

2016

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Criminal Code Amendment (High Risk
Terrorist Offenders) Bill 2016**

No. , 2016

(Attorney-General)

**A Bill for an Act to amend the *Criminal Code Act
1995*, and for related purposes**

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1 **A Bill for an Act to amend the *Criminal Code Act***
2 ***1995, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Criminal Code Amendment (High Risk Terrorist*
6 *Offenders) Act 2016*.

7 **2 Commencement**

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2, Part 1	At the same time as the provisions covered by table item 2.	
4. Schedule 2, Part 2, Division 1	At the same time as the provisions covered by table item 2. However, if Schedule 9 to the <i>Counter-Terrorism Legislation Amendment Act (No. 1) 2016</i> commences at or before that time, the provisions covered by this table item do not commence at all.	
5. Schedule 2, Part 2, Division 2	Immediately before the commencement of Schedule 9 to the <i>Counter-Terrorism Legislation Amendment Act (No. 1) 2016</i> . However, if that Schedule commences on or before the commencement of the provisions covered by table item 2, the provisions covered by this table item do not commence at all.	
6. Schedule 2, Part 2, Division 3	At the same time as the provisions covered by table item 2. However, if Schedule 9 to the <i>Counter-Terrorism Legislation Amendment Act (No. 1) 2016</i> does not commence on or before the commencement of the provisions covered by table item 2, the provisions covered by this table item do not commence at all.	

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
7. Schedule 2, Part 2, Division 4	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of Schedule 9 to the <i>Counter-Terrorism Legislation Amendment Act (No. 1) 2016</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

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.

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Schedule 1—Criminal Code Act 1995

Criminal Code Act 1995

1 After Division 105 of the *Criminal Code*

Insert:

Division 105A—Continuing detention orders

Subdivision A—Object and definitions

105A.1 Object

The object of this Division is to ensure the safety and protection of the community by providing for the continuing detention of terrorist offenders who pose an unacceptable risk of committing serious Part 5.3 offences if released into the community.

105A.2 Definitions

In this Division:

continuing detention order means an order made under subsection 105A.7(1).

continuing detention order decision means:

- (a) a decision on an application for a continuing detention order or an interim detention order; or
- (b) a decision in a review of a continuing detention order to affirm, revoke or vary the order.

continuing detention order proceeding means a proceeding under Subdivision C or D.

interim detention order means an order made under subsection 105A.9(2).

prison includes any gaol, lock-up or other place of detention.

relevant expert means any of the following persons who is competent to assess the risk of a terrorist offender committing a

1 serious Part 5.3 offence if the offender is released into the
2 community:

- 3 (a) a person who is:
4 (i) registered as a medical practitioner under a law of a
5 State or Territory; and
6 (ii) a fellow of the Royal Australian and New Zealand
7 College of Psychiatrists;
8 (b) any other person registered as a medical practitioner under a
9 law of a State or Territory;
10 (c) a person registered as a psychologist under a law of a State or
11 Territory;
12 (d) any other expert.

13 **serious Part 5.3 offence** means an offence against this Part, the
14 maximum penalty for which is 7 or more years of imprisonment.

15 **terrorist offender**: see subsection 105A.3(1) and section 105A.18.

16 **Subdivision B—Continuing detention orders**

17 **105A.3 Who a continuing detention order may apply to and effect of** 18 **an order**

- 19 (1) A continuing detention order may be made under section 105A.7 in
20 relation to a person (the **terrorist offender**) if:
21 (a) the person has been convicted of:
22 (i) an offence against Subdivision A of Division 72
23 (international terrorist activities using explosive or
24 lethal devices); or
25 (ii) an offence against Subdivision B of Division 80
26 (treason); or
27 (iii) a serious Part 5.3 offence; or
28 (iv) an offence against Part 5.5 (foreign incursions and
29 recruitment); and
30 (b) either:
31 (i) the person is detained in custody and serving a sentence
32 of imprisonment for the offence; or
33 (ii) a continuing detention order or interim detention order
34 is in force in relation to the person; and

1 (c) if subparagraph (b)(i) applies—the person will be at least 18
2 years old when the sentence ends.

