

| | | |
|---|---|--|
| <p align="center"><u>National Security Legislation Discussion Paper on Proposed Amendments</u></p> | <p align="center"><u>National Security Legislation Amendment Bill 2010</u></p> | |
|---|---|--|

| <p>Schedule 1 – Treason and Urging Violence</p> | | | |
|--|---|------------------|--|
| <p><i>Crimes Act 1914</i> Section 24</p> | <p>Omit “paragraph 80.1(1)(e)” and substitute “paragraph 80.1AA(1)(b) in subparagraph 24F(2)(b)(ii)</p> | <p>No change</p> | |
| <p>Sections 30A-30H</p> | <p>Repeal</p> | <p>No change</p> | |
| <p>Section 30R</p> | <p>Repeal</p> | <p>No change</p> | |
| | | | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|--|--|---|--|
| <p><i>Criminal Code Act 1995</i></p> <p>Section 80.1 Treason</p> | <p>In s 80.1(1) delete “called treason”</p> <p>Repeal paragraphs 80.1(1)(e) and (f)</p> <p>Amend paragraph 80.1(1)(h).</p> <p>Repeal subsection 80.1(1A)</p> <p>Amend subsection 80.1(1B)</p> <p>Insert s 80.1AA</p> <p>Saving - Proclamations</p> | <p>No change</p> <p>No change</p> <p>Paragraph 80.1(1)(h) repealed and 80.1(1)(g) amended accordingly</p> <p>No change</p> <p>Repeal subsection (1B)</p> <p>The Bill includes a note after paragraphs 80.1AA(1) and (4) providing that a court can impose a fine upon a body corporate convicted of an offence under these subsections in accordance with s 4B(3) of the <i>Crimes Act 1914</i> that was not proposed.</p> <p>No change</p> | |
| <p>Section 80.2 Urging violence</p> | <p>Repeal subsection 80.2(1) and insert a new offence of urging the overthrow of the Constitution or government by force or violence in a new s 80.2(1)</p> <p>In subsection 80.2(2) omit “first-mentioned” and substitute “first.”</p> | <p>The Bill inserts “first person” in 80.2(1) and (1)(a).</p> <p>No change</p> | |

| | | |
|---|---|--|
| <p align="center"><u>National Security Legislation Discussion Paper on Proposed Amendments</u></p> | <p align="center"><u>National Security Legislation Amendment Bill 2010</u></p> | |
|---|---|--|

| | | | |
|--|---|--|--|
| | <p>Repeal subsection 80.2(3) and substitute it with new s 80.2(3) offence “Urging interference in Parliamentary elections or constitutional referenda by force or violence.”</p> <p>In s 80.2(4) delete “that the first mentioned” and insert “ or a referendum, that the first”</p> <p>Repeal subsection 80.2(5) 28 days after Royal Assent</p> <p>Repeal subsection 80.2(6)</p> <p>Add s 80.2A</p> <p>Add s 80.2B</p> | <p>The Bill inserts “first person”</p> <p>No change</p> <p>No change</p> <p>No change, except for the note that there is a defence in s 80.3 for acts done in good faith and omit “first-mentioned” and substitute “first” the day after Royal Assent.</p> <p>No change other than the inclusion of “first person” in subsections (1) and (2).</p> <p>No change other than the inclusion of “first person” in subsections (1), (1)(a), and (2)</p> | |
|--|---|--|--|

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---|---|---|--|
| | Repeal the offences of “Urging a person to assist the enemy” and “Urging a person to assist those engaged in armed hostilities,” as well as the applicable defence, in subsections 80.2(7)-(9). | No change | |
| Section 80.3 Defence for acts done in good faith | In subsection 80.3(1) omit “Sections 80.1 and 80.2” and substitute “Subdivisions B and C” In subparagraph 80.3(2)(b)(ii) omit “paragraph 80.1(1)(e)” and substitute “paragraph 80.1AA(1)(b)” Insert subsections (3)(a), (b) and (c) at the end of s 80.3 Application | No change No change No change No change | |
| Section 80.4 | Not proposed | Omit “Section” and substitute (1) Subject to subsection (2)” Add “(2) Section 15.2 (extended geographical jurisdiction – category B) applies to an offence against subsection 80.2A(2) or 80.2B(2)” | |
| Section 80.5 Attorney- | Repeal s 80.5 | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|----------------------------|--|---|--|
| General's consent required | Application | No change | |
| Dictionary | Insert definitions of <i>treason</i> and <i>referendum</i> . | Only the definition of <i>referendum</i> is included. | |

