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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Crimes Legislation Amendment (Powers
and Offences) Bill 2011**

No. , 2011

(Justice)

**A Bill for an Act to amend various Acts relating to
the enforcement of the criminal law, and for other
purposes**

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1 **A Bill for an Act to amend various Acts relating to**
2 **the enforcement of the criminal law, and for other**
3 **purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Crimes Legislation Amendment*
7 *(Powers and Offences) Act 2011*.

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.
13

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	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, Part 1	The day after this Act receives the Royal Assent.	
3. Schedule 1, Part 2	A single day to be fixed by Proclamation. However, if the provision(s) 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.	
4. Schedule 2, Part 1	The day after this Act receives the Royal Assent.	
5. Schedule 2, Part 2	A single day to be fixed by Proclamation. However, if the provision(s) 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.	
6. Schedule 3	The day after this Act receives the Royal Assent.	
7. Schedule 4	The day after this Act receives the Royal Assent.	
8. Schedule 5, items 1 to 14	The day this Act receives the Royal Assent.	
9. Schedule 5, item 15	Immediately after the commencement of the provision(s) covered by table item 6. However, if item 2 of Schedule 1 to the <i>Customs Amendment (Military End-Use) Act 2011</i> does not commence at or before the commencement of the provisions covered by table item 6, the provision(s) do not commence at all.	
10. Schedule 6,	The later of:	

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
items 1, 2 and 3	(a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of items 1 to 154 of Schedule 2 to the <i>Crimes Legislation Amendment Act (No. 2) 2011</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
11. Schedule 6, items 4 to 8	The day after this Act receives the Royal Assent.	
12. Schedule 6, item 9	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of items 1 to 154 of Schedule 2 to the <i>Crimes Legislation Amendment Act (No. 2) 2011</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
13. Schedule 6, items 10 and 11	The day after this Act receives the Royal Assent.	
14. Schedule 7	A single day to be fixed by Proclamation. However, if the provision(s) 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.	
15. Schedule 8	The day after this Act receives the Royal Assent.	
1 2 3	Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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

4 **3 Schedule(s)**

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

1 **Schedule 1—Forensic procedures**

2 **Part 1—Amendments commencing on day after**
3 **Royal Assent**

4 *Crimes Act 1914*

5 **1 Subsection 23WA(1)**

6 Insert:

7 *accredited laboratory* means:

- 8 (a) a forensic laboratory accredited by the National Association
9 of Testing Authorities, Australia; or
10 (b) a forensic laboratory that is of a kind prescribed by the
11 regulations for the purposes of this paragraph.

12 **2 Subsection 23WA(1) (definition of *Commissioner*)**

13 Omit “staff member”, substitute “AFP appointee (within the meaning of
14 the *Australian Federal Police Act 1979*)”.

15 **3 Subsection 23WA(1) (definition of *informed consent*)**

16 Omit “section 23WF”, substitute “sections 23WF, 23WG, 23XWG and
17 23XWR”.

18 **4 Subsection 23WA(1) (paragraph (b) of the definition of**
19 ***intimate forensic procedure*)**

20 After “blood”, insert “(other than by a finger prick)”.

21 **5 Subsection 23WA(1) (paragraph (c) of the definition of**
22 ***intimate forensic procedure*)**

23 Repeal the paragraph.

24 **6 Subsection 23WA(1) (after paragraph (a) of the definition of**
25 ***non-intimate forensic procedure*)**

26 Insert:

- 27 (aa) the taking of a sample of blood by a finger prick;
28 (ab) the taking of a sample of saliva, or a sample by buccal swab;

1 **7 Subsection 23WA(1) (definition of *senior constable*)**

2 Repeal the definition.

3 **8 Subsection 23WA(1)**

4 Insert:

5 *senior police officer* means a constable of the rank of sergeant or
6 higher.

7 **9 Section 23WC (table item 2)**

8 Omit “senior constable”, substitute “senior police officer”.

9 **10 Paragraph 23WG(3)(c)**

10 Omit “senior constable”, substitute “senior police officer”.

11 **11 Paragraph 23WJ(3)(a)**

12 Omit “constable”, substitute “senior police officer”.

13 **12 Division 4 of Part ID (heading)**

14 Repeal the heading, substitute:

15 **Division 4—Non-intimate forensic procedures on suspect**
16 **by order of senior police officer**

17 **13 Section 23WM (heading)**

18 Repeal the heading, substitute:

19 **23WM Non-intimate forensic procedure may be carried out by**
20 **order of senior police officer**

21 **14 Subsection 23WM(1)**

22 Omit “senior constable”, substitute “senior police officer”.

23 **15 Section 23WN (heading)**

24 Repeal the heading, substitute:

1 **23WN Circumstances in which senior police officer may order**
2 **non-intimate forensic procedures**

3 **16 Section 23WN**

4 Omit “senior constable” (wherever occurring), substitute “senior police
5 officer”.

6 **17 Section 23WO (heading)**

7 Repeal the heading, substitute:

8 **23WO Matters to be considered by senior police officer before**
9 **ordering forensic procedure**

10 **18 Section 23WO**

11 Omit “senior constable” (wherever occurring), substitute “senior police
12 officer”.

13 **19 Section 23WP (heading)**

14 Repeal the heading, substitute:

15 **23WP Record of senior police officer’s order**

16 **20 Subsections 23WP(1) and (2)**

17 Omit “senior constable”, substitute “senior police officer”.

18 **21 Paragraphs 23WR(a) and (b)**

19 After “procedure”, insert “(whether or not consent has been sought)”.

20 **22 Paragraph 23XL(b)**

21 Repeal the paragraph, substitute:

22 (b) the sample is taken using the least painful technique known
23 and available to the person.