3 Note: Before making the order, a Court must be satisfied of certain matters
4 under section 105A.7.

5 (2) The effect of the order is to commit the offender to detention in a
6 prison for the period the order is in force.

7 Note 1: The period must not be more than 3 years (see subsection 105A.7(5)).

8 Note 2: An arrangement with a State or Territory must be in force for an
9 offender to be detained at a prison of the State or Territory (see
10 subsection 105A.21(2)).

11 **105A.4 Treatment of a terrorist offender in a prison under a**
12 **continuing detention order**

13 (1) A terrorist offender who is detained in a prison under a continuing
14 detention order must be treated in a way that is appropriate to his
15 or her status as a person who is not serving a sentence of
16 imprisonment, subject to any reasonable requirements necessary to
17 maintain:

- 18 (a) the management, security or good order of the prison; and
19 (b) the safe custody or welfare of the offender or any prisoners;
20 and
21 (c) the safety and protection of the community.

22 (2) The offender must not be accommodated or detained in the same
23 area or unit of the prison as persons who are in prison for the
24 purpose of serving sentences of imprisonment unless:

- 25 (a) it is reasonably necessary for the purposes of rehabilitation,
26 treatment, work, education, general socialisation or other
27 group activities; or
28 (b) it is necessary for the security or good order of the prison or
29 the safe custody or welfare of the offender or prisoners; or
30 (c) it is necessary for the safety and protection of the
31 community; or
32 (d) the offender elects to be so accommodated or detained.

33 (3) This section does not apply if the offender is serving a sentence of
34 imprisonment.

Subdivision C—Making a continuing detention order**105A.5 Applying for a continuing detention order**

- (1) The Attorney-General, or a legal representative of the Attorney-General, (the *applicant*) may apply to a Supreme Court of a State or Territory for a continuing detention order in relation to a terrorist offender.
- (2) However, the application may not be made more than 6 months before the end of:
- (a) a sentence of imprisonment referred to in subparagraph 105A.3(1)(b)(i) that the offender is serving, at the end of which the offender would be required to be released into the community; or
 - (b) if a continuing detention order is in force in relation to the offender—the period for which the order is in force.

Content of application

- (3) The application must:
- (a) include any report or other document that the applicant intends, at the time of the application, to rely on in relation to the application; and
 - (b) include information about the offender's age; and
 - (c) request that the order be in force for a specified period.

Note 1: The period must not be more than 3 years (see subsection 105A.7(5)).

Note 2: Evidence may also be adduced later under section 105A.14.

Giving offender copy of application

- (4) The applicant must, subject to subsection (5), give a copy of the application to the offender personally within 2 business days after the application is made.

Note: For giving the offender documents, see section 105A.15.

- (5) The applicant is not required to give to the offender, when the applicant gives the copy of the application to the offender under subsection (4), any information included in the application if the Attorney-General is likely to do any of the following in relation to the information:

- 1 (a) give a certificate under Subdivision C of Division 2 of
2 Part 3A of the *National Security Information (Criminal and*
3 *Civil Proceedings) Act 2004*;
4 (b) seek an arrangement under section 38B of that Act;
5 (c) make a claim of public interest immunity;
6 (d) seek an order of the Court preventing or limiting disclosure
7 of the information.

8 **105A.6 Appointment of and assessment by relevant expert**

- 9 (1) If an application for a continuing detention order is made to a
10 Supreme Court of a State or Territory in relation to a terrorist
11 offender, the Court must hold a preliminary hearing to determine
12 whether to appoint one or more relevant experts.
- 13 (2) The hearing must be held within 28 days after a copy of the
14 application is given to the offender under subsection 105A.5(4).
- 15 (3) The Court may appoint one or more relevant experts if the Court
16 believes that the matters alleged in the application would, if
17 proved, justify making a continuing detention order in relation to
18 the offender.
- 19 (4) The relevant expert who is appointed must:
20 (a) conduct an assessment of the risk of the offender committing
21 a serious Part 5.3 offence if the offender is released into the
22 community; and
23 (b) provide a report of the expert's assessment to the Court, the
24 Attorney-General and the offender.