| Schedule 2 - Terrorism | | | |
|--|---|-----------|--|
| <i>Classification (Publications, Films and Computer Games) Act 1995</i> | In paragraph 9A(2)(c) insert "substantial" before "risk". | No change | |
| <i>Criminal Code Act 1995</i> Paragraph 102.1(1A)(c) Definition of 'advocates' | Insert "substantial" before "risk." | No change | |
| Subsection 102.1(3) Expiration of regulations | Omit "second anniversary" and substitute "third anniversary," increasing the period until a listing automatically expires from 2 to 3 | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---|--|---|--|
| which list terrorist organisations | years. | | |
| Subsection 102.1A(1) | Omit Committee on ASIO, ASIS and DSD” and substitute “Committee on Intelligence and Security.” | No change | |
| Subsection 102.1A(2) | Repeal ‘Review of listing provisions’ | No change | |
| Section 100.5 | Adds subsection (3) | No change | |
| Subsection 102.1(1)(a) Definition of ‘close family member’ | Omit “de facto spouse or same-sex partner” and substitute “or de facto partner” and add Note | No change | |
| Subsection 105.35(3)(a) Definition of ‘family member’ | Omit “de facto spouse or same-sex partner” and substitute “or de facto partner” | No change | |
| Section 105.35 Contacting family members | Add subsection (4) | No change | |
| Subsection 390.1(1) | New definitions of ‘child’ | No changes to the proposed new definitions. | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---|---|--|--|
| Dictionary | ‘step-child’ and ‘step-parent’ | The Bill also includes new definitions of ‘de facto partner’ and ‘parent’ | |
| Subsections 272.3(2) and (3) Contingent | Not proposed | Repeal and substitute with a new subsection (2) clarifying who is a grandparent. | |
| Sections 100.1, 101.7, 102.7, 102.8A and B, 102.5, 102.1 and 102.1(19) | Proposed amendments: The definition of a ‘terrorist act’ (100.1); A new terrorism hoax offence (101.7); Clarifying the scope of the offence of providing support to a terrorist organisation (102.7); Declared aid organisations and the revocation of a declaration (102.8A and B); Exemption in the training offence for declared aid organisations (102.5); Definitions of ‘declared aid | None of these proposals are included in the Bill. | |

| | | |
|---|---|--|
| <p align="center"><u>National Security Legislation Discussion Paper on Proposed Amendments</u></p> | <p align="center"><u>National Security Legislation Amendment Bill 2010</u></p> | |
|---|---|--|

| | | | |
|--|---|--|--|
| | <p>organisation' and 'declared regional aid organisation' (102.1);</p> <p>Clarifying the meaning of 'close family member (102.1(19)).</p> | | |
|--|---|--|--|

| | | |
|--|--|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|--|--|--|

| Schedule 3 – Investigation of Commonwealth Offences | | | |
|--|--|--------------|--|
| <i>Crimes Act 1914</i> | Repeal definition of ‘arrested’ and insert a new definition | No change | |
| Subsection 23B(1) Definitions | Insert definition of ‘authorising officer’ Omit “or 23CA” and substitute “or 23DB” in definition of ‘investigation period’ Insert ‘judicial officer’ Insert ‘serious Commonwealth offence’ Repeal definition of ‘under arrest’ and substitute new definition | | |
| Subsection 23(2A) | Insert a new subsection (2A) clarifying that subsection (2) ceases to apply at the end of the investigation period, which does not affect any other detention power. | Not included | |
| Subsection | Omit all words after “in respect of | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|--|--|--|--|
| 23B(3) Definition of 'judicial officer' | that offence by” and substitute new (a)-(d) | | |
| Section 23C Period of investigation if arrested for a non-terrorism offence | <p>Delete the end of subsection 23C(2) and all of 23C(3) and insert a new 23C(2A) and 23C(3).</p> <p>Amend 23C(7) to clarify the time that may be disregarded for the purposed of subsection (4)-(6).</p> <p>Insert subsection 23C(7A) to further clarify subsection (7).</p> <p>Repeal s 23C(9) definition of 'judicial officer.'</p> | <p>Provides that detention can only occur “while arrested for the Commonwealth offence” and [<i>reasonably believes</i>] in s 23C(2)(b) is omitted</p> <p>Repeal subsection 23C(7) and substitute new provision. The new provision has “for one or more of the following reasons” rather than ‘or’ between each subsection.</p> <p>No longer divided into subsections (a) and (b).</p> <p>No change</p> <p>No change</p> | |
| Section 23CA | Repeal s 23CA | No change | |