24 **23 Section 23XM (table item 2)**

25 After “blood”, insert “(other than by a finger prick)”.

26 **24 Section 23XM (table item 3)**

27 Repeal the item.

1 **25 Section 23XM (after table item 9)**

2 Insert:

3

9A	the taking of a sample of blood by a finger prick	medical practitioner nurse constable appropriately qualified person	no
----	---	--	----

9B	the taking of a sample of saliva, or a sample by buccal swab	medical practitioner dentist dental technician nurse constable appropriately qualified person	no
----	--	--	----

4 **26 Subsection 23XN(1)**

5 Omit “, a sample of saliva, a buccal swab”.

6 **27 Section 23XU**

7 Repeal the section, substitute:

8 **23XU Samples—sufficient material to share**

9 (1) This section applies if:

- 10 (a) a sample is taken from a suspect under this Part; and
- 11 (b) the suspect requests the investigating constable that the
- 12 sample be shared; and
- 13 (c) there is sufficient material to be analysed both in the
- 14 investigation of the offence and on behalf of the suspect.

15 (2) The investigating constable must invite the suspect to nominate an

16 accredited laboratory to which a part of the material sufficient for

17 analysis will be provided on behalf of the suspect.

18 (3) If the suspect nominates an accredited laboratory, the investigating

19 constable must ensure that:

- 20 (a) a part of the material sufficient for analysis is provided to that
- 21 laboratory, on behalf of the suspect, within the period of 28
- 22 days beginning on the day of the nomination; and

1 (b) reasonable care is taken to ensure that the suspect's part of
2 the material is protected and preserved until it is provided to
3 that laboratory.

4 Note: Division 9 contains provisions about making material available to the
5 suspect.

6 (4) The suspect must bear the costs in relation to any analysis of that
7 part of the material provided to that laboratory.

8 **28 Subsection 23XUA(2)**

9 Omit "request that a person of his or her", substitute "request the
10 investigating constable that a person (the *attende*e) of the suspect's".

11 **29 After subsection 23XUA(2)**

12 Insert:

13 (2A) The investigating constable must then inform the suspect that the
14 attendee may be directed by the person (the *analyst*) responsible
15 for analysing the material to leave the premises at which the
16 analysis is being conducted if the attendee does not comply with
17 instructions given by the analyst in relation to the analysis of the
18 material.

19 **30 Subsection 23XUA(3)**

20 Omit "The person chosen", substitute "Subject to this section, the
21 attendee".

22 **31 Subsection 23XUA(3)**

23 Omit "person responsible for analysing the material", substitute
24 "analyst".

25 **32 At the end of section 23XUA**

26 Add:

27 (4) The analyst may give instructions to the attendee relating to the
28 analysis of the material.

29 (5) The analyst may give a direction to the attendee to leave the
30 premises at which the analysis is being conducted if the attendee
31 fails to comply with such an instruction.

1 (6) If the analyst gives such a direction, the analyst must inform the
2 attendee that a failure to comply with the direction is an offence
3 against subsection (7). A failure to comply with this subsection
4 does not affect the validity of the direction.

5 (7) The attendee commits an offence if:
6 (a) the attendee is given a direction under subsection (5); and
7 (b) the attendee fails to comply with the direction.

8 Penalty: 30 penalty units.

9 (8) An offence against subsection (7) is an offence of strict liability.

10 Note: For strict liability, see section 6.1 of the *Criminal Code*.

11 **33 Section 23XW**

12 Repeal the section, substitute:

13 **23XW Results of analysis**

14 If:

15 (a) material from a sample taken from a suspect is analysed in
16 the investigation of the offence; and

17 (b) before or after the analysis, the suspect has requested the
18 investigating constable that a copy of the results of any
19 analysis be provided to the suspect;

20 then the investigating constable must ensure that, within 14 days of
21 the analysis or of the request (whichever is the later):

22 (c) a copy of the results of the analysis is provided to the
23 suspect; and

24 (d) if the DNA profile derived from that material has been
25 matched, as part of the investigation of the offence, under
26 section 23YDAF with a DNA profile placed on the crime
27 scene index in relation to the offence—the suspect is
28 informed in writing of that match.

29 **34 Subsection 23XWB(1)**

30 Repeal the subsection, substitute:

1 *Intimate forensic procedure to which Division applies*

- 2 (1) This Division applies to an intimate forensic procedure that is the
3 taking of a sample of blood (other than by a finger prick).

4 **35 At the end of subsection 23XWB(2)**

5 Add:

- 6 ; (c) the taking of a sample of blood by a finger prick;
7 (d) the taking of a sample of saliva, or a sample by buccal swab.

8 **36 At the end of subsection 23XWC(1)**

9 Add:

- 10 ; or (c) by order of a judge or magistrate under section 23XWO.

