Secretary of the Department  
10 administered by the Minister administering the *Human Services*  
11 *(Centrelink) Act 1997*.

12 *Immigration Minister* means the Minister administering the  
13 *Migration Act 1958*.

14 *security notice* means a notice under section 38N.

15 **6 After Part 1.3A of Chapter 1**

16 Insert:

17 **Part 1.3B—Loss of social security payments and**  
18 **concessions for persons on security grounds**  
19

20 **38L Simplified outline of this Part**

21 

Persons who might prejudice the security of Australia or a foreign 22 country may lose social security payments or concession cards.
---

23 **38M Loss of social security payments and concessions for persons on**  
24 **security grounds**

25 (1) If a security notice is given to the Minister in relation to a person,  
26 then while the notice is in force:

27 (a) no social security payment is to be paid to the person; and

---

**Schedule 2** Stopping welfare payments  
**Part 1** Main amendments

---

- 1 (b) the person is not qualified for a social security payment; and  
2 (c) a social security payment is not payable to the person; and  
3 (d) the person is not qualified for a concession card.

4 Note: A security notice is a notice under section 38N.

- 5 (2) If a security notice is given to the Minister in relation to a person,  
6 then any social security payment of the person is cancelled on the  
7 day the notice comes into force.
- 8 (3) If a security notice is given to the Minister in relation to a person,  
9 then any concession card the person holds is cancelled on the day  
10 the notice comes into force.
- 11 (4) If a security notice given to the Minister in relation to a person  
12 ceases to be in force, then for any day while the notice was in  
13 force:  
14 (a) the person is not qualified for a social security payment; and  
15 (b) a social security payment is not payable to the person; and  
16 (c) the person is not qualified for a concession card.
- 17 (5) Subsections (1) to (4) have effect despite any other provision of the  
18 social security law.
- 19 (6) If a person's social security payment is cancelled by subsection (2),  
20 or a person's concession card is cancelled by subsection (3), the  
21 Secretary must cause reasonable steps to be taken to notify the  
22 person of the cancellation.

23 **38N Security notice from Attorney-General**

- 24 (1) The Attorney-General may give the Minister a written notice  
25 requiring that this Part apply in relation to a specified person if:  
26 (a) the Foreign Affairs Minister gives the Attorney-General a  
27 notice under section 38P in relation to the person; or  
28 (b) the Immigration Minister gives the Attorney-General a notice  
29 under section 38Q in relation to the person.
- 30 (2) Before giving a notice under this section, the Attorney-General  
31 must have regard to the following:  
32 (a) the extent (if any) that any social security payments of the  
33 person are being, or may be, used for a purpose that might

- 1                   prejudice the security of Australia or a foreign country, if the  
2                   Attorney-General is aware of that extent;
- 3                   (b) the likely effect of the operation of section 38M on the  
4                   person's dependants, if the Attorney-General is aware of  
5                   those dependants.
- 6                   (3) The Attorney-General's Secretary must:
- 7                   (a) seek the advice of the Human Services Secretary in relation  
8                   to paragraph (2)(b); and  
9                   (b) inform the Attorney-General of that advice.
- 10                  (4) Subsection (2) does not limit the matters to which regard may be  
11                  had.

### 12                  **38P Notice from Foreign Affairs Minister**

- 13                  If:
- 14                  (a) either:
- 15                   (i) under subsection 14(2) of the *Australian Passports Act*  
16                   2005, the Foreign Affairs Minister refuses to issue a  
17                   person an Australian passport; or  
18                   (ii) under section 22 of that Act, the Foreign Affairs  
19                   Minister cancels a person's Australian passport; and
- 20                  (b) the refusal or cancellation was because of a  
21                  refusal/cancellation request made in relation to the person  
22                  under subsection 14(1) of that Act; and
- 23                  (c) the request was made on the basis of the circumstance  
24                  mentioned in subparagraph 14(1)(a)(i) of that Act;
- 25                  the Foreign Affairs Minister may give the Attorney-General a  
26                  written notice setting out those matters.

### 27                  **38Q Notice from Immigration Minister**

- 28                  If:
- 29                  (a) the Immigration Minister cancels a person's visa under  
30                  section 116 or 128 of the *Migration Act 1958* because of an  
31                  assessment by the Australian Security Intelligence  
32                  Organisation that the person is directly or indirectly a risk to  
33                  security (within the meaning of section 4 of the *Australian*  
34                  *Security Intelligence Organisation Act 1979*); or

- 1 (b) the Immigration Minister cancels a person's visa under  
2 section 134B of the *Migration Act 1958* (emergency  
3 cancellation on security grounds) and decides not to revoke  
4 that cancellation under subsection 134C(3) of that Act; or  
5 (c) the Immigration Minister cancels a person's visa under  
6 section 501 of the *Migration Act 1958* and there is an  
7 assessment by the Australian Security Intelligence  
8 Organisation that the person is directly or indirectly a risk to  
9 security (within the meaning of section 4 of the *Australian*  
10 *Security Intelligence Organisation Act 1979*);  
11 the Immigration Minister may give the Attorney-General a written  
12 notice setting out those matters.

13 **38R Copy of security notice to be given to Secretaries**

- 14 The Minister must give a copy of a security notice to:  
15 (a) the Secretary of the Department; and  
16 (b) the Secretary of the Human Services Department.

17 **38S Period security notice is in force**

- 18 A security notice comes into force on the day it is given to the  
19 Minister, and remains in force until it is revoked.

20 **38SA Annual review of security notice**

- 21 Before the end of the following periods, the Attorney-General must  
22 consider whether to revoke a security notice (if it has not already  
23 been revoked):  
24 (a) 12 months after it came into force;  
25 (b) 12 months after the Attorney-General last considered whether  
26 to revoke it.

27 **38T Revoking a security notice**

- 28 (1) The Attorney-General may, by written notice given to the Minister,  
29 revoke a security notice.  
30 (2) The revocation takes effect on the day it is made.

- 1 (3) The Minister must give a copy of a notice under subsection (1) to:  
2 (a) the Secretary of the Department; and  
3 (b) the Secretary of the Human Services Department.
- 4 (4) If:  
5 (a) a person's social security payment is cancelled by  
6 subsection 38M(2) or a person's concession card is cancelled  
7 by subsection 38M(3); and  
8 (b) the Attorney-General revokes the security notice concerned;  
9 the Secretary of the Department must cause reasonable steps to be  
10 taken to notify the person of the revocation.