| | | |
|---|---|--|
| <p align="center"><u>National Security Legislation Discussion Paper on Proposed Amendments</u></p> | <p align="center"><u>National Security Legislation Amendment Bill 2010</u></p> | |
|---|---|--|

| | | | |
|--|--|--|--|
| <p>Section 23D Application may be made for extension of the investigation period</p> | <p>Amend s 23D</p> | <p>Repeal s 23D and substitute new s 23D</p> <p>23D: “in writing” not included.</p> <p>Paragraph (2) provides that the application may be made by phone or in writing. Not in the proposal.</p> <p>Paragraph (5) is different to paragraph (4) in the proposal. A copy of the application does not have to be provided if the application was not made in writing.</p> | |
| <p>Section 23DA Magistrate may extend the investigation period</p> | <p>Repeal s 23DA and substitute with new s 23DA.</p> | <p>No change</p> | |
| <p>Section 23DB Period of investigation of arrested for a terrorism offence</p> | <p>Repeal s 23DB and substitute with new s 23DB</p> | <p>Inserts “terrorism” before “offence” in (1) and (2)</p> <p>Subsection (2) provides that the person may only be detained “while arrested for the terrorism offence.”</p> | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---|--|--|--|
| | | Subsection (10) has been collapsed into paragraphs (a) and (b) | |
| Section 23DC Application | Repeal s 23DC and substitute with new s 23DC | Includes 23DC(8) which provides that a person, or their legal representative may make representations to the magistrate about the application. | |
| Section 23DD Time specified by magistrate | Repeal s 23DD and substitute with a new s 23DD | No change | |
| Section 23DE Application for extension of investigation period | Repeal s 23DE and substitute with a new s 23DE | No change | |
| Section 23DF Magistrate may extend the investigation period | Repeal s 23DF and substitute with a new s 23DF | No change | |
| Section 23E Evidentiary provisions for electronic | Repeal s 23E and substitute with a new s 23E | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---------------|--|-----------|--|
| applications | | | |
| Section 23XGD | Omit “or 23CA(8)” and substitute with “or 23DB(9)” | No change | |
| Application | How amendments made by this Schedule apply to persons arrested more than once in 48 hours. | No change | |

| Schedule 4 – Powers to search premises in relation to terrorism offences | | | |
|---|---|--|--|
| | | | |
| <i>Crimes Act 1914</i> Section 3UB Consequential amendment about seized items under new power | Add (2) providing that s 3UB does not limit the operation of s 3UEA | No change | |
| Section 3UEA Searching premises | Insert new provision allowing entry without a warrant in emergencies. | Subsection (1)(a) in the draft has been removed. Insertion of “or do anything to make the premises safe” in subsection (5). | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---|---|---|--|
| | | Inclusion of subsection (7) which requires the police officer to notify the occupier of the entry 24 hours after the search has occurred. | |
| Section 3UF How seized things must be dealt with | After “section 3UE” insert “or 3UEA” in subsections (1), (4), and (5) | No change | |

| Schedule 5 – Re-entry of premises in emergency situation | | | |
|---|---|--|--|
| | | | |
| <i>Crimes Act 1914</i> Subsection 3C(1) Extension of time for re-entry under a search warrant | Insert “emergency situation” definition | No change | |
| Section 3J | Insert (aa) | No change | |
| Section 3JA Extension of time to re- | Insert s 3JA | Additional criteria in (3)(b) which provides that the issuing officer may extend the period during which the | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|--|--------------|---|--|
| enter premises in emergency situations | | executing officer and constable may be away from the premises “if the extension would not result in the period ending after the expiry of the warrant.” | |
| Subsection 3L(7) | Not proposed | Change “the issuing officer” to “an issuing officer” | |