11 **37 Subsection 23XWC(3)**

12 After “by order of a”, insert “judge or”.

13 **38 Paragraph 23XWD(b)**

14 After “by order of a”, insert “judge or”.

15 **39 Subsection 23XWE(1)**

16 Repeal the subsection, substitute:

- 17 (1) Division 6 applies in relation to the carrying out under this
18 Division of a forensic procedure on an offender. For this purpose:
19 (a) references in Division 6 to the suspect are taken to be
20 references to the offender; and
21 (b) references in Subdivision F of Division 6 to the investigating
22 constable are taken to be references to the Commissioner.

23 Note: By applying Division 6, sections 23XJ (about use of force in carrying
24 out forensic procedures) and 23XK (about forensic procedures not
25 being carried out in a cruel, inhuman or degrading manner) apply to
26 the carrying out of a forensic procedure under this Division.

27 **40 Paragraph 23XWL(c)**

28 Repeal the paragraph.

29 **41 After section 23XWN**

30 Insert:

1 **23XWNA Circumstances in which judge or magistrate may order**
2 **forensic procedure**

3 A judge or magistrate may, under section 23XWO, order the
4 carrying out of a forensic procedure on an offender if:

- 5 (a) the offender is not in custody and has not consented to the
6 forensic procedure (whether or not consent has been sought);
7 or
8 (b) the offender is in custody and has not consented to the
9 forensic procedure (whether or not consent has been sought);
10 or
11 (c) under section 23WE, the offender cannot consent to the
12 forensic procedure.

13 **42 Subsection 23XWO(1)**

14 Omit “directing a serious offender to consent to an intimate forensic
15 procedure to which this Division applies being carried out on the
16 serious offender”, substitute “for the carrying out of an intimate forensic
17 procedure, or a non-intimate forensic procedure, to which this Division
18 applies on a serious offender (other than a child or an incapable
19 person)”.

20 **43 Paragraph 23XWO(7)(c)**

21 Repeal the paragraph.

22 **44 After section 23XWO**

23 Insert:

24 **23XWOA Securing the presence of offender at hearing—offender in**
25 **custody**

26 (1) If:

- 27 (a) an application is made under section 23XWO to a judge or
28 magistrate for an order under that section for the carrying out
29 of a forensic procedure on an offender; and
30 (b) the offender is in custody or is otherwise detained under a
31 law of the Commonwealth, a State or a Territory (*original*
32 *custody*);

33 the judge or magistrate may, on the application of a constable,
34 issue a warrant directing the person holding the offender to deliver

- 1 the offender into the custody (*temporary custody*) of the constable
2 for the hearing of the application.
- 3 (2) If the judge or magistrate refuses to make the order under
4 section 23XWO, the constable given temporary custody of the
5 offender must return the offender to the place of original custody
6 without delay.
- 7 (3) If the judge or magistrate makes the order under section 23XWO,
8 the judge or magistrate may:
- 9 (a) order the constable given temporary custody of the offender:
10 (i) to convey the offender to the nearest premises where
11 facilities for carrying out the procedure in accordance
12 with this Part are available to that constable; and
13 (ii) to return the offender to the place of original custody
14 without delay after the procedure is carried out; or
15 (b) order the constable given temporary custody of the offender
16 to return the offender to the place of original custody without
17 delay.

18 **23XWOB Securing the presence of offender at hearing—offender**
19 **not in custody**

- 20 (1) If:
- 21 (a) an application is made under section 23XWO to a judge or
22 magistrate for an order for the carrying out of a forensic
23 procedure on an offender; and
24 (b) the offender is neither in custody nor detained under a law of
25 the Commonwealth, a State or a Territory;
- 26 the judge or magistrate may, on the application of a constable:
- 27 (c) issue a summons for the appearance of the offender at the
28 hearing of the application; or
29 (d) issue a warrant for the arrest of the offender for the purpose
30 of bringing the offender before the judge or magistrate for the
31 hearing of the application.
- 32 (2) An application for a summons under subsection (1) must be:
- 33 (a) made by information on oath or affirmation; and
34 (b) accompanied by an affidavit dealing with matters referred to
35 in paragraphs (3)(a) and (b).

- 1 (3) The judge or magistrate may issue a summons only if satisfied:
2 (a) that the issue of the summons is necessary to ensure the
3 appearance of the offender at the hearing of the application
4 made under section 23XWO; or
5 (b) that the issue of the summons is otherwise justified.
- 6 (4) An application for a warrant under subsection (1) must be:
7 (a) made by information on oath or affirmation; and
8 (b) accompanied by an affidavit dealing with matters referred to
9 in paragraphs (5)(a), (b) and (c).
- 10 (5) The judge or magistrate may issue a warrant only if satisfied:
11 (a) that the arrest is necessary to ensure the appearance of the
12 offender at the hearing of the application made under
13 section 23XWO, and that the issue of a summons would not
14 ensure that appearance; or
15 (b) that the offender might destroy evidence that might be
16 obtained by carrying out the forensic procedure; or
17 (c) that the issue of the warrant is otherwise justified.

18 **45 Paragraph 23XWP(1)(b)**

19 Omit “offender to permit a forensic procedure to be carried out under
20 this Division”, substitute “carrying out of a forensic procedure under
21 this Division on the offender”.