25 Note: For giving the offender documents, see section 105A.15.

26 *Attendance and participation at assessment*

- 27 (5) The offender must attend the assessment.
28 Note: The assessment may be conducted over a number of sessions.
- 29 (6) The Court must ensure that the effect of subsection (5) and
30 paragraph 105A.8(b) is explained to the offender.

31 *Contents of report*

- 32 (7) The expert's report must include the following matters:
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- 1 (a) the expert's assessment of the risk of the offender committing
2 a serious Part 5.3 offence if the offender is released into the
3 community;
- 4 (b) reasons for that assessment;
- 5 (c) the pattern or progression to date of behaviour on the part of
6 the offender in relation to serious Part 5.3 offences, and an
7 indication of the nature of any likely future behaviour on his
8 or her part in relation to serious Part 5.3 offences;
- 9 (d) efforts made to date by the offender to address the causes of
10 his or her behaviour in relation to serious Part 5.3 offences,
11 including whether he or she has actively participated in any
12 rehabilitation or treatment programs;
- 13 (e) if the offender has participated in any rehabilitation or
14 treatment programs—whether or not this participation has
15 had a positive effect on him or her;
- 16 (f) any relevant background of the offender, including
17 developmental and social factors;
- 18 (g) factors that might increase or decrease any risks that have
19 been identified of the offender committing a serious Part 5.3
20 offence if the offender is released into the community;
- 21 (h) any other matters the expert considers relevant.

22 **105A.7 Making a continuing detention order**

- 23 (1) A Supreme Court of a State or Territory may make a written order
24 under this subsection if:
- 25 (a) an application is made in accordance with section 105A.5 for
26 a continuing detention order in relation to a terrorist offender;
27 and
- 28 (b) after having regard to matters in accordance with
29 section 105A.8, the Court is satisfied to a high degree of
30 probability, on the basis of admissible evidence, that the
31 offender poses an unacceptable risk of committing a serious
32 Part 5.3 offence if the offender is released into the
33 community; and
- 34 (c) the Court is satisfied that there is no other less restrictive
35 measure that would be effective in preventing the
36 unacceptable risk.

37 Note: An example of a less restrictive measure is a control order.

1 (2) Otherwise, the Court must dismiss the application.

2 *Onus of satisfying Court*

3 (3) The Attorney-General bears the onus of satisfying the Court of the
4 matters referred to in paragraphs (1)(b) and (c).

5 *Period of order*

6 (4) The order must specify the period during which it is in force.

7 (5) The period must be a period of no more than 3 years that the Court
8 is satisfied is reasonably necessary to prevent the unacceptable
9 risk.

10 *Court may make successive continuing detention orders*

11 (6) To avoid doubt, subsection (5) does not prevent a Supreme Court
12 of a State or Territory making a continuing detention order in
13 relation to a terrorist offender that begins to be in force
14 immediately after a previous continuing detention order in relation
15 to the offender ceases to be in force.

16 **105A.8 Matters a Court must have regard to in making a continuing**
17 **detention order**

18 In deciding whether the Court is satisfied as referred to in
19 paragraph 105A.7(1)(b) in relation to a terrorist offender, a
20 Supreme Court of a State or Territory must have regard to the
21 following matters:

- 22 (a) the safety and protection of the community;
- 23 (b) any report received from a relevant expert under
24 section 105A.6 in relation to the offender, and the level of the
25 offender's participation in the assessment by the expert;
- 26 (c) the results of any other assessment conducted by a relevant
27 expert of the risk of the offender committing a serious
28 Part 5.3 offence, and the level of the offender's participation
29 in any such assessment;
- 30 (d) any report, relating to the extent to which the offender can
31 reasonably and practicably be managed in the community,
32 that has been prepared by:
- 33 (i) the relevant State or Territory corrective services; or

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- 1 (ii) any other person or body who is competent to assess
2 that extent;
- 3 (e) any treatment or rehabilitation programs in which the
4 offender has had an opportunity to participate, and the level
5 of the offender's participation in any such programs;
- 6 (f) the level of the offender's compliance with any obligations to
7 which he or she is or has been subject while:
- 8 (i) on release on parole for any offence; or
9 (ii) subject to a continuing detention order or interim
10 detention order;
- 11 (g) the offender's criminal history (including prior convictions
12 and findings of guilt in respect of any other offences);
- 13 (h) the views of the sentencing court at the time the relevant
14 sentence of imprisonment was imposed on the offender;
- 15 (i) any other information as to the risk of the offender
16 committing a serious Part 5.3 offence;
- 17 (j) any other matter the Court considers relevant.