| | | | |
|---|---|---|--|
| Schedule 6 – Amendments relating to bail | | | |
| <i>Crimes Act 1914</i> | Insert a new appeal right with subsections (3A)-(3D). | No change | |
| Section 15AA | Amend subsection (4) and its note. | No change | |
| Application | Not proposed | Amendments apply on and after the commencement of this Schedule to bail proceedings initiated on or after the commencement and to those initiated before, but only to those parts occurring after commencement. | |

| | | | |
|---|---|-----------|--|
| Schedule 7 – Listings under the Charter of the United Nations Act 1945 | | | |
| Subsections 15(1) and (3) | Insert “on reasonable grounds” before “satisfied” | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|------------------|---------------------------|-----------|--|
| Section 15A | Insert new s 15A | No change | |
| Subsection 19(3) | Insert new paragraph (aa) | No change | |
| Transitional | | No change | |

| Schedule 8 – Amendments relating to the disclosure of national security information in criminal and civil proceedings | | | |
|--|---|-----------|--|
| <i>National Security Information (Criminal and Civil Proceedings) Act 2004</i> | Subsection 6(1): after “defendant” insert “the defendant’s legal representative.” | No change | |
| | Subsection 6(2): delete “take place after the notice is given” and insert “occur after the notice is given (whether or not those parts began before that time)” | No change | |
| Section 6 Application to federal criminal proceedings | | | |
| Section 6A Application to civil proceedings | Paragraphs 6A(1)(b) and (2)(b): After “parties to the proceeding” insert “the defendant’s legal representative” | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|--|---|-----------------------------------|--|
| | <p>Paragraph 6A(2)(d) and Subparagraph 6A(2)(e)(ii): After “Divisions” insert “1A, 1”</p> <p>Subsection 6A(5): delete “take place after the notice is given” and insert “occur after the notice is given (whether or not those parts began before that time)”</p> | <p>No change</p> <p>No change</p> | |
| Section 7 Definitions | Insert definitions of “court official” and “national security information.” | No change | |
| Section 13 Meaning of <i>criminal proceeding</i> | Amended definition of ‘criminal proceeding’ | No change | |
| Section 14 Meaning of <i>federal criminal proceeding</i> | Repeal and substitute with a new s 14 | No change | |
| Section 15 | Repeal subsection 15(1) and | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|--|---|---|--|
| Meaning of <i>defendant</i> in relation to a federal criminal proceeding | substitute a new subsection 15(1). | | |
| Section 15A Meaning of <i>civil proceeding</i> | Amend subsection 15A(2)(b) and add subsection 15A(3). | No change | |
| Section 16 Disclosure of information in permitted circumstances | Repeal subsections 16(aa), (ab), (ac), (ad), and (b) and substitute new subsection 16(b). | No change | |
| Section 17 Meaning of likely to prejudice national security | Amend s 17 | Splits s 17 into subsections “(1) A disclosure of information (2) The contravention of a requirement is likely to prejudice national security...” | |
| Section 19 General powers of a | Insert subsections 19(1A) and (3A). | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|--|---|----------------------------|--|
| court | | | |
| Section 20A Attorney- General may attend and be heard at federal criminal proceedings | Insert a new s 20A | No change | |
| Section 20B Court to consider hearing in camera etc | Insert a new s 20B | No change | |
| Section 21 National security information hearings | Repeal subsection 21(1) and insert new subsections (1) and (1A) Amend s 21(2) | No change No change | |
| Section 22 Arrangements for federal criminal proceedings | Repeal subsection 22(1) and substitute a new subsection 22(1) | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---|--|---|--|
| about disclosure etc of national security information | | | |
| Section 23 Protection of national security information disclosed in federal criminal proceedings | Amend paragraph 23(1)(a) Repeal subsection 23(2) and (3) and substitute a new subparagraph (2) | No change No change | |
| Section 24 Notification of expected disclosure of national security information | Repeal subsection 24(1) and insert new subsections 24(1) and (1A). Repeal subsections 24(3) and (4) and insert new subsections 24(3) and (4). New subsection 24(5) | No change No change No change | |
| Section 25 Preventing | Repeal paragraph 25(1)(b) and substitute a new paragraph 25(1)(b). | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|--|---|---|--|
| witnesses from disclosing information in federal criminal proceedings by not allowing them to answer questions | <p>Amend subsection 25(2).</p> <p>Insert a new subsection 25(2A).</p> <p>Repeal subsections 25(3)-(7) and substitute new subsections 25(3)-(7).</p> <p>Add a new subsection 25(8)</p> | <p>No change</p> <p>No change</p> <p>No change</p> <p>No change</p> | |
| Section 26 Attorney-General's criminal non-disclosure certificate | <p>Amend subparagraphs 26(1)(a)(i), (ii) and (iii).</p> <p>Repeal subsection 26(8) and substitute a new subsection 26(8).</p> | <p>No change</p> <p>No change</p> | |