22 **46 Subsection 23XWP(3)**

23 Omit “an offender who is not in a prison or another place of detention to
24 permit a forensic procedure to be carried out”, substitute “the carrying
25 out of a forensic procedure under this Division on an offender who is
26 not in a prison or another place of detention”.

27 **47 Subsection 23XWP(4)**

28 Omit “An offender ordered to permit the carrying out of a forensic
29 procedure”, substitute “If a judge or magistrate orders the carrying out
30 of a forensic procedure under this Division on an offender, the
31 offender”.

32 **48 Subsection 23XWQ(2)**

33 After “A person”, insert “(the *authorised person*)”.

1 **49 After subparagraph 23XWQ(2)(b)(i)**

2 Insert:

- 3 (ia) in a case where the informed consent of the parent or
4 guardian of the volunteer is given in accordance with
5 section 23XWR—after the constable concerned has
6 informed the child or incapable person that, even though
7 consent has been given, if he or she objects to or resists
8 the carrying out of the forensic procedure it will not be
9 carried out; and

10 **50 Subparagraph 23XWQ(2)(b)(ii)**

11 Omit “after the person”, substitute “after the authorised person”.

12 **51 Paragraph 23XWR(2)(b)**

13 Repeal the paragraph, substitute:

- 14 (b) that the information will be stored on the volunteers (limited
15 purposes) index of that system unless the volunteer (or, in the
16 case of a volunteer who is a child or an incapable person, the
17 parent or guardian of the volunteer) chooses for the
18 information to be stored on the volunteers (unlimited
19 purposes) index of that system; and

20 **52 Section 23YDAC**

21 Before “In this”, insert “(1)”.

22 **53 Section 23YDAC (definition of *Commonwealth DNA***
23 ***database system*)**

24 Omit “containing”, substitute “that is managed by the Commonwealth
25 and that contains”.

26 **54 Section 23YDAC (paragraph (a) of the definition of**
27 ***Commonwealth DNA database system*)**

28 After “Commonwealth agency”, insert “and, in relation to a crime scene
29 index, in so far as it also relates to material taken or obtained by a
30 foreign law enforcement agency (within the meaning of the *Australian*
31 *Crime Commission Act 2002*)”.

32 **55 Section 23YDAC (after paragraph (a) of the definition of**
33 ***crime scene index*)**

Schedule 1 Forensic procedures

Part 1 Amendments commencing on day after Royal Assent

1 Insert:

2 (aa) at any place outside Australia where an offence under the law
3 of a foreign country was, or is reasonably suspected of
4 having been, committed; or

5 **56 Section 23YDAC (at the end of the definition of**
6 **State/Territory DNA database system)**

7 Add:

8 Note: See also subsection (2).

9 **57 Section 23YDAC (definition of volunteers (limited**
10 **purposes) index)**

11 Omit “paragraph 23XWR(2)(b)”, substitute “paragraph
12 23XWR(2)(ba)”.

13 **58 At the end of section 23YDAC**

14 Add:

15 (2) For a participating jurisdiction, the database referred to in the
16 definition of *State/Territory DNA database system* in
17 subsection (1) may be that part of NCIDD that relates to that
18 participating jurisdiction.

19 **59 After paragraph 23YDAE(2)(d)**

20 Insert:

21 (da) the purpose of assisting a foreign country to decide whether
22 to make a request under the *Mutual Assistance in Criminal*
23 *Matters Act 1987*;

24 **60 Paragraph 23YDA(1)(b)**

25 After “suspect”, insert “, offender or volunteer”.

26 **61 Paragraph 23YDA(2)(a)**

27 After “(Division 3)”, insert “, asking an offender to consent to a forensic
28 procedure (Division 6A) or asking a volunteer to consent to a forensic
29 procedure (Division 6B)”.

30 **62 Paragraph 23YDA(2)(b)**

1 After “(Division 4)”, insert “or on an offender who is in custody
2 (Division 6A)”.

3 **63 Paragraph 23YDA(2)(c)**

4 After “(Division 5)”, insert “, applying to a judge or magistrate for an
5 order for the carrying out of a forensic procedure on an offender
6 (Division 6A) or applying to a magistrate for an order under
7 section 23XWU for the carrying out of a forensic procedure on a child
8 or incapable person”.

9 **64 Paragraphs 23YDA(2)(d), (e) and (f)**

10 After “suspect”, insert “, offender or volunteer”.

11 **65 Subsection 23YG(2)**

12 Repeal the subsection, substitute:

13 (2) Subject to subsection (3), material of any kind that is required by
14 this Part to be made available to a suspect, offender or volunteer
15 must be made available in accordance with subsection (1):

- 16 (a) within 14 days after the material comes into existence; or
17 (b) if the material is requested by the suspect, offender or
18 volunteer or the suspect’s, offender’s or volunteer’s interview
19 friend or legal representative, within 14 days of the request.

20 (3) Subsection (2) does not apply to:

- 21 (a) copies of records required to be made available under
22 subsection 23XE(5); and
23 (b) material required to be provided under section 23XU; and
24 (c) copies of results of analysis and other information required to
25 be provided under section 23XW.