18 **105A.9 Interim detention orders**

- 19 (1) The Attorney-General, or a legal representative of the
20 Attorney-General, may apply to a Supreme Court of a State or
21 Territory for an interim detention order in relation to a terrorist
22 offender if an application has been made to the Court for a
23 continuing detention order in relation to the offender.
- 24 (2) The Court may make a written order under this subsection if:
- 25 (a) the Court is satisfied that either of the following periods will
26 end before the application for the continuing detention order
27 has been determined:
- 28 (i) the sentence of imprisonment referred to in
29 subparagraph 105A.3(1)(b)(i) that the offender is
30 serving;
- 31 (ii) the period for which a continuing detention order or an
32 interim detention order is in force in relation to the
33 offender; and
- 34 (b) the Court believes that the matters alleged in the application
35 for the continuing detention order would, if proved, justify
36 making a continuing detention order in relation to the
37 offender.

1 Note: More than one interim detention order can be made in relation to a
2 person (see subsection (6)).

3 (3) The effect of the order is to commit the offender to detention in a
4 prison while the order is in force.

5 *Period of order*

6 (4) The order must specify the period during which it is in force.

7 (5) The period must be a period of no more than 28 days that the Court
8 is satisfied is reasonably necessary to determine the application for
9 the continuing detention order.

10 (6) The total period of all interim detention orders made in relation to
11 the offender before the Court makes a decision on the application
12 for the continuing detention order must not be more than 3 months.

13 *Treatment of certain offenders covered by interim detention orders*

14 (7) While an interim detention order is in force in relation to the
15 offender, section 105A.4 applies as if a continuing detention order
16 were in force in relation to the offender.

17 Note: Section 105A.4 deals with the treatment of a terrorist offender who is
18 in a prison under a continuing detention order.

19 **Subdivision D—Review of continuing detention order**

20 **105A.10 Periodic review of continuing detention order**

21 (1) A Supreme Court of a State or Territory must begin a review of a
22 continuing detention order that is in force in relation to a terrorist
23 offender within the period of 12 months after:

- 24 (a) the order began to be in force; or
25 (b) if the order has been reviewed under this Subdivision by a
26 Supreme Court of a State or Territory—the most recent
27 review ended.

28 Note: For the process for reviewing a continuing detention order, see
29 section 105A.12.

30 (2) However, a review is not required if an application for a new
31 continuing detention order in relation to the offender has been
32 made and not withdrawn.

- 1 (3) The review is to be conducted by the Court of the State or Territory
2 where the prison in which the offender is detained is located.

3 **105A.11 Review of continuing detention order on application**

- 4 (1) A terrorist offender, or a legal representative of a terrorist offender,
5 in relation to whom a continuing detention order is in force may
6 apply to a Supreme Court of a State or Territory for review of the
7 order.

8 Note: For the process for reviewing a continuing detention order, see
9 section 105A.12.

- 10 (2) The Court may review the order if the Court is satisfied that:
11 (a) there are new facts or circumstances which would justify
12 reviewing the order; or
13 (b) it would be in the interests of justice, having regard to the
14 purposes of the order and the manner and effect of its
15 implementation, to review the order.
- 16 (3) Otherwise, the Court must dismiss the application.
- 17 (4) The application must be made to the Supreme Court of the State or
18 Territory where the prison in which the offender is detained is
19 located.

20 **105A.12 Process for reviewing a continuing detention order**

- 21 (1) This section applies if, under section 105A.10 or 105A.11, a
22 Supreme Court of a State or Territory reviews a continuing
23 detention order that is in force in relation to a terrorist offender.

24 *Parties to the review*

- 25 (2) The parties to the review are:
26 (a) the Attorney-General; and
27 (b) the offender.
- 28 (3) The Court may appoint one or more relevant experts for the
29 purposes of the review. If the Court does so, subsections 105A.6(4)
30 to (7) apply in relation to the review.