| Section 27 Consequences of Attorney-General giving criminal non-disclosure certificates | <p>Repeal subsections 27(1) and (2) and substitute a new subsection (1).</p> <p>Amend subsection 27(3).</p> | <p>No change</p> <p>No change</p> | |
| Section 28 Attorney- | Repeal subparagraph 28(1)(a)(i) and insert a new subparagraph. | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|--|---|---|--|
| General's criminal exclusion certificate | Amend subparagraph 28(1)(a)(ii). Amend subsection 28(2). Amend subsection 28(5). Repeal subsection 28(6). Amend subsections 28(9) and (10). | No change No change No change No change No change | |
| Section 29 Closed hearing requirements | Amend subsection 29(1). Repeal paragraph 29(2)(f) and substitute with a new paragraph (f). Amend subparagraph 29(5)(c)(iii). Amend subsection 29(7). | No change No change No change No change | |
| Section 30 Intervention by Attorney-General in federal criminal proceedings | Repeal s 30 | No change | |
| Section 31 | Amend paragraphs 31(6)(a) and (b) | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---|---|---|--|
| Court orders | | | |
| Section 32 Reasons for court orders | Amend paragraphs 32(1)(e). Amend subsection 32(2). Amend subsection 32(3) | No change No change No change | |
| Section 37 Appeals against s 31 court orders | Amend subsection 37(1). | No change | |
| Section 38AA Attorney- General etc may attend and be heard at civil proceedings | Insert a new s 38AA | No change | |
| Section 38AB Court to consider hearing in camera etc | Insert a new s 38AB | No change | |
| Section 38A | Repeal subsections 38A(1), (2) and | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---|---|----------------------------|--|
| National security information hearings | (3) and substitute with new subsections 38A(1) and (2). Amend subsection 38A(4). | No change | |
| Section 38B Arrangements for civil proceedings about disclosures of national security information | Repeal subsection 38B(1) and substitute with a new subsection (1). | No change | |
| Section 38C Protection of national security information in a civil proceeding | Amend subsection 38C(1). Repeal subsections 38C(2) and (3) and substitute with a new subsection (2). | No change No change | |
| Section 38D Notification of expected disclosure of national security | Repeal subsection 38D(1) and substitute with a new subsection (1). Amend subsection 38D(2) and insert a new paragraph 38D(2)(aa) and subsection (c). | No change No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---|---|--|--|
| information | Repeal subsections 38D(4) and (5) and substitute with new subsections. | No change | |
| Section 38E Preventing witnesses from disclosing information in a civil proceedings by not allowing them to answer questions | Repeal paragraph 38E(1)(b) and substitute with a new paragraph (b). Amend subsection 38E(2). Insert a new subsection 38E(2A) Amend subsections 38E(4) and (6). | No change No change No change No change | |
| Section 38F Attorney-General's non-disclosure certificate | Amend subparagraphs 38F(1)(a)(i) and (ii). Repeal subsection 38F(9) and substitute with a new subsection (9). | No change No change | |
| Section 38H Attorney-General's civil witness exclusion certificate | Amend subparagraphs 38H(1)(a)(i) and (ii) Repeal subsection 38H(2) and replace with a new subsection. Amend subsection 38H(9). | No change No change No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---|--|----------------------------|--|
| | | | |
| Section 38I Closed hearing requirements in civil proceedings | Repeal paragraph 38I(2)(e) and substitute with a new paragraph (e). Amend subsection 38I(7). | No change No change | |
| Section 38K Intervention by Attorney- General in civil proceedings | Repeal s 38K | No change | |
| Section 38L Court orders in civil proceedings | Amend paragraphs 38L(6)(a) and (b). | No change | |
| Section 38M Reasons for court orders | Amend paragraph 38M(1)(d). Amend subsections 38M(2) and (3). | No change No change | |
| Section 38R Appeals against court orders in s 38L | Amend subsection 38R(1). | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|--|--|--|--|
| Section 39 Security clearance for defendant's legal representative | Insert a new subsection 39(1A) providing for what considerations should be taken into account Amend subsection 39(3). Not proposed | No change No change Omit "by the Department" in ss 39(2), (3)(a) and (5)(b)(i). | |
| Section 39A Security clearance for parties etc to a civil proceeding | Add a new subsection 39A(1A). Amend subsection 39A(3). Not proposed | No change Instead of "defendant" the Bill uses "party" Omit "by the Department" in ss 39A(2), (3)(a) and (5)(d). | |
| Section 40 Offence to disclose information before Attorney-General gives criminal non-disclosure certificate etc under s 26 | Repeal subsection 40(1) and substitute with a new subsection. Insert a new subsection 40(1A). Amend paragraph 40(2)(a.) | No change No change No change | |
| Section 41 | Repeal s 41 and substitute with a | No change | |