26 **66 After paragraph 23YO(2)(d)**

27 Insert:

28 (da) the purposes of assisting a foreign country to decide whether
29 to make a request under the *Mutual Assistance in Criminal*
30 *Matters Act 1987*;

31 **67 After section 23YP**

32 Insert:

1 **23YPA Analysis of forensic material**

2 The analysis for the Commonwealth of forensic material obtained
3 as a result of the carrying out of a forensic procedure under this
4 Part must be carried out in an accredited laboratory.

5 **68 Subsection 23YQ(1)**

6 Omit “staff member”, substitute “AFP appointee”.

7 **69 Subsection 23YQ(2)**

8 Omit “*staff member*”, substitute “*AFP appointee*”.

9 **70 Subsection 23YUC(1)**

10 Omit “the forensic procedure”, substitute “an intimate forensic
11 procedure”.

12 **71 Subsection 23YUC(1)**

13 After “an order”, insert “under this Part”.

14 **72 After subsection 23YUC(1)**

15 Insert:

16 (1A) A person is authorised to carry out a non-intimate forensic
17 procedure authorised by an order under this Part that is registered
18 in accordance with an arrangement referred to in subsection
19 23YUB(1) anywhere in the Commonwealth. The person is
20 authorised to carry out the procedure in accordance with Division 6
21 or a corresponding law of a participating jurisdiction, and not
22 otherwise.

23 **73 At the end of Division 11 of Part 1D**

24 Add:

25 **23YUDA Arrangements with prisons or other places of detention**

26 The Commissioner may, on behalf of the Commonwealth, enter
27 into an arrangement with the head (however described) of a prison
28 or other place of detention in a State or Territory in relation to the
29 carrying out of forensic procedures under this Part on offenders
30 who are serving sentences of imprisonment in that prison or other
31 place of detention.

1 **74 Saving—orders by senior constable**

2 The amendment made by item 16 does not affect the validity of an order
3 that is in force under section 23WN of the *Crimes Act 1914*
4 immediately before the commencement of that item.

5 **75 Application provision**

- 6 (1) The amendments made by items 22 to 26, 34, 35, 39, 48, 49, 50, 67, 70
7 and 72 apply in relation to the carrying out of forensic procedures
8 starting on or after the commencement of those items.
- 9 (2) The amendments made by items 27 to 33 apply in relation to samples
10 taken under Part ID of the *Crimes Act 1914* on or after the
11 commencement of those items.
- 12 (3) The amendments made by items 21, 40, 41, 43 and 45 to 47 apply in
13 relation to orders made on or after the commencement of those items.
- 14 (4) The amendments made by items 42 and 44 apply in relation to
15 applications made under section 23XWO of the *Crimes Act 1914* on or
16 after the commencement of those items.
- 17 (5) The amendment made by item 51 applies in relation to the giving of
18 informed consent on or after the commencement of that item.
- 19 (6) The amendments made by items 53 to 55 do not affect the continuity of
20 the Commonwealth DNA database system referred to in
21 section 23YDAC of the *Crimes Act 1914* or of the crime scene index
22 referred to in that section.
- 23 (7) The amendments made by items 59 and 66 do not affect by implication
24 the interpretation of sections 23YDAE and 23YO of the *Crimes Act*
25 *1914* at a time before the commencement of those items.
- 26 (8) The amendments made by items 60 to 64 apply in relation to actions
27 taken on or after the commencement of those items.
- 28 (9) The amendment made by item 65 applies in relation to material that, on
29 or after the commencement of that item, is required by Part ID of the
30 *Crimes Act 1914* to be made available to a person.
31

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

3 ***Crimes Act 1914***

4 **76 Paragraphs 23WF(2)(b) and (c)**

5 Repeal the paragraphs, substitute:

- 6 (b) informs the suspect, in accordance with the regulations and
7 section 23WJ, of the matters mentioned in that section; and

8 **77 Paragraph 23WG(2)(b)**

9 Repeal the paragraph, substitute:

- 10 (b) informs the suspect, in accordance with the regulations and
11 section 23WJ, of the matters mentioned in that section; and

12 **78 Paragraph 23XWG(1)(b)**

13 Repeal the paragraph, substitute:

- 14 (b) informs the offender, in accordance with the regulations and
15 section 23XWJ, of the matters mentioned in that section; and

16 **79 Subsection 23XWR(1)**

17 After “a constable informs the volunteer, parent or guardian”, insert “,
18 in accordance with the regulations,”.

19 **80 Application provision**

20 The amendments made by this Part apply in relation to the giving of
21 informed consent on or after the commencement of this Part.
22