1 *Affirming or revoking the order*

- 2 (4) The Court may affirm the order if:
- 3 (a) after having regard to the matters referred to in
- 4 section 105A.8, the Court is satisfied to a high degree of
- 5 probability, on the basis of admissible evidence, that the
- 6 offender poses an unacceptable risk of committing a serious
- 7 Part 5.3 offence if the offender is released into the
- 8 community; and
- 9 (b) the Court is satisfied that there is no other less restrictive
- 10 measure that would be effective in preventing the
- 11 unacceptable risk.

12 Note: An example of a less restrictive measure is a control order.

- 13 (5) Otherwise, the Court must revoke the order.

14 *Onus of satisfying Court*

- 15 (6) The Attorney-General bears the onus of satisfying the Court of the
- 16 matters referred to in subsection (4).

17 *Varying the period specified by the order*

- 18 (7) The Court must vary the order to specify a shorter period for which
- 19 the order will be in force if:
- 20 (a) the Court affirms the order under subsection (4); but
- 21 (b) the Court is not satisfied that the period currently specified is
- 22 reasonably necessary to prevent the unacceptable risk.
- 23 The shorter period must be a period that the Court is satisfied is
- 24 reasonably necessary to prevent the unacceptable risk.

25 **Subdivision E—Provisions relating to continuing detention**

26 **order proceedings**

27 **105A.13 Civil evidence and procedure rules in relation to continuing**

28 **detention order proceedings**

- 29 (1) A Supreme Court of a State or Territory must, subject to
- 30 subsection (2), apply the rules of evidence and procedure for civil
- 31 matters during a continuing detention order proceeding.

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- 1 (2) Despite anything in the rules of evidence and procedure, the Court
2 may receive in evidence in the proceeding evidence of the relevant
3 terrorist offender's criminal history (including prior convictions
4 and findings of guilt in respect of any offences).

5 **105A.14 Adducing evidence and making submissions**

6 A party to a continuing detention order proceeding in a Supreme
7 Court of a State or Territory may adduce evidence (including by
8 calling witnesses or producing material), or make submissions, to
9 the Court in relation to the proceeding.

10 **105A.15 Giving terrorist offenders documents**

- 11 (1) A document that is required to be given under this Division to a
12 terrorist offender who is detained in a prison is taken to have been
13 given to the offender at the time referred to in paragraph (3)(b) if
14 the document is given to the chief executive officer (however
15 described) of the prison or centre.
- 16 (2) The chief executive officer must, as soon as reasonably practicable,
17 give the document to the offender personally.
- 18 (3) Once the chief executive officer has done so, he or she must notify
19 the Court and the person who gave the officer the document, in
20 writing:
21 (a) that the document has been given to the offender; and
22 (b) of the day that document was so given.

23 **105A.16 Reasons for decisions**

24 A Supreme Court of a State or Territory that makes a continuing
25 detention order decision in a continuing detention order proceeding
26 must:
27 (a) state the reasons for its decision; and
28 (b) cause those reasons to be entered in the records of the Court;
29 and
30 (c) cause a copy of any order it made to be provided to each
31 party to the proceeding.

1 **105A.17 Right of appeal**

- 2 (1) An appeal lies to the court of appeal (however described) of a State
3 or Territory if:
4 (a) the Supreme Court of the State or Territory makes a
5 continuing detention order decision; and
6 (b) the court of appeal has jurisdiction to hear appeals from the
7 Supreme Court in relation to civil matters.
- 8 (2) The appeal is to be by way of rehearing. In particular, in relation to
9 the appeal, the court of appeal:
10 (a) subject to this subsection, has all the powers, functions and
11 duties that the Supreme Court has in relation to the relevant
12 continuing detention order proceedings; and
13 (b) may draw inferences of fact which are not inconsistent with
14 the findings of the Supreme Court; and
15 (c) may receive further evidence as to questions of fact (orally in
16 court, by affidavit or in any other way) if the court of appeal
17 is satisfied that there are special grounds for doing so.
- 18 (3) The appeal against the decision of the Supreme Court may be
19 made:
20 (a) as of right, within 28 days after the day on which the decision
21 was made; or
22 (b) by leave, within such further time as the court of appeal
23 allows.
- 24 (4) The making of the appeal does not stay the operation of the order.
- 25 (5) This section does not limit any other right of appeal that exists
26 apart from this section.

