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Supplementary submission  
 Mr. Joe-Cheong Stern  
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Table comparing secrecy provisions in *Australian Security Intelligence Organisation Act 1979* (Cth) and *Australian Crime Commission Act 2002* (Cth)

	<i>Australian Security Intelligence Organisation Act 1979</i> (Cth) secrecy provisions	<i>Australian Crime Commission Act 2002</i> (Cth) secrecy provisions
When does the prohibition against disclosure apply?	Once detention or questioning warrant issued <sup>1</sup>	When the examiner includes a notation of non-disclosure in a summons or notice <sup>2</sup>
On what grounds can a prohibition be issued?	Prohibition automatically applies once warrant issued <sup>3</sup>	The examiner must include a notation that disclosure of information about the summons/notice or any 'official matter' relating to such a summons/notice is prohibited <sup>4</sup> if s/he is satisfied that failure to do so will prejudice: <ul style="list-style-type: none"> <li>• the safety or reputation of a person; or</li> <li>• the fair trial of person who may or has been charged with an offence; or</li> <li>• the effectiveness of an investigation or operation.<sup>5</sup></li> </ul> The examiner <i>may</i> include such a notation if s/he is satisfied that failure to do so <i>might</i> prejudice any of the above matters or is otherwise contrary to public interest. <sup>6</sup>
To whom does prohibition against disclosure apply?	General application <sup>7</sup>	A person served with, or otherwise given, the summons or notice containing the notation of non-disclosure <sup>8</sup>
What information is	Information disclosing:	Information regarding:

<sup>1</sup> *Australian Security Intelligence Organisation Act 1979* (Cth) ss 34VAA(1)(a) & 34VAA(2)(a).

<sup>2</sup> *Australian Crime Commission 2002* (Cth) s 29B(1).

<sup>3</sup> *Australian Security Intelligence Organisation Act 1979* (Cth) ss 34VAA(1)(a) & 34VAA(2)(a).

<sup>4</sup> *Australian Crime Commission 2002* (Cth) s 29A(1).

<sup>5</sup> *Ibid* s 29A(2)(a).

<sup>6</sup> *Ibid* s 29A(2)(b)-(c).

<sup>7</sup> *Australian Security Intelligence Organisation Act 1979* (Cth) ss 34VAA(1)-(2).

<sup>8</sup> *Australian Crime Commission Act 2002* (Cth) s 29B(1)

<p><b>covered by the prohibition?</b></p>	<ul style="list-style-type: none"> <li>• issuing of warrant, its content or detention or questioning under warrant during period warrant in force;<sup>9</sup></li> <li>• 'operational information'<sup>10</sup> acquired in/directly as a result of issuing of warrant or conduct under the warrant while warrant in force and two years expiry of warrant.<sup>11</sup></li> </ul>	<ul style="list-style-type: none"> <li>• existence of the summons or notice;</li> <li>• any 'official matter'<sup>12</sup> connected with the summons or notice.</li> </ul>
<p><b>What are the exceptions to the prohibition?</b></p>	<p>'Permitted disclosures'<sup>13</sup> including disclosure:</p> <ul style="list-style-type: none"> <li>• made by persons exercising powers under the Act;</li> <li>• to a lawyer for the purpose of seeking legal advice or representation relating to a questioning or detention warrant;</li> <li>• permitted by Director-General of ASIO or Attorney-General.<sup>14</sup></li> </ul>	<p>Includes disclosure to:</p> <ul style="list-style-type: none"> <li>• persons specified in notation;</li> <li>• legal practitioners for purpose of obtaining legal advice etc;</li> <li>• legal aid officer for purpose of obtaining legal and financial assistance.<sup>15</sup></li> </ul>
<p><b>How long does the prohibition last?</b></p>	<ul style="list-style-type: none"> <li>• Prohibition relating to issuing etc of warrant: period warrant in force;<sup>16</sup></li> <li>• Prohibition relating to 'operational information' acquitted in/directly as a result of the issuing of a warrant or conduct under it: period warrant in force and two years after its expiry.<sup>17</sup></li> </ul>	<p>Five years after issuing of summons or notice<sup>18</sup> or when:</p> <ul style="list-style-type: none"> <li>• no evidence of an offence under the Act obtained;</li> <li>• evidence assembled and decision made not to prosecute;</li> <li>• evidence assembled and criminal proceedings have begun<sup>19</sup></li> </ul> <p>whichever occurs earlier.</p>

<sup>9</sup> *Australian Security Intelligence Organisation Act 1979* (Cth) s 34VAA(1)(a)-(c), (e).

<sup>10</sup> 'Operational information' is defined by *Australian Security Intelligence Organisation Act 1979* (Cth) s 34VAA(5).

<sup>11</sup> *Australian Security Intelligence Organisation Act 1979* (Cth) ss 34VAA(1)(a)-(c), (d)-(e) & s 34VAA(2).

<sup>12</sup> This phrase is defined by *Australian Crime Commission 2002* (Cth) section 30(7).

<sup>13</sup> *Australian Security Intelligence Organisation Act 1979* (Cth) ss 34VAA(1)(f) & 34VAA(2)(f).

<sup>14</sup> 'Permitted disclosures' is defined by *Australian Security Intelligence Organisation Act 1979* (Cth) ss 34VAA(5).

<sup>15</sup> *Australian Crime Commission Act 2002* (Cth) s 29B(2)-(4).

<sup>16</sup> *Australian Security Intelligence Organisation Act 1979* (Cth) s 34VAA(1)(a)-(c), (e).

<sup>17</sup> *Australian Security Intelligence Organisation Act 1979* (Cth) ss 34VAA(1)(a)-(c), (d)-(e) & s 34VAA(2).

<sup>18</sup> *Australian Crime Commission Act 2002* (Cth) s 29B(5)(b).

<sup>19</sup> *Australian Crime Commission Act 2002* (Cth) ss 29A(4) & 29B(5)(a).