1 **Schedule 2—Amendments relating to**
2 **disclosure of ACC information**

3 **Part 1—Amendments commencing on day after**
4 **Royal Assent**

5 *Australian Crime Commission Act 2002*

6 **1 Section 59 (heading)**

7 Repeal the heading, substitute:

8 **59 Providing reports and information to members of Parliament**

9 **2 Before subsection 59(1)**

10 Insert:

11 *Information for Minister*

12 **3 Subsection 59(1)**

13 After “the Chair of the Board”, insert “and the CEO”.

14 **4 Subsection 59(1)**

15 After “requests the Chair”, insert “or the CEO”.

16 **5 Subsection 59(1)**

17 After “functions, the Chair”, insert “or the CEO (as the case requires)”.

18 **6 Before subsection 59(1A)**

19 Insert:

20 *Information for Inter-Governmental Committee*

21 **7 Subsection 59(1A)**

22 After “the Chair of the Board” (first occurring), insert “or the CEO”.

23 **8 Subsection 59(1A)**

24 After “the Chair of the Board” (second occurring), insert “or the CEO
25 (as the case requires)”.

1 **9 Subsection 59(2)**

2 After “the Chair of the Board”, insert “or the CEO (as the case
3 requires)”.

4 **10 Subsection 59(2)**

5 Omit “the Chair” (second occurring), substitute “he or she”.

6 **11 Subsection 59(3)**

7 After “the Chair of the Board” (first occurring), insert “or the CEO”.

8 **12 Paragraph 59(3)(b)**

9 After “the Chair of the Board”, insert “or the CEO”.

10 **13 Subsection 59(5)**

11 After “the Chair of the Board” (first occurring), insert “or the CEO (as
12 the case requires)”.

13 **14 Subsection 60(4)**

14 After “the Board”, insert “or the CEO”.

15 **15 Subsection 60(5)**

16 Omit “the Board shall”, substitute “the Board and the CEO must”.

17 **16 Application of this Part**

18 The amendments made by this Part apply to any information in the
19 possession of the ACC, whether the information comes into the
20 possession of the ACC before or after this item commences.
21

1 **Part 2—Amendments commencing on Proclamation**

2 *Australian Crime Commission Act 2002*

3 **17 Subsection 4(1)**

4 Insert:

5 *ACC information* means information that is in the ACC's
6 possession.

7 **18 Subsection 4(1)**

8 Insert:

9 *permissible purpose* means one or more of the following purposes:

- 10 (a) performing functions referred to in section 7A or 7C;
- 11 (b) preventing, detecting, investigating, prosecuting or
12 punishing:
- 13 (i) criminal offences or activities that might constitute
14 criminal offences (including under a law of a foreign
15 country); or
- 16 (ii) contraventions of a law of the Commonwealth, a State
17 or a Territory imposing a penalty or sanction (including
18 taking civil remedies in relation to contraventions of
19 such laws); or
- 20 (iii) seriously improper conduct (including professional
21 misconduct or misconduct by a public official);
- 22 (c) preventing, detecting or investigating threats to national
23 security;
- 24 (d) preventing serious threats to an individual's life, health or
25 safety, or to public health or public safety;
- 26 (e) enforcing laws (including laws of foreign countries) relating
27 to proceeds of crime;
- 28 (f) enforcing laws (including laws of foreign countries) relating
29 to unexplained wealth;
- 30 (g) protecting public revenue;
- 31 (h) developing government policy;
- 32 (i) researching criminology;
- 33 (j) any other purpose prescribed by the regulations.

1 **19 Subsection 12(1) (note)**

2 Omit “Note”, substitute “Note 1”.

3 **20 Subsection 12(1) (note)**

4 Omit “section 59”, substitute “sections 59AA and 59AB”.

5 **21 At the end of subsection 12(1)**

6 Add:

7 Note 2: This subsection is subject to any relevant direction given under
8 subsection 25A(9) (see subsection (2) of this section).

9 **22 At the end of subsection 12(1A)**

10 Add:

11 Note: This subsection is subject to any relevant direction given under
12 subsection 25A(9) (see subsection (2) of this section).

13 **23 After subsection 12(1A)**

14 Insert:

15 (2) Subsections (1) and (1A) are subject to any relevant direction given
16 under subsection 25A(9) (confidentiality in relation to
17 examinations).

18 **24 Subparagraph 47A(1)(b)(ii)**

19 Omit “a law enforcement agency or a foreign law enforcement agency”,
20 substitute “a person or body (however described) to whom the CEO
21 may disclose ACC information under section 59AA”.

22 **25 At the end of subsection 59(1)**

23 Add:

24 Note: This section is subject to any relevant direction given under subsection
25 25A(9) (see section 59AC).

26 **26 Subsections 59(7) to (11)**

27 Repeal the subsections, substitute:

28 *Information for members of Parliament*

29 (7) The Chair of the Board or the CEO may inform one or more of the
30 following persons of the general conduct of the operations of the

1 ACC if the Chair or the CEO (as the case requires) considers that it
2 is in the public interest to do so:

- 3 (a) a member of either House of the Parliament;
4 (b) a member of the Parliament of a State.

5 Note: A reference to the Parliament of a State includes a reference to the
6 Legislative Assemblies of the Australian Capital Territory and the
7 Northern Territory (see paragraph 4(3)(a)).

8 **27 After section 59**

9 Insert:

10 **59AA Disclosing information to government bodies**

11 *Commonwealth, State, Territory and foreign agencies etc.*

- 12 (1) The CEO may disclose ACC information to:
- 13 (a) a body of the Commonwealth, a State or a Territory; or
14 (b) a person who holds an office or appointment under a law of
15 the Commonwealth, a State or a Territory; or
16 (c) an agency that has responsibility for:
17 (i) law enforcement in a foreign country; or
18 (ii) intelligence gathering for a foreign country; or
19 (iii) the security of a foreign country; or
20 (d) an international body that:
21 (i) has functions relating to law enforcement or gathering
22 intelligence; and
23 (ii) is prescribed by the regulations for the purposes of this
24 paragraph; or
25 (e) an international judicial body that is prescribed by the
26 regulations for the purposes of this paragraph;
- 27 if:
- 28 (f) the CEO considers it appropriate to do so; and
29 (g) the CEO considers that the information is relevant to a
30 permissible purpose; and
31 (h) disclosing the ACC information would not be contrary to a
32 law of the Commonwealth, a State or a Territory that would
33 otherwise apply.