27 **105A.18 Consequences of release of terrorist offender**

- 28 (1) This section applies in relation to a continuing detention order
29 proceeding if:
30 (a) the proceeding is any of the following:
31 (i) a proceeding on an application for a continuing
32 detention order in relation to a terrorist offender;
33 (ii) an appeal against a decision to dismiss such an
34 application;

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- 1 (iii) an appeal against a decision to revoke a continuing
2 detention order in relation to a terrorist offender;
- 3 (iv) an appeal against a decision (including in a review of
4 such an order) to specify a particular period for which
5 such an order will be in force; and
- 6 (b) before the application or appeal is determined (whether
7 before or after the appeal is made), the offender is released
8 from custody because:
- 9 (i) the sentence of imprisonment referred to in
10 subparagraph 105A.3(1)(b)(i) that the offender was
11 serving ends; or
- 12 (ii) the period for which a continuing detention order or an
13 interim detention order is in force in relation to the
14 offender ends; or
- 15 (iii) a continuing detention order in force in relation to the
16 offender was revoked as referred to in
17 subparagraph (a)(iii) of this subsection.
- 18 (2) For the purposes of the continuing detention order proceeding:
- 19 (a) the offender is taken to remain a terrorist offender despite
20 being released from custody; and
- 21 (b) a reference in this Division to the offender being released
22 into the community includes a reference to the offender
23 remaining in the community.

24 *Power of police officer to detain terrorist offender*

- 25 (3) If a continuing detention order or interim detention order is in force
26 in relation to the offender at any time after the offender is released
27 as mentioned in paragraph (1)(b):
- 28 (a) any police officer may take the offender into custody; and
29 (b) any police officer may detain the offender;
30 for the purpose of giving effect to the order.
- 31 (4) A police officer, in:
- 32 (a) taking the offender into custody; or
33 (b) detaining the offender;
34 under subsection (3) has the same powers and obligations as the
35 police officer would have if the police officer were arresting the
36 offender, or detaining the offender, for an offence.

1 (5) In subsection (4):

2 *offence* means:

- 3 (a) if the police officer is an AFP member—an offence against a
4 law of the Commonwealth; or
5 (b) if the police officer is not an AFP member—an offence
6 against a law of the State or Territory of whose police force
7 the police officer is a member.

8 **Subdivision F—Miscellaneous**

9 **105A.19 Sharing information**

10 *Requesting information*

- 11 (1) The Attorney-General may request a person prescribed by the
12 regulations for the purposes of this subsection to give the
13 Attorney-General information that the Attorney-General
14 reasonably believes to be relevant to the administration or
15 execution of this Division.
16 (2) The request need not be in writing.

17 *Disclosing information*

- 18 (3) The Attorney-General may disclose information to a person
19 prescribed by the regulations for the purposes of this subsection if:
20 (a) the information was acquired by any of the following in the
21 exercise of a power under, or the performance of a function
22 or duty in connection with, this Division:
23 (i) the Attorney-General;
24 (ii) a legal representative of the Attorney-General;
25 (iii) the Secretary of the Department;
26 (iv) an APS employee in the Department; and
27 (b) the Attorney-General reasonably believes that the disclosure
28 is necessary to enable the person to exercise the person's
29 powers, or to perform the person's functions or duties; and
30 (c) if the regulations provide that information may be disclosed
31 to the person only if specified circumstances are met—those
32 circumstances are met.

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- 1 (4) Subsection (3) applies despite any other law of the
2 Commonwealth, a State or a Territory (whether written or
3 unwritten).

4 **105A.20 Delegation by the Attorney-General**

5 The Attorney-General may, in writing, delegate any of his or her
6 powers or functions under section 105A.19 to any of the following
7 persons:

- 8 (a) the Secretary of the Department;
9 (b) any APS employee in the Department who performs duties in
10 connection with the administration or execution of this
11 Division.