11 **38U Notices may contain personal information**

12 A notice under this Part in relation to a person may contain  
13 personal information (within the meaning of the *Privacy Act 1988*)  
14 about the person.

15 **38V Decisions under Part not decisions of officers**

16 For the purposes of Part 4 of the Administration Act, a decision  
17 under this Part is taken not to be a decision of an officer under the  
18 social security law.

19 **38W Notices not legislative instruments**

20 A notice under this Part is not a legislative instrument.

21 ***Social Security (Administration) Act 1999***

22 **7 Before paragraph 123(1)(c)**

23 Insert:

- 24 (ba) the payment is cancelled by section 38M of the 1991 Act; or

1 **Part 3—Application provisions**

2 **9 Application provisions**

3 *Affected payments and concessions*

- 4 (1) Section 57GI of the *A New Tax System (Family Assistance) Act 1999*, as  
5 inserted by this Act, applies in relation to family assistance of an  
6 individual, whether the individual became eligible for that assistance  
7 before, on or after the commencement of this item.
- 8 (2) Section 278B of the *Paid Parental Leave Act 2010*, as inserted by this  
9 Act, applies in relation to parental leave pay or dad and partner pay of a  
10 person, whether the person became eligible for that pay before, on or  
11 after the commencement of this item.
- 12 (3) Section 38M of the *Social Security Act 1991*, as inserted by this Act,  
13 applies in relation to the following:
- 14 (a) a social security payment of a person, whether the person  
15 qualified for that payment before, on or after the  
16 commencement of this item;
- 17 (b) a concession card of a person, whether that card was issued  
18 before, on or after the commencement of this item.

19 *Ministerial notices*

- 20 (4) Paragraph 57GK(a) of the *A New Tax System (Family Assistance) Act*  
21 *1999*, paragraph 278D(a) of the *Paid Parental Leave Act 2010* and  
22 paragraph 38P(a) of the *Social Security Act 1991*, as inserted by this  
23 Act, apply in relation to the refusal to issue, or the cancellation of, a  
24 passport before, on or after the commencement of this item.
- 25 (5) Paragraphs 57GL(a) and (c) of the *A New Tax System (Family*  
26 *Assistance) Act 1999*, paragraphs 278E(a) and (c) of the *Paid Parental*  
27 *Leave Act 2010* and paragraphs 38Q(a) and (c) of the *Social Security*  
28 *Act 1991*, as inserted by this Act, apply in relation to the cancellation of  
29 a visa, or an assessment made, before, on or after the commencement of  
30 this item.

---

1 **Schedule 3—Customs' detention powers**  
2

3 *Customs Act 1901*

4 **1 Section 219ZJA**

5 Insert:

6 *national security* has the same meaning as in the *National Security*  
7 *Information (Criminal and Civil Proceedings) Act 2004*.

8 **2 Section 219ZJA (definition of *serious Commonwealth***  
9 ***offence*)**

10 Repeal the definition, substitute:

11 *serious Commonwealth offence* means an offence against a law of  
12 the Commonwealth that is punishable on conviction by  
13 imprisonment for 12 months or more.

14 **3 Paragraph 219ZJB(1)(b)**

15 Omit “or is committing,” substitute “is committing or intends to  
16 commit”.

17 **4 Subsection 219ZJB(3)**

18 Omit “delivered, as soon as practicable, into the custody of”, substitute  
19 “made available, as soon as practicable, to”.

20 **5 Subsection 219ZJB(4)**

21 Omit “or was committing,” substitute “was committing or was  
22 intending to commit”.

23 **6 Subsection 219ZJB(5)**

24 Omit “45 minutes”, substitute “2 hours”.

25 **7 Paragraphs 219ZJB(7)(a) and 219ZJC(6)(a)**

26 After “safeguard”, insert “national security, the security of a foreign  
27 country or”.

1 **8 At the end of Subdivision B of Division 1BA of Part XII**

2 Add:

3 **219ZJCA Detention of person for national security or security of a**  
4 **foreign country**

- 5 (1) An officer may detain a person if:
- 6 (a) the person is in a designated place; and
- 7 (b) the officer is satisfied on reasonable grounds that the person
- 8 is, or is likely to be, involved in an activity that is a threat to
- 9 national security or the security of a foreign country.
- 10 (2) An officer who is detaining a person under this section must
- 11 (subject to subsection (3)) ensure that the person is made available,
- 12 as soon as practicable, to a police officer in person to be dealt with
- 13 according to law.
- 14 (3) An officer who is detaining a person under this section must
- 15 release the person from that detention immediately if:
- 16 (a) the officer ceases to be satisfied on reasonable grounds that
- 17 the person is, or is likely to be, involved in an activity that is
- 18 a threat to national security or the security of a foreign
- 19 country; or
- 20 (b) the person is made available to a police officer under
- 21 subsection (2); or
- 22 (c) a police officer indicates that the police force to which the
- 23 police officer belongs has no interest in the person.
- 24 (4) Subject to subsection (6), if a person is detained under this section
- 25 for more than 2 hours, an officer who is detaining the person under
- 26 this section must inform the person of the right of the person to
- 27 have a family member or another person notified of the person's
- 28 detention.
- 29 (5) Where a person detained under this section wishes to have a family
- 30 member or another person notified of the person's detention, the
- 31 officer must take all reasonable steps to notify the family member
- 32 or the other person.
- 33 (6) An officer who is detaining the person under this section may
- 34 refuse to notify a family member or another person of the person's



1 detention if the officer believes on reasonable grounds that such  
2 notification should not be made in order to:

- 3 (a) safeguard national security, the security of a foreign country  
4 or the processes of law enforcement; or  
5 (b) protect the life and safety of any person.

6 Note: In relation to references in this section to family member, see also  
7 section 4AAA.

8 **9 At the end of subsection 219ZJD(1)**

9 Add:

- 10 ; or (e) in the case of a person detained under section 219ZJCA—  
11 preventing the concealment, loss or destruction of material of  
12 interest for national security or the security of a foreign  
13 country.