34 Note 1: For the definition of *body*, see subsection (3).

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1 Note 2: This section is subject to any relevant direction given under subsection
2 25A(9) (see section 59AC).

3 *ASIO*

4 (2) The CEO may disclose ACC information to the Australian Security
5 Intelligence Organisation if:

6 (a) the CEO considers it appropriate to do so; and

7 (b) the information is relevant to security (as defined in section 4
8 of the *Australian Security Intelligence Organisation Act*
9 1979); and

10 (c) disclosing the ACC information would not be contrary to a
11 law of the Commonwealth, a State or a Territory that would
12 otherwise apply.

13 *Definitions*

14 (3) In this section:

15 *body* includes:

16 (a) a body however described; and

17 (b) a Department of State; and

18 (c) a body (whether incorporated or not) established for a public
19 purpose by or under a law of the Commonwealth, a State or a
20 Territory; and

21 (d) a law enforcement agency.

22 **59AB Disclosing information to private sector bodies**

23 (1) The CEO may disclose ACC information to a body corporate that
24 is prescribed, or is included in a class of bodies corporate that is
25 prescribed, by the regulations for the purposes of this section if:

26 (a) the CEO considers it appropriate to do so; and

27 (b) the CEO considers that disclosing the information to the body
28 is necessary for a permissible purpose; and

29 (c) the body has undertaken, in writing, not to use or further
30 disclose the information except:

31 (i) as referred to in subsection (3); or

32 (ii) as required by a law of the Commonwealth, a State or a
33 Territory; and

- 1 (d) the body has undertaken, in writing, to comply with any
2 conditions the CEO specifies under subsection (4) or (5); and
3 (e) disclosing the ACC information would not be contrary to a
4 law of the Commonwealth, a State or a Territory that would
5 otherwise apply.

6 Note: This section is subject to any relevant direction given under subsection
7 25A(9) (see section 59AC).

8 *Limitations on disclosing information under subsection (1)*

- 9 (2) The CEO may disclose ACC information to a body corporate under
10 subsection (1) only if:
11 (a) for information that is personal information (within the
12 meaning of the *Privacy Act 1988*)—the CEO considers that
13 disclosing the information is necessary for the purposes of:
14 (i) preventing criminal offences or activities that might
15 constitute criminal offences (including under a law of a
16 foreign country); or
17 (ii) detecting criminal offences or activities that might
18 constitute criminal offences (including under a law of a
19 foreign country); or
20 (iii) facilitating the collection of criminal information and
21 intelligence in relation to criminal offences or activities
22 that might constitute criminal offences (including under
23 a law of a foreign country); and
24 (b) in any case—the information is not confidential commercial
25 information relating to another body or person.

26 *Specifying purposes and conditions etc.*

- 27 (3) The CEO must specify, in writing, any permissible purpose for
28 which the ACC information may be used or further disclosed.
29 (4) If the CEO discloses ACC information that is personal information
30 (within the meaning of the *Privacy Act 1988*) to a body corporate,
31 the CEO must specify, in writing:
32 (a) one or more conditions that the body corporate must meet in
33 relation to monitoring and controlling any further disclosure
34 of that information by an employee or officer of the body
35 corporate; and

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- 1 (b) a condition that the information is not to be disclosed to a
2 person who is not an employee or officer of the body
3 corporate, other than in any circumstances specified.
- 4 (5) The CEO may specify, in writing, any other conditions that the
5 CEO considers appropriate in relation to ACC information that is
6 disclosed under, or in accordance with, this section (whether in
7 relation to personal information or any other ACC information).
- 8 (6) An instrument made under subsection (3), (4) or (5) is not a
9 legislative instrument.

10 *Offence—disclosure etc. for unauthorised purposes*

- 11 (7) A person commits an offence if:
12 (a) ACC information is disclosed to the person under, or in
13 accordance with, this section; and
14 (b) the person (directly or indirectly):
15 (i) makes a record of the information; or
16 (ii) discloses the information to any other person; and
17 (c) the record or disclosure referred to in paragraph (b) is not:
18 (i) for a purpose specified under subsection (3) in relation
19 to the information; or
20 (ii) required by any other law.

21 Penalty: 50 penalty units, or imprisonment for 12 months, or both.

22 Note: For a defence to this offence, see subsection (9).

23 *Offence—breach of conditions*

- 24 (8) A person commits an offence if:
25 (a) ACC information is disclosed to the person under, or in
26 accordance with, this section; and
27 (b) the CEO specifies a condition under subsection (4) or (5) in
28 relation to the information; and
29 (c) the person does an act or omits to do an act in relation to the
30 information; and
31 (d) the act or omission breaches the condition.