12 **105A.21 Arrangement with States and Territories**

- 13 (1) The Attorney-General may arrange for a terrorist offender in
14 relation to whom a continuing detention order is in force to be
15 detained in a prison of a State or Territory.
- 16 (2) If an arrangement is made under subsection (1), the continuing
17 detention order is taken to authorise the chief executive officer
18 (however described) of the prison to detain the offender at the
19 prison while the order is in force.

20 **105A.22 Annual report**

- 21 (1) The Attorney-General must, as soon as practicable after each
22 30 June, cause a report to be prepared about the operation of this
23 Division during the year ended on that 30 June.
- 24 (2) Without limiting subsection (1), a report relating to a year must
25 include the number of each of the following:
26 (a) applications for continuing detention orders made during the
27 year;
28 (b) applications for interim detention orders made during the
29 year;
30 (c) continuing detention orders made during the year;
31 (d) interim detention orders made during the year;
32 (e) applications for review of continuing detention orders made
33 during the year;

- 1 (f) continuing detention orders affirmed during the year;
2 (g) continuing detention orders varied during the year;
3 (h) continuing detention orders revoked during the year.
- 4 (3) The Attorney-General must cause copies of the report to be laid
5 before each House of the Parliament within 15 sitting days of that
6 House after the report is completed.

7 **2 In the appropriate position in Division 106 of the *Criminal***
8 ***Code***

9 Insert:

10 **106.8 Application provision for amendments in the *Criminal Code***
11 ***Amendment (High Risk Terrorist Offenders) Act 2016***

12 Division 105A, as inserted by the *Criminal Code Amendment*
13 *(High Risk Terrorist Offenders) Act 2016*, applies in relation to:

- 14 (a) any person who, on the day this section commences, is
15 detained in custody and serving a sentence of imprisonment
16 for an offence referred to in paragraph 105A.3(1)(a) of this
17 Code; and
18 (b) any person who, on or after that day, begins a sentence of
19 imprisonment for such an offence (whether the conviction for
20 the offence occurred before, on or after that day).

1 **Schedule 2—Consequential amendments**

2 **Part 1—Amendments commencing on day fixed by**
3 **Proclamation**

4 *Surveillance Devices Act 2004*

5 **1 Subsection 6(1) (after paragraph (o) of the definition of**
6 ***relevant proceeding*)**

7 Insert:

- 8 (oa) a proceeding under, or related to a matter arising under,
9 Division 105A of the *Criminal Code* (continuing detention
10 orders); or

11 *Telecommunications (Interception and Access) Act 1979*

12 **2 Subsection 5(1) (at the end of paragraph (b) of the**
13 **definition of *permitted purpose*)**

14 Add:

- 15 (vii) the performance of a function or duty, or the exercise of
16 a power, by a person, court or other body under, or in
17 relation to a matter arising under, Division 105A of the
18 *Criminal Code*, so far as the function, duty or power
19 relates to a continuing detention order or an interim
20 detention order; or

21 **3 Subsection 5(1) (after subparagraph (c)(iv) of the definition**
22 **of *permitted purpose*)**

23 Insert:

- 24 (iva) the performance of a function or duty, or the exercise of
25 a power, by a person, court or other body under, or in
26 relation to a matter arising under, Division 105A of the
27 *Criminal Code*, so far as the function, duty or power
28 relates to a continuing detention order or an interim
29 detention order; or

30 **4 After paragraph 5B(1)(bc)**

31 Insert:

Schedule 2 Consequential amendments

Part 1 Amendments commencing on day fixed by Proclamation

- 1 (bd) a proceeding under, or a proceeding relating to a matter
2 arising under, Division 105A of the *Criminal Code*, so far as
3 the proceeding relates to a continuing detention order or an
4 interim detention order; or

5 **5 Before section 140**

6 Insert:

7 **139C Dealing for purposes relating to continuing detention orders**

- 8 (1) An officer or staff member of:
9 (a) the Australian Federal Police; or
10 (b) the Police Force of a State;
11 may, for one or more purposes referred to in subsection (2), and for
12 no other purpose (other than a purpose referred to in
13 subsection 139(2) or (4A) or 139A(2), if applicable), communicate
14 to another person, make use of, or make a record of lawfully
15 accessed information other than foreign intelligence information.
- 16 (2) The purposes are purposes connected with the performance of a
17 function or duty, or the exercise of a power, by a person, court or
18 other body under, or in relation to a matter arising under,
19 Division 105A of the *Criminal Code* (continuing detention orders).