14 **10 At the end of paragraph 219ZJD(3)(b)**

15 Add:

- 16 ; or (iv) that is of interest for national security or the security of  
17 a foreign country.

18 **11 Subsection 219ZJD(4)**

19 Repeal the subsection, substitute:

- 20 (4) An officer who seizes a weapon or other thing under subsection (3)  
21 must ensure that it is made available to:  
22 (a) the police officer to whom the person is made available under  
23 subsection 219ZJB(3) or 219ZJCA(2); or  
24 (b) the police officer into whose custody the person is delivered  
25 under subsection 219ZJC(3).

26 **12 Subsection 219ZJF(1)**

27 Omit “this Division”, substitute “section 219ZJB or 219ZJC”.

28 **13 Subparagraph 219ZJJ(1)(b)(iv)**

29 After “detention”, insert “, unless the minor is detained under  
30 section 219ZJCA”.



1 **Schedule 4—Cancelling visas on security**  
2 **grounds**

3 **Part 1—Amendment of the Migration Act 1958**

4 **Division 1—Amendments**

5 **1 Subsection 5(1)**

6 Insert:

7 *ASIO* means the Australian Security Intelligence Organisation.

8 *ASIO Act* means the *Australian Security Intelligence Organisation*  
9 *Act 1979*.

10 *assessment*, in relation to ASIO, has the same meaning as in  
11 subsection 35(1) of the ASIO Act.

12 **2 Subsection 33(10)**

13 Before “and H”, insert “, FB”.

14 **3 Before paragraph 118(d)**

15 Insert:

16 (cc) section 134B (emergency cancellation on security grounds);  
17 or

18 **4 Before Subdivision G of Division 3 of Part 2**

19 Insert:

20 **Subdivision FB—Emergency cancellation on security grounds**

21 **134A Natural justice**

22 The rules of natural justice do not apply to a decision made under  
23 this Subdivision.

24 **134B Emergency cancellation on security grounds**

25 The Minister must cancel a visa held by a person if:

---

- 1 (a) there is an assessment made by ASIO for the purposes of this  
2 section; and  
3 (b) the assessment contains advice that ASIO suspects that the  
4 person might be, directly or indirectly, a risk to security  
5 (within the meaning of section 4 of the ASIO Act); and  
6 (c) the assessment contains a recommendation that all visas held  
7 by the person be cancelled under this section; and  
8 (d) the person is outside Australia.

9 **134C Decision about revocation of emergency cancellation**

10 *Application of section*

- 11 (1) This section applies to a visa that is cancelled under section 134B.

12 *First ground to revoke cancellation*

- 13 (2) The Minister must revoke the cancellation of the visa as soon as  
14 reasonably practicable after the end of the period referred to in  
15 subsection (5).  
16 (3) However, the Minister must not revoke the cancellation under  
17 subsection (2) if:  
18 (a) there is an assessment made by ASIO for the purposes of this  
19 section before the end of the period referred to in  
20 subsection (5); and  
21 (b) the assessment contains advice that the former holder of the  
22 visa is, directly or indirectly, a risk to security (within the  
23 meaning of section 4 of the ASIO Act); and  
24 (c) the assessment contains a recommendation that the  
25 cancellation not be revoked under subsection (2).

26 *Second ground to revoke cancellation*

- 27 (4) If:  
28 (a) there is an assessment made by ASIO for the purposes of this  
29 section before the end of the period referred to in  
30 subsection (5); and  
31 (b) the assessment contains a recommendation that the  
32 cancellation of the visa be revoked under this subsection;

1                   then the Minister must revoke the cancellation as soon as  
2                   reasonably practicable after the assessment is made.

3                   *Period*

4                   (5) For the purposes of subsections (2), (3) and (4), the period is the  
5                   period that:

6                   (a) starts at the beginning of the day (the *cancellation day*) the  
7                   visa is cancelled; and

8                   (b) ends at the end of the 28th day after the cancellation day.

9                   **134D Effect of revocation of cancellation**

10                  (1) If the cancellation of a visa is revoked under section 134C, then,  
11                  without limiting its operation before cancellation, it has effect as if  
12                  it were granted on the revocation.

13                  (2) However, the Minister may vary:

14                   (a) the time the visa is to be in effect; or

15                   (b) any period in which, or date until which, the visa permits its  
16                   holder to travel to, enter and remain in Australia, or to remain  
17                   in Australia.

18                  **134E Notice of cancellation**

19                  (1) If:

20                   (a) the Minister decides under section 134B to cancel a visa; and

21                   (b) the Minister decides under subsection 134C(3) not to revoke  
22                   the cancellation;

23                  then the Minister must give the former holder of the visa notice of  
24                  the cancellation.

25                  (2) The notice must be given:

26                   (a) if the assessment made by ASIO for the purposes of  
27                   section 134C contains an advice that it is essential to the  
28                   security of the nation that a notice is not given to the person  
29                   under this section—as soon as reasonably practicable after  
30                   ASIO advises the Minister, in writing, that it is no longer  
31                   essential to the security of the nation for the notice not to be  
32                   given; and

- 1 (b) otherwise—as soon as reasonably practicable after the  
2 Minister decides under subsection 134C(3) not to revoke the  
3 cancellation.
- 4 (3) The notice must:  
5 (a) state that the visa was cancelled under section 134B; and  
6 (b) be given to the person in the prescribed way.
- 7 (4) Failure to give the notice does not affect the validity of either:  
8 (a) the decision under section 134B to cancel the visa; or  
9 (b) the decision under subsection 134C(3) not to revoke the  
10 cancellation.

11 **134F Effect of cancellation on other visas**

- 12 (1) This section applies if:  
13 (a) a visa held by a person (the *relevant person*) is cancelled  
14 under section 134B; and  
15 (b) the Minister decides under subsection 134C(3) not to revoke  
16 the cancellation; and  
17 (c) the Minister has given a notice to the relevant person under  
18 section 134E about the cancellation.
- 19 (2) If another person holds a visa only because the relevant person  
20 held a visa, then the Minister may, without notice to the other  
21 person, cancel the other person's visa.

22 **Division 2—Application of amendments made by Part 1**

23 **5 Application of amendments made by Part 1**

24 The amendments made by Part 1 of this Schedule apply in relation to  
25 visas granted before, on or after that commencement.