| | | |
|---|---|--|
| <p align="center"><u>National Security Legislation Discussion Paper on Proposed Amendments</u></p> | <p align="center"><u>National Security Legislation Amendment Bill 2010</u></p> | |
|---|---|--|

| | | | |
|---|-------------------------------|--|--|
| <p>Offence to disclose information before Attorney-General gives criminal witness exclusion certificate etc. Under s 28</p> | <p>new s 41.</p> | | |
| <p>Section 42 Offence to contravene requirement to notify the Attorney-General etc. Under ss 24 and 25</p> | <p>Amend paragraph 42(a).</p> | <p>No change</p> | |
| <p>Section 45A Offence to contravene regulations</p> | <p>Insert a new s 45A.</p> | <p>There is an additional paragraph (d), which provides that the contravention of the requirement must be likely to prejudice national security.</p> | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---|--|--|--|
| Section 46 | Not proposed | In subparagraph 46(c)(i), omit “the Attorney-General’s Department has given the legal representative or person mentioned in subparagraph (a)(ii)” and substitute “the legal representative or person mentioned in subparagraph (a)(ii) has.” | |
| Section 46A Offence to disclose information before Attorney-General gives civil non-disclosure certificate under s 38F | Repeal subsection 46A(1) and substitute with a new subsection. Insert a new subsection 46A(1A). | No change No change | |
| Section 46B Offence to disclose information before Attorney-General gives civil witness exclusion certificate etc | Repeal s 46B and substitute with a new s 46B | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---|--|---|--|
| under s 38H | | | |
| Section 46C Offence to contravene requirement to notify Attorney- General etc. Under ss 38D and 38E | Repeal s 46C and substitute with a new s 46C. | No change | |
| Section 46FA Offence to contravene regulations | Insert a new s 46FA | The Bill includes a paragraph (d) which provides that the contravention of the requirement must be likely to prejudice national security. | |
| Section 46G | Not proposed | Omit “Attorney-General’s Department has given the party to the proceeding, the legal representative or the person mentioned in subparagraph (a)(iii)” and substitute it with “the party to the proceeding, the legal representative or the person mentioned in subparagraph (a)(iii) has”. | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---------------------------|--|--|--|
| Application of Amendments | | The Bill cites “items 17, 103 and 107” instead of “items 96 and 99” in the proposal. | |
| Saving provision | | No change | |