20 **6 After subparagraphs 180D(2)(b)(i) and (c)(i)**

21 Insert:

- 22 (ia) for the purposes of Division 105A of the *Criminal Code*
23 (continuing detention orders); or

24 **7 After subparagraph 181B(3)(b)(ii)**

25 Insert:

- 26 (iaa) for the purposes of Division 105A of the *Criminal Code*
27 (continuing detention orders); or

28 **8 After subparagraph 181B(6)(b)(i)**

29 Insert:

- 30 (iaa) for the purposes of Division 105A of the *Criminal Code*
31 (continuing detention orders); or

1 **9 After subparagraph 182(2)(a)(iii)**

2 Insert:

3 (iia) for the purposes of Division 105A of the *Criminal Code*
4 (continuing detention orders); or

5 **10 After subparagraph 182(3)(a)(ii)**

6 Insert:

7 (iia) for the purposes of Division 105A of the *Criminal Code*
8 (continuing detention orders); or

9 **11 After subparagraph 182B(b)(iv)**

10 Insert:

11 (iva) for the purposes of Division 105A of the *Criminal Code*
12 (continuing detention orders); or

1 **Part 2—Contingent amendments**

2 **Division 1—Amendments if the Counter-Terrorism**
3 **Legislation Amendment Act (No. 1) 2016**
4 **commences after this Act**

5 *Telecommunications (Interception and Access) Act 1979*

6 **12 Subsection 139(1)**

7 After “139A(2)”, insert “or 139C(2)”.

8 **13 Subsection 139A(1)**

9 After “139(2)”, insert “or 139C(2)”.

10 **14 Section 142**

11 Omit “or 139A”, substitute “, 139A or 139C”.

12 **15 Paragraph 150(1)(b)**

13 Omit “or 139A(2)”, substitute “, 139A(2) or 139C(2)”.

14 **Division 2—Amendment of the Counter-Terrorism**
15 **Legislation Amendment Act (No. 1) 2016**

16 *Counter-Terrorism Legislation Amendment Act (No. 1) 2016*

17 **16 Items 51 and 52 of Schedule 9**

18 Repeal the items, substitute:

19 **51 Subsection 139(1)**

20 After “139A(2)”, insert “, 139B(2)”.

21 **52 Subsection 139A(1)**

22 After “139(2)”, insert “or (4A), 139B(2)”.

23 **17 Items 54 and 55 of Schedule 9**

24 Repeal the items, substitute:

1 **54 Section 142**

2 After “139A”, insert “, 139B”.

3 **55 Paragraph 150(1)(b)**

4 Omit “139A(2)”, substitute “or (4A), 139A(2), 139B(2)”.

5 **Division 3—Amendments if the Counter-Terrorism**
6 **Legislation Amendment Act (No. 1) 2016**
7 **commences before this Act**

8 *Telecommunications (Interception and Access) Act 1979*

9 **18 Subsection 139(1)**

10 Omit “or 139B(2)”, substitute “, 139B(2) or 139C(2)”.

11 **19 Subsection 139A(1)**

12 Omit “or 139B(2)”, substitute “, 139B(2) or 139C(2)”.

13 **20 Section 142**

14 Omit “or 139B”, substitute “, 139B or 139C”.

15 **21 Paragraph 150(1)(b)**

16 Omit “or 139B(2)”, substitute “, 139B(2) or 139C(2)”.

17 **Division 4—Amendments after Counter-Terrorism**
18 **Legislation Amendment Act (No. 1) 2016**
19 **commences**

20 *Telecommunications (Interception and Access) Act 1979*

21 **22 Subsection 139B(1)**

22 Omit “or 139A(2)”, substitute “, 139A(2) or 139C(2)”.

23 **23 Subsection 139C(1)**

24 Omit “or 139A(2)”, substitute “, 139A(2) or 139B(2)”.