1 **Part 2—Amendment of the Australian Security**  
2 **Intelligence Organisation Act 1979**

3 **6 Section 36**

4 Before “This Part”, insert “(1)”.

5 **7 At the end of section 36**

6 Add:

7 (2) Despite paragraph (1)(b), this Part applies to a security assessment  
8 in respect of a person if:

- 9 (a) the person was the holder of a valid permanent visa; and  
10 (b) the visa was cancelled under section 134B of the *Migration*  
11 *Act 1958*; and  
12 (c) the security assessment is made for the purposes of  
13 section 134C of that Act in relation to that cancellation.

1 **Schedule 5—Identifying persons in**  
2 **immigration clearance**

3 **Part 1—Amendment of the Migration Act 1958**

4 **1 Paragraph 5A(3)(g)**

5 Repeal the paragraph, substitute:

6 (g) to enhance the Department’s ability to identify non-citizens  
7 who have a criminal history or who are of character concern;  
8 and

9 (ga) to assist in identifying persons who may be a security  
10 concern to Australia or a foreign country; and

11 **2 Part 2 (heading)**

12 Repeal the heading, substitute:

13 **Part 2—Arrival, presence and departure of persons**

14 **3 Paragraph 166(1)(c)**

15 Repeal the paragraph, substitute:

16 (c) comply with any requirement, made by a clearance officer  
17 before an event referred to in subparagraph 172(1)(a)(iii) or  
18 (b)(iii) or paragraph 172(1)(c) occurs, to provide one or more  
19 personal identifiers referred to in subsection (5) to a  
20 clearance authority; and

21 (d) if under paragraph (a) the person presents evidence to an  
22 authorised system—provide to the authorised system a  
23 photograph or other image of the person’s face and  
24 shoulders.

25 **4 Subsection 166(2)**

26 Omit “present evidence, or provide information,” substitute “present or  
27 provide evidence, information or personal identifiers”.

28 **5 Subparagraph 166(2)(c)(i)**

29 Omit “neither the system nor a clearance officer requires”, substitute “a  
30 clearance officer does not require”.

---



1 **6 Subsection 166(3) (heading)**

2 Repeal the heading, substitute:

3 *Complying with paragraphs (1)(a) and (b)*

4 **7 Before subsection 166(5)**

5 Insert:

6 *Personal identifiers provided under paragraph (1)(c)*

7 **8 Subsection 166(5)**

8 Omit “paragraphs (1)(a) and (c), a person may only be required to  
9 present or”, substitute “paragraph (1)(c), a person may only be required  
10 to”.

11 **9 Paragraph 166(5)(c)**

12 After “identifier”, insert “of a type”.

13 **10 Subsection 166(6)**

14 Repeal the subsection.

15 **11 Subsection 166(7)**

16 Repeal the subsection, substitute:

17 (7) A person is taken not to have complied with a requirement to  
18 provide a personal identifier under paragraph (1)(c) or (d) unless  
19 the personal identifier is provided by way of one or more  
20 identification tests carried out by an authorised officer or  
21 authorised system.

22 **12 Subsection 166(8)**

23 Omit “non-citizen”, substitute “person”.

24 **13 Paragraph 166(8)(a)**

25 After “authorised officer”, insert “or authorised system”.

1 **14 Paragraphs 170(1)(a) and (b)**

2 Omit “the officer or an authorised system”, substitute “a clearance  
3 authority”.

4 **15 At the end of subsection 170(1)**

5 Add:

6 ; and (c) to comply with any requirement made by a clearance officer  
7 to provide one or more personal identifiers referred to in  
8 subsection (2A) to a clearance authority; and

9 (d) if under paragraph (a) the person presents evidence to an  
10 authorised system—to provide to the authorised system a  
11 photograph or other image of the person’s face and  
12 shoulders.

13 **16 Subsection 170(2)**

14 Repeal the subsection, substitute:

15 *Complying with subsection (1)*

16 (2) A person is to comply with subsection (1) in a prescribed way.

17 **17 Subsection 170(2AA)**

18 Omit “present evidence, or provide information,” substitute “present or  
19 provide evidence, information or personal identifiers”.

20 **18 Subparagraph 170(2AA)(c)(i)**

21 Omit “neither the system nor a clearance officer requires the person to  
22 present or provide evidence, information or personal identifiers referred  
23 to in subsection (1) or (2)”, substitute “a clearance officer does not  
24 require the person to present or provide evidence, information or  
25 personal identifiers referred to in subsection (1)”.

26 **19 Subsection 170(2A) (heading)**

27 Repeal the heading, substitute:

1 *Personal identifiers provided under paragraph (1)(c)*

2 **20 Subsection 170(2A)**

3 Omit “paragraph (1)(a) and subsection (2), a person may only be  
4 required to present or”, substitute “paragraph (1)(c), a person may only  
5 be required to”.

6 **21 Paragraph 170(2A)(c)**

7 After “identifier”, insert “of a type”.

8 **22 Subsection 170(3)**

9 Repeal the subsection.

10 **23 Subsection 170(4)**

11 Repeal the subsection, substitute:

12 (4) A person is taken not to have complied with a requirement to  
13 provide a personal identifier under paragraph (1)(c) or (d) unless  
14 the personal identifier is provided by way of one or more  
15 identification tests carried out by an authorised officer or  
16 authorised system.

17 **24 Subsection 170(5)**

18 Omit “non-citizen”, substitute “person”.

19 **25 Paragraph 170(5)(a)**

20 After “an authorised officer”, insert “or authorised system”.

21 **26 Subsection 175(1)**

22 Omit “to leave Australia (whether or not after calling at places in  
23 Australia)”, substitute “due to depart from a place in Australia to a place  
24 outside Australia (whether or not after calling at other places in  
25 Australia)”.

26 **27 Paragraphs 175(1)(a) and (b)**

27 Omit “the officer or an authorised system”, substitute “a clearance  
28 authority”.

1 **28 At the end of subsection 175(1)**

2 Add:

3 ; and (c) comply with any requirement made by a clearance officer to  
4 provide one or more personal identifiers referred to in  
5 subsection (2A) to a clearance authority; and

6 (d) if under paragraph (a) the person presents evidence to an  
7 authorised system—provide to the authorised system a  
8 photograph or other image of the person’s face and  
9 shoulders.