| Schedule 9 – Functions of Inspector-General of Intelligence and Security | | | |
|---|--------------|---|--|
| <i>Inspector-General of Intelligence and Security Act 1986</i> | Not proposed | Repeal the definition of ‘agency’ and substitute a new definition of ‘Commonwealth agency.’ | |
| Subsection 3(1) | Not proposed | In the definition of ‘employee’ omit “an agency” and insert “a Commonwealth agency.” | |
| | Not proposed | Repeal the definition of ‘head’ and substitute it with a new definition. | |
| | Not proposed | Insert a new definition of ‘intelligence agency.’ | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|-----------------|--|--|--|
| | Not proposed | In the definition of ‘responsible Minister,’ omit “an agency” and substitute it with “a Commonwealth agency.” | |
| Subsection 3(3) | Not proposed | Omit “an agency shall be” and substitute it with “a Commonwealth agency is.” | |
| Subsection 3(4) | Not proposed | Add a new subsection (4) allowing the Minister to declare a body to be a Commonwealth agency by legislative instrument. | |
| Section 4 | Not proposed Not proposed Not proposed | Omit “or security” in paragraph 4(a)(i). Add “and” at the end of subparagraphs 4(a)(i) and (iii) Insert a new paragraph 4(ba) providing for the assistance of Ministers in investigating intelligence or security. | |
| Subsection 8(1) | Not proposed | In subparagraph 8(1)(c)(i), after “Commonwealth agency” insert “(within the meaning of Part IV of | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|-------------|---|---|--|
| | <p>Not proposed</p> <p>Not proposed</p> <p>Not proposed</p> | <p>the <i>Australian Security Intelligence Organisation Act 1979</i>)”</p> <p>In subparagraph 8(1)(c)(ii), after “Security Appeals”, insert “Division of the Administrative Appeals”.</p> <p>In subsection 8(5), insert “intelligence” after “an employee”.</p> <p>Repeal subsection 8(8)</p> | |
| Section 9 | Not proposed | Repeal s 9 and substitute with a new s 9 providing for additional inquiry functions of the Inspector-General | |
| Section 9AA | Not proposed | Insert s 9AA, which provides for the limits on the Inspector-General’s functions. | |
| Section 9A | Not proposed | <p>After “Inspector-General” (first occurring) insert “in relation to an intelligence agency”.</p> <p>Omit “relevant”</p> | |
| Section 11 | Not proposed | In paragraph 11(1)(a) and | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|--------------------|--------------|--|--|
| | | subsections 11(2) and (5), omit “an agency” and substitute with “an intelligence agency”. | |
| Sections 12 and 14 | Not proposed | Omit “an agency” and substitute with “an intelligence agency”. | |
| Section 15 | Not proposed | In subsections 15(1), (2) and (3), omit “an agency and substitute with “a Commonwealth agency”. At the end of subsection 15(3) add a new paragraph (c). | |
| Section 16 | Not proposed | Omit “an agency and substitute with “a Commonwealth agency”. | |
| Section 17 | Not proposed | Omit “an agency and substitute with “a Commonwealth agency” in subsections 17(4), (6), (7), (8), (9) and (10). | |
| Section 18 | Not proposed | Omit “, an Agency (within the meaning of the <i>Public Service Act 1999</i>) or an authority of the Commonwealth” and substitute with “or a Commonwealth agency”. | |
| Section 19 | Not proposed | Omit “an agency and substitute with | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|------------|--------------|---|--|
| | | “a Commonwealth agency”. | |
| Section 20 | | <p>Omit “an agency” and substitute with “a Commonwealth agency” in paragraph 20(a).</p> <p>In paragraph 20(b) insert “or other protective security” after “national security”.</p> | |
| Section 21 | Not proposed | <p>Repeal subsection 21(1) and substitute with a new subsections 21(1) and (1AA) providing what the Inspector-General must do after completing an inquiry.</p> <p>In subsections (1A) and (1B), omit “an agency a copy of a draft report” and substitute with “a Commonwealth agency a draft agency copy”.</p> <p>Omit “a copy of that report” and substitute with “the draft agency copy” in 21(1B).</p> <p>Add a new paragraph (c) at the end of subsection 21(1B).</p> | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|------------|--------------|---|--|
| | | <p>In paragraph 21(2)(a), omit “a copy of a draft report to the head of an agency” and substitute with “a draft agency copy to the head of a Commonwealth agency”.</p> <p>In paragraph 21(2)(b) omit “a copy of the draft report” and substitute with “the draft agency copy”.</p> | |
| Section 22 | Not proposed | <p>Repeal subsection 22(1) and substitute with new subsections 22(1) and (1A).</p> <p>Omit “an agency” and substitute with “a Commonwealth agency” in 22(2)(b).</p> <p>In subsection 22(3), after “If the report” insert “,or a final agency copy of the report” and after “of the report” insert “, or the final agency copy of the report”.</p> <p>Repeal subsection 22(4) and substitute a new subsection providing for what the Inspector-General must give the responsible Minister.</p> | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|-------------|--------------|---|--|
| | | | |
| Section 23 | Not proposed | After “complaint insert “in respect of action taken by an intelligence agency” in subsection 23(1). | |
| Section 24 | Not proposed | In 24(1) omit “an agency has given a copy” and substitute with “a Commonwealth agency and has, under section 22, given a final agency copy”. Omit “an agency” and substitute with “a Commonwealth agency” in 24(2) | |
| Section 24A | Not proposed | Omit “an agency” and substitute with “a Commonwealth agency” in 24A(1)(a). Repeal paragraph 24A(1)(b) and substitute with a new paragraph. | |
| Section 25A | Not proposed | Omit “an agency” and substitute “an intelligence agency”. | |
| Section 32A | Not proposed | Omit “an agency” and substitute “an intelligence agency” in subsection 32A(2). | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---------------|--------------|---|--|
| Section 32B | Not proposed | Omit “the agency” and substitute “that agency in subsection 32B(2). | |
| Section 35(5) | Not proposed | After “other countries” insert “, law enforcement operations”. | |