10 **29 Subsection 175(2)**

11 Repeal the subsection, substitute:

12 *Complying with subsection (1)*

13 (2) A person is to comply with subsection (1) in a prescribed way.

14 **30 Subsection 175(2AA)**

15 Omit “present evidence, or provide information,” substitute “present or  
16 provide evidence, information or personal identifiers”.

17 **31 Subparagraph 175(2AA)(c)(i)**

18 Omit “neither the system nor a clearance officer requires the person to  
19 present or provide evidence, information or personal identifiers referred  
20 to in subsection (1) or (2)”, substitute “a clearance officer does not  
21 require the person to present or provide evidence, information or  
22 personal identifiers referred to in subsection (1)”.

23 **32 Subsection 175(2A) (heading)**

24 Repeal the heading, substitute:

25 *Personal identifiers provided under paragraph (1)(c)*

26 **33 Subsection 175(2A)**

27 Omit “paragraph (1)(a) and subsection (2), a person may only be  
28 required to present or”, substitute “paragraph (1)(c), a person may only  
29 be required to”.

1 **34 Paragraph 175(2A)(c)**

2 After “identifier”, insert “of a type”.

3 **35 Subsection 175(3)**

4 Repeal the subsection.

5 **36 Subsection 175(4)**

6 Repeal the subsection, substitute:

- 7 (4) A person is taken not to have complied with a requirement to  
8 provide a personal identifier under paragraph (1)(c) or (d) unless  
9 the personal identifier is provided by way of one or more  
10 identification tests carried out by an authorised officer or  
11 authorised system.

12 **37 Subsection 175(5)**

13 Omit “non-citizen”, substitute “person”.

14 **38 Paragraph 175(5)(a)**

15 After “an authorised officer”, insert “or authorised system”.

16 **39 At the end of Division 5 of Part 2**

17 Add:

18 **175B Collection, access and disclosure of information**

19 *Collection of information*

- 20 (1) If a person presents or provides a document to a clearance  
21 authority under this Division, the clearance authority may collect  
22 information (including personal identifiers) in the document.

23 *Access to, and disclosure of, personal information*

- 24 (2) The following provisions:  
25 (a) section 336D (which authorises access to identifying  
26 information);

- 1 (b) section 336E (other than subsection 336E(1)) and  
2 section 336F (which authorise disclosure of identifying  
3 information);  
4 (c) a provision of an instrument made under section 336D or  
5 336F;  
6 apply to personal information (other than personal identifiers)  
7 collected under this Division in the same way as they apply to  
8 identifying information.

9 *Effect on interpretation*

- 10 (3) This section does not, by implication, affect the interpretation of  
11 any other provision of this Act or an instrument made under this  
12 Act.

13 **40 Section 258**

14 Omit “non-citizens” (wherever occurring), substitute “persons”.

15 **41 Section 258A (heading)**

16 Repeal the heading, substitute:

17 **258A When person cannot be required to provide personal identifier**

18 **42 Subsection 258B(1)**

19 Omit “carrying out an identification test on a non-citizen”, substitute  
20 “an authorised officer carries out an identification test on a person”.

21 **43 Paragraphs 258B(1)(a) and (b)**

22 Omit “the non-citizen” (wherever occurring), substitute “the person”.

23 **44 Subsections 258B(2) and (3)**

24 Omit “non-citizen” (wherever occurring), substitute “person”.

25 **45 Section 258C (heading)**

26 Repeal the heading, substitute:

1 **258C Information to be provided when identification tests not**  
2 **carried out**

3 **46 Section 258C**

4 Omit “non-citizen” (wherever occurring), substitute “person”.

5 **47 Subsection 258D(1)**

6 Omit “the authorised officer is to carry out identification tests on the  
7 non-citizen”, substitute “an identification test is to be carried out on a  
8 person”.

9 **48 Subsection 258D(2)**

10 Omit “non-citizen”, substitute “person”.

11 **49 Subsection 258D(2)**

12 Omit “carried out by an authorised officer”.

13 **50 Paragraphs 258E(a) and (e)**

14 Omit “non-citizen”, substitute “person”.

15 **51 Subsection 261AL(1)**

16 Omit “non-citizen”, substitute “person”.

17 **52 Paragraphs 261AL(1)(a) and (b)**

18 Omit “non-citizen’s” (wherever occurring), substitute “person’s”.

19 **53 Subsection 261AL(5)**

20 Omit “non-citizen”, substitute “person”.

21 **54 Subsection 261AM(1)**

22 Omit “non-citizen”, substitute “person”.

23 **55 Paragraphs 261AM(1)(a) and (b)**

24 Omit “non-citizen’s” (wherever occurring), substitute “person’s”.

25 **56 Subsection 261AM(4)**

26 Omit “non-citizen”, substitute “person”.

1 **57 Paragraph 336D(2)(g)**

2 Repeal the paragraph, substitute:

3 (g) the purposes of:

- 4 (i) this Act or an instrument made under this Act; or  
5 (ii) the *Australian Citizenship Act 2007* or an instrument  
6 made under that Act; or  
7 (iii) the *Customs Act 1901* or an instrument made under that  
8 Act; or  
9 (iv) any other law of the Commonwealth prescribed by the  
10 regulations;

11 **58 Subparagraph 336E(2)(a)(iii)**

12 Repeal the subparagraph, substitute:

- 13 (iii) identify non-citizens who have a criminal history or  
14 who are of character concern; or  
15 (iiia) identify persons who may be a security concern to  
16 Australia or a foreign country; or

17 **59 After paragraph 336E(2)(b)**

18 Insert:

19 (ba) is for the purpose of:

- 20 (i) this Act or an instrument made under this Act; or  
21 (ii) the *Australian Citizenship Act 2007* or an instrument  
22 made under that Act; or  
23 (iii) the *Customs Act 1901* or an instrument made under that  
24 Act; or  
25 (iv) any other law of the Commonwealth prescribed by the  
26 regulations; or

27 **60 After paragraph 366E(2)(eb)**

28 Insert:

- 29 (ec) is for the purpose of identifying non-citizens who have a  
30 criminal history or who are of character concern; or  
31 (ed) is for the purpose of identifying persons who may be a  
32 security concern to Australia or a foreign country; or



1 **Part 2—Application of amendments**

2 **61 Application of amendments**

3 (1) The amendment made by item 1 of this Schedule, as it affects  
4 section 336A, 336D or 336F of the *Migration Act 1958*, applies in  
5 relation to personal identifiers and personal information provided before  
6 or after the commencement of this Schedule.

7 (2) The amendment made by item 39 of this Schedule applies in relation to:  
8 (a) documents presented or provided; or  
9 (b) personal information provided;  
10 before or after the commencement of this Schedule.

11 (3) The amendments made by items 57 to 60 apply in relation to personal  
12 identifiers and personal information provided before or after the  
13 commencement of this Schedule.

14 (4) If:  
15 (a) an instrument was made for the purposes of a provision of the  
16 *Migration Act 1958*; and  
17 (b) the instrument was in force immediately before the  
18 commencement of this Schedule; and  
19 (c) the provision is amended by this Schedule;  
20 then the instrument continues in force (and may be dealt with) as if it  
21 were made for the purposes of that provision as amended.

1 **Schedule 6—Identifying persons entering or**  
2 **leaving Australia through advance**  
3 **passenger processing**

4 **Part 1—Amendment of the Migration Act 1958**

5 **Division 1—Amendments**

6 **1 Paragraph 5A(3)(c)**

7 Omit “, including passenger processing at Australia’s border”.

8 **2 After paragraph 5A(3)(c)**

9 Insert:

10 (ca) to improve passenger processing at Australia’s border; and

11 **3 Paragraph 245I(2)(b)**

12 After “voyage to”, insert “or from”.

13 **4 Subsections 245J(3) and 245K(2)**

14 After “information”, insert “(including personal identifiers)”.

15 **5 Section 245L (heading)**

16 Repeal the heading, substitute:

17 **245L Obligation to report on persons arriving in Australia**

18 **6 Subsection 245L(1)**

19 Omit “an airport or port”, substitute “a place”.

20 **7 Paragraphs 245L(2)(a) and (b)**

21 Omit “airport or port”, substitute “place in Australia”.

22 **8 Subsection 245L(2) (note 1)**

23 Omit “(and the obligation in subsection (6))”.

---

1 **9 Paragraphs 245L(4)(a) and (b)**

2 Omit “airport” (wherever occurring), substitute “place”.

3 **10 Paragraphs 245L(5)(a) and (b)**

4 After “arrival”, insert “at the place in Australia”.

5 **11 Subsections 245L(6) and (7)**

6 Repeal the subsections.

7 **12 After section 245L**

8 Insert:

9 **245LA Obligation to report on persons departing from Australia**

10 *Aircraft and ships to which section applies*

11 (1) This section applies to an aircraft or ship of a kind to which this  
12 Division applies that is due to depart from a place in Australia on a  
13 flight or voyage to a place outside Australia (whether or not after  
14 calling at other places in Australia).

15 *Obligation to report on passengers and crew*

16 (2) The operator of the aircraft or ship must, in accordance with this  
17 section:

18 (a) report to the Department, using the approved primary  
19 reporting system for passengers, on each passenger who is  
20 on, or is expected to be on, the flight or voyage (including  
21 any part of the flight or voyage); and

22 (b) report to the Department, using the approved primary  
23 reporting system for crew, on each member of the crew who  
24 is on, or is expected to be on, the flight or voyage (including  
25 any part of the flight or voyage).

26 Note 1: This obligation must be complied with even if the information  
27 concerned is personal information.

28 Note 2: Section 245N contains an offence for failure to comply with this  
29 subsection.

30 (3) However, if:

---

**Schedule 6** Identifying persons entering or leaving Australia through advance passenger processing

**Part 1** Amendment of the Migration Act 1958

---

- 1 (a) on the flight or voyage, the aircraft or ship calls at one or  
2 more places in Australia before departing to the place outside  
3 Australia; and  
4 (b) the regulations prescribe that a report under subsection (2)  
5 must only relate to the part of the flight or voyage that is  
6 from the last place in Australia to the place outside Australia;  
7 then the report must be on each passenger or crew member who is  
8 on, or is expected to be on, that part of the flight or voyage.

9 *Information to be reported*

- 10 (4) A report on a passenger or crew member under subsection (2) must  
11 include the information relating to the passenger or crew member  
12 that is specified, as mentioned in subsection 245J(3), in relation to  
13 the relevant approved primary reporting system.

14 *Deadline for providing a report*

- 15 (5) A report on a passenger or crew member under subsection (2) must  
16 be provided:  
17 (a) if the regulations prescribe a period or periods before the  
18 aircraft's or ship's departure from a place for the giving of a  
19 report under subsection (2) in relation to the passenger or  
20 crew member—not later than the start of that period or each  
21 of those periods; and  
22 (b) if the regulations prescribe an event or events for the giving  
23 of a report under subsection (2) in relation to the passenger or  
24 crew member—at the time of that event or each of those  
25 events; and  
26 (c) if the regulations prescribe a time or times for the giving of a  
27 report under subsection (2) in relation to the passenger or  
28 crew member—at that time or each of those times.  
29 (6) To avoid doubt, more than one report may be required to be  
30 provided under subsection (2) in relation to a passenger or crew  
31 member.

32 Note: For example, if regulations made for the purposes of subsection (5)  
33 prescribe a period of 48 hours before the aircraft's or ship's departure  
34 from a place on the flight or voyage and also prescribe an event of the  
35 passenger or crew member checking-in for the flight or voyage, then 2

1 reports would be required to be provided under this section in relation  
2 to the passenger or crew member.

3 **13 Before section 245M**

4 Insert:

5 **245LB Dealing with information collected under this Division etc.**

6 *Collection of personal information*

7 (1) The Department may collect information (including personal  
8 identifiers) in a report provided under this Division.

9 *Access to, and disclosure of, personal information*

10 (2) The following provisions:

11 (a) section 336D (which authorises access to identifying  
12 information);

13 (b) section 336E (other than subsection 336E(1)) and  
14 section 336F (which authorise disclosure of identifying  
15 information);

16 (c) a provision of an instrument made under section 336D or  
17 336F;

18 apply to personal information (other than personal identifiers)  
19 collected under this Division, or under subsection 64ACA(11) or  
20 64ACB(8) of the *Customs Act 1901*, in the same way as they apply  
21 to identifying information.