| Schedule 10 – Consequential amendments relating to the establishment of the Parliamentary Joint Committee on Law Enforcement | | | |
|---|---|-----------|--|
| <i>Administrative Decisions (Judicial Review Act) 1977</i> | After paragraph (db) of Schedule 2 insert paragraph (dc). | No change | |
| <i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i> | Omit “Chair of the Board” and substitute with “the Chief Executive Officer”. | No change | |
| Paragraph 128(14)(c) | Omit “the Australian Crime Commission under subsection 59(6A) of the <i>Australian Crime Commission Act 2002</i> ” and substitute with “Law Enforcement under subsection 8(1) of the <i>Parliamentary</i> | No change | |

| | | |
|---|---|--|
| <u>National Security Legislation Discussion Paper on Proposed Amendments</u> | <u>National Security Legislation Amendment Bill 2010</u> | |
|---|---|--|

| | | | |
|---|--|-----------------|--|
| | <i>Joint Committee on Law Enforcement Act 2010</i> ". | | |
| <i>Australian Crime Commission Act 2002</i> | Add a new paragraph (d) | No change | |
| Subsection 51(4) | | | |
| Part III | Repeal | No change | |
| Subsections 59(6A), (6B), (6C) and (6D) | Repeal | No change | |
| Transitional | Committee on the Australian Crime Commission. | No change | |
| <i>Australian Federal Police Act 1979</i> | Insert a new paragraph (ea) in subsection (2). | No change | |
| Section 60A | Omit "(d) and (e)" and substitute with "(d), (e) and (ea)" in paragraph 60A(2)(f). | No change | |
| | Add subparagraph (iv) to 60A(3)(a) | Not in the Bill | |

| | | |
|---|---|--|
| <p align="center"><u>National Security Legislation Discussion Paper on Proposed Amendments</u></p> | <p align="center"><u>National Security Legislation Amendment Bill 2010</u></p> | |
|---|---|--|

| | | | |
|--|---------------------|--|--|
| <p><i>Proceeds of Crime Act 2002</i></p> <p>Subsection 179U(1)</p> | <p>Not proposed</p> | <p>Omit “the Australian Crime Commission: and substitute with “Law Enforcement”.</p> | |
|--|---------------------|--|--|