22 (3) As soon as practicable after information is reported under  
23 section 245L or 245LA, the Department must disclose the  
24 information (including personal identifiers) to the Australian  
25 Customs and Border Protection Service.

26 *Effect on interpretation*

27 (4) This section does not, by implication, affect the interpretation of  
28 any other provision of this Act or an instrument made under this  
29 Act.

1 **14 Subsection 245M(2)**

2 Omit “Section 245L applies”, substitute “Sections 245L and 245LA  
3 apply”.

4 **15 Paragraph 245M(2)(a)**

5 Omit “paragraph 245L(2)(a) or (b)”, substitute “subsections 245L(2)  
6 and 245LA(2)”.

7 **16 Paragraph 245M(2)(b)**

8 Omit “subsection 245L(3)”, substitute “subsections 245L(3) and  
9 245LA(4)”.

10 **17 Subsections 245N(1), (2) and (4)**

11 After “245L(2)”, insert “or 245LA(2)”.

12 **Division 2—Application of amendments made by Part 1**

13 **18 Application of amendments made by Part 1**

14 *Access and disclosure of identifying information etc.*

15 (1) The amendments made by items 1 and 2 of this Schedule, as they affect  
16 section 336A, 336D or 336F of the *Migration Act 1958*, apply in  
17 relation to personal identifiers and personal information provided  
18 before, on or after the commencement of this Schedule.

19 *Reports about arrivals including personal identifiers*

20 (2) The amendments made by item 4 apply in relation to an aircraft or ship  
21 arriving at a place in Australia on or after that commencement.

22 (3) However, subitem (2) does not apply to the extent that it would require  
23 a report given before that commencement to include a personal  
24 identifier.

25 *Reports about arrivals at a place in Australia*

26 (4) The amendments made by items 6, 7, 9 and 10 apply in relation to an  
27 aircraft or ship arriving at a place in Australia (whether or not an airport  
28 or a port) on or after that commencement.

- 1 (5) However, if the aircraft or ship arrives at a place that is not an airport or  
2 port, then subitem (4) does not apply to the extent that it would require  
3 a report in relation to that arrival to be given before that  
4 commencement.

5 *Reports about departures*

- 6 (6) The amendments made by items 3, 4, 12, 14, 15, 16 and 17 apply in  
7 relation to an aircraft or ship departing from a place in Australia on or  
8 after that commencement.

- 9 (7) However, subitem (6) does not apply to the extent that it would require  
10 a report to be given before that commencement.

11 *Dealing with information*

- 12 (8) The amendment made by item 13 applies in relation to information in  
13 reports provided on or after that commencement.

14 *Saving*

- 15 (9) If:  
16 (a) an instrument was made for the purposes of a provision of the  
17 *Migration Act 1958*; and  
18 (b) the instrument was in force immediately before the  
19 commencement of this Schedule; and  
20 (c) the provision is amended by this Schedule;  
21 then the instrument continues in force (and may be dealt with) as if it  
22 were made for the purposes of that provision as amended.

1 **Part 2—Amendment of the Customs Act 1901**

2 **19 Paragraphs 64ACA(12)(b) and 64ACB(9)(b)**

3 Omit “subsection 245L(6)”, substitute “section 245LB”.



1 **Schedule 7—Seizing bogus documents**

2 **Part 1—Amendment of the Migration Act 1958**

3 **Division 1—Main amendments**

4 **1 Section 103**

5 After “present”, insert “, produce”.

6 **2 Section 103**

7 After “presented”, insert “, produced”.

8 **3 Before section 487**

9 Insert:

10 **Division 1—Bogus documents**

11 **487ZI Prohibition on, and forfeiture of, bogus documents**

12 (1) A person (whether a citizen or non-citizen) must not give, present,  
13 produce or provide a bogus document to an officer, an authorised  
14 system, the Minister, a tribunal or any other person or body  
15 performing a function or purpose under, or in relation to, this Act  
16 (the *official*), or cause such a document to be so given, presented,  
17 produced or provided.

18 (2) A bogus document given, presented, produced or provided in  
19 contravention of subsection (1) is forfeited to the Commonwealth.

20 **487ZJ Seizure of bogus documents**

21 (1) If an officer reasonably suspects that a document is forfeited under  
22 subsection 487ZI(2), then the officer may seize the document.

23 (2) As soon as practicable after seizing the document, the officer must  
24 give written notice of the seizure to the person who gave,  
25 presented, produced or provided the document to the official under  
26 subsection 487ZI(1).

- 1 (3) The notice must:  
2 (a) identify the document; and  
3 (b) state that the document has been seized; and  
4 (c) specify the reason for the seizure; and  
5 (d) state that the document will be condemned as forfeited unless  
6 the person institutes proceedings against the Commonwealth  
7 before the end of the period specified in the notice:  
8 (i) to recover the document; or  
9 (ii) for a declaration that the document is not forfeited.
- 10 (4) For the purposes of paragraph (3)(d), the period must:  
11 (a) start on the date of the notice; and  
12 (b) end 90 days after that date.

13 **487ZK Document condemned as forfeited**

- 14 (1) If a document is seized under subsection 487ZJ(1), then:  
15 (a) the person who gave, presented, produced or provided the  
16 document to the official under subsection 487ZI(1); and  
17 (b) if that person is not the owner of the document—the owner;  
18 may, subject to paragraph (2)(b), institute proceedings in a court of  
19 competent jurisdiction:  
20 (c) to recover the document; or  
21 (d) for a declaration that the document is not forfeited.
- 22 (2) The proceedings:  
23 (a) may be instituted even if the seizure notice required to be  
24 given under subsection 487ZJ(2) in relation to the document  
25 has not yet been given; and  
26 (b) may only be instituted before the end of the period specified  
27 in the seizure notice.
- 28 (3) If, before the end of the period specified in the seizure notice, the  
29 person or owner does not institute the proceedings, the document is  
30 condemned as forfeited to the Commonwealth immediately after  
31 the end of that period.
- 32 (4) If, before the end of the period specified in the seizure notice, the  
33 person or owner does institute the proceedings, the document is

- 1 condemned as forfeited to the Commonwealth at the end of the  
2 proceedings unless there is:
- 3 (a) an order for the person or owner to recover the document; or
  - 4 (b) a declaration that the document is not forfeited.
- 5 (5) For the purposes of subsection (4), if the proceedings go to  
6 judgment, they end:
- 7 (a) if no appeal against the judgment is lodged within the period  
8 for lodging such an appeal—at the end of that period; or
  - 9 (b) if an appeal against the judgment is lodged within that  
10 period—when the appeal lapses or is finally determined.

11 **487ZL Dealing with a document after it is condemned as forfeited**

- 12 (1) If, under section 487ZK, a document is condemned as forfeited to  
13 the Commonwealth, it must be dealt with or disposed of (including  
14 by being given to another person) in accordance with any direction  
15 given by the Minister under section 499.
- 16 (2) If the Minister considers that the document may be relevant to  
17 proceedings in a court or tribunal, then the Minister:
- 18 (a) must give a direction under section 499 for the safe keeping  
19 of the document; and
  - 20 (b) must authorise access to the document for the purposes of  
21 those proceedings.

1 **Division 2—Other**

2 **Division 2—Contingent amendments**

3 **4 Subsection 487ZI(1)**

4 After “bogus document”, insert “(within the meaning of section 97)”.

5 **5 Subsection 487ZI(1)**

6 Omit “(within the meaning of section 97)”.

7 **Division 3—Application of amendments made by Part 1**

8 **6 Application of amendments**

9 The amendments made by Part 1 of this Schedule apply to documents  
10 given, presented, produced or provided to the official on or after the  
11 commencement of item 1 of this Schedule.

1 **Part 2—Amendment of the Australian Citizenship Act**  
2 **2007**

3 **Division 1—Main amendments**

4 **7 Section 3**

5 Insert:

6 *bogus document* has the same meaning as in subsection 5(1) of the  
7 *Migration Act 1958*.

8 **8 Before section 46**

9 Insert:

10 **Division 1—Bogus documents**

11 **45A Prohibition on, and forfeiture of, bogus documents**

- 12 (1) A person (whether a citizen or non-citizen) must not give a bogus  
13 document to the Minister, a person acting under a delegation or  
14 authorisation of the Minister, a tribunal or any other person or body  
15 performing a function or purpose under, or in relation to, this Act  
16 (the *official*), or cause such a document to be so given.
- 17 (2) A bogus document given in contravention of subsection (1) is  
18 forfeited to the Commonwealth.

19 **45B Seizure of bogus documents**

- 20 (1) If the Minister reasonably suspects that a document is forfeited  
21 under subsection 45A(2), then the Minister may seize the  
22 document.
- 23 (2) As soon as practicable after seizing the document, the Minister  
24 must give written notice of the seizure to the person who gave the  
25 document to the official under subsection 45A(1).
- 26 (3) The notice must:  
27 (a) identify the document; and

- 1 (b) state that the document has been seized; and  
2 (c) specify the reason for the seizure; and  
3 (d) state that the document will be condemned as forfeited unless  
4 the person institutes proceedings against the Commonwealth  
5 before the end of the period specified in the notice:  
6 (i) to recover the document; or  
7 (ii) for a declaration that the document is not forfeited.
- 8 (4) For the purposes of paragraph (3)(d), the period must:  
9 (a) start on the date of the notice; and  
10 (b) end 90 days after that date.

#### 11 **45C Document condemned as forfeited**

- 12 (1) If a document is seized under subsection 45B(1), then:  
13 (a) the person who gave the document to the official under  
14 subsection 45A(1); and  
15 (b) if that person is not the owner of the document—the owner;  
16 may, subject to paragraph (2)(b), institute proceedings in a court of  
17 competent jurisdiction:  
18 (c) to recover the document; or  
19 (d) for a declaration that the document is not forfeited.
- 20 (2) The proceedings:  
21 (a) may be instituted even if the seizure notice required to be  
22 given under subsection 45B(2) in relation to the document  
23 has not yet been given; and  
24 (b) may only be instituted before the end of the period specified  
25 in the seizure notice.
- 26 (3) If, before the end of the period specified in the seizure notice, the  
27 person or owner does not institute the proceedings, the document is  
28 condemned as forfeited to the Commonwealth immediately after  
29 the end of that period.
- 30 (4) If, before the end of the period specified in the seizure notice, the  
31 person or owner does institute the proceedings, the document is  
32 condemned as forfeited to the Commonwealth at the end of the  
33 proceedings unless there is:  
34 (a) an order for the person or owner to recover the document; or
-

- 1 (b) a declaration that the document is not forfeited.
- 2 (5) For the purposes of subsection (4), if the proceedings go to  
3 judgment, they end:
- 4 (a) if no appeal against the judgment is lodged within the period  
5 for lodging such an appeal—at the end of that period; or  
6 (b) if an appeal against the judgment is lodged within that  
7 period—when the appeal lapses or is finally determined.

8 **45D Dealing with a document after it is condemned as forfeited**

- 9 (1) If, under section 45C, a document is condemned as forfeited to the  
10 Commonwealth, it must be dealt with or disposed of (including by  
11 being given to another person) in accordance with any direction  
12 given by the Minister.
- 13 (2) If the Minister considers that the document may be relevant to  
14 proceedings in a court or tribunal, then the Minister:
- 15 (a) must give a direction for the safe keeping of the document;  
16 and  
17 (b) must authorise access to the document for the purposes of  
18 those proceedings.
- 19 (3) A direction given under this section is not a legislative instrument.

20 **Division 2—Other**

21 **Division 2—Contingent amendments**

22 **9 Section 3**

23 Insert:

24 *bogus document* has the same meaning as in section 97 of the  
25 *Migration Act 1958*.

26 **10 Section 3 (definition of *bogus document*)**

27 Omit “section 97”, substitute “subsection 5(1)”.

1 **Division 3—Application of amendments made by Part 2**

2 **11 Application of amendments**

3 The amendments made by Part 2 of this Schedule apply to documents  
4 given to the official on or after the commencement of item 1 of this  
5 Schedule.