32 Penalty: 50 penalty units, or imprisonment for 12 months, or both.

33 Note: For a defence to this offence, see subsection (9).

1 *Defence—information legitimately made public*

2 (9) Subsections (7) and (8) do not apply to a person in relation to ACC
3 information if:

4 (a) the information is in the public domain before the person:

5 (i) makes the record, or discloses the information (if
6 subsection (7) applies); or

7 (ii) does the act or omits to do the act in relation to the
8 information (if subsection (8) applies); and

9 (b) the original disclosure of the information into the public
10 domain (before the person does the thing referred to in
11 subparagraph (a)(i) or (ii) of this subsection) was not:

12 (i) in contravention of section 51 or subsection (7) or (8) of
13 this section; or

14 (ii) in breach of an undertaking given under subsection (1)
15 of this section.

16 Note: A defendant bears an evidential burden in relation to the matter in
17 subsection (9) (see subsection 13.3(3) of the *Criminal Code*).

18 **59AC Confidentiality in relation to examinations**

19 Sections 59, 59AA and 59AB are subject to any relevant direction
20 as in force under subsection 25A(9) (confidentiality in relation to
21 examinations).

22 **59AD Publication of reports in relation to offences**

23 A report under this Act that:

24 (a) sets out a finding that an offence has been committed; or

25 (b) makes a recommendation to institute a prosecution in respect
26 of an offence;

27 must not be made available to the public unless the finding or
28 recommendation is expressed to be based on evidence that would
29 be admissible in the prosecution of a person for that offence.

30 **28 After paragraph 61(2)(d)**

31 Insert:

32 (da) the general nature and the extent of any information disclosed
33 by the CEO during that year to a body corporate under
34 section 59AB;

1 **29 Application of this Part**

2 The amendments made by this Part apply to any ACC information,
3 whether the information comes into the possession of the ACC before
4 or after this item commences.
5

1 **Schedule 3—Amendments relating to**
2 **returnable items for the ACC**
3

4 *Australian Crime Commission Act 2002*

5 **1 Subsection 4(1)**

6 Insert:

7 *Commonwealth officer:*

- 8 (a) has the meaning given by subsection 3(1) of the *Crimes Act*
9 *1914*; and
10 (b) includes members of the staff of the ACC.

11 **2 Subsection 4(1)**

12 Insert:

13 *returnable item* means:

- 14 (a) a thing seized under a warrant issued under section 22; or
15 (b) a thing, or a document, produced:
16 (i) under a notice given under section 29; or
17 (ii) during an examination conducted under Division 2 of
18 Part II.

19 **3 Subsection 4(1) (paragraph (d) of the definition of *serious***
20 ***and organised crime*)**

21 Omit “within the meaning of the *Proceeds of Crime Act 2002*”.

22 **4 Subsection 4(1) (subparagraph (da)(ii) of the definition of**
23 ***serious and organised crime*)**

24 Omit “within the meaning of the *Proceeds of Crime Act 2002*”.

25 **5 Subsection 4(1)**

26 Insert:

27 *serious offence:*

- 28 (a) in the definition of *serious and organised crime*—has the
29 meaning given by the *Proceeds of Crime Act 2002*; and

1 (b) otherwise—has the meaning given by subsection 3C(1) of the
2 *Crimes Act 1914*.

3 **6 Subsection 4(1)**

4 Insert:

5 *State or Territory law enforcement agency* has the meaning given
6 by subsection 3ZQU(7) of the *Crimes Act 1914*.

7 **7 Subsection 4(1)**

8 Insert:

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

11 **8 Subsection 4(1)**

12 Insert:

13 *terrorist act* has the same meaning as in subsection 100.1(1) of the
14 *Criminal Code*.

15 **9 Subsections 22(8) and (9)**

16 Repeal the subsections.

17 **10 At the end of Division 1A of Part II**

18 Add:

19 **24AA Use of and sharing returnable items**

20 *Use of returnable items by persons who are not members of the*
21 *staff of the ACC*

22 (1) The CEO may make a returnable item available to a constable, or
23 Commonwealth officer, who is not a member of the staff of the
24 ACC, to use for any or all of the following purposes if it is
25 necessary to do so for that purpose:

26 (a) a purpose referred to in subsection 3ZQU(1) of the *Crimes*
27 *Act 1914*;

28 (b) the performance of the functions of the ACC referred to in
29 section 7A of this Act;

1 (c) the performance of the functions of the Board referred to in
2 section 7C of this Act.

3 (2) A constable or Commonwealth officer, who is not a member of the
4 staff of the ACC, may use a returnable item for all or any of the
5 purposes referred to in subsection (1) if it is necessary to do so for
6 that purpose.

7 *Use of returnable items by members of the staff of the ACC*

8 (3) The head of the special ACC operation/investigation to which a
9 returnable item relates may make the item available to another
10 member of the staff of the ACC to use for the purpose of the
11 performance of all or any of the functions referred to in section 7A
12 or 7C.

13 (4) A member of the staff of the ACC may use a returnable item for
14 the purpose of the performance of all or any of the functions
15 referred to in section 7A or 7C.

16 *Use of returnable items for State or Territory purposes*

17 (5) The CEO may make a returnable item available to a constable or
18 Commonwealth officer to use for any purpose for which the
19 making available of the item is required or authorised by a law of a
20 State or Territory.

21 (6) A constable or Commonwealth officer may use a returnable item
22 for any other use that is required or authorised by or under a law of
23 a State or a Territory.

24 *Section does not limit any other law of the Commonwealth*

25 (7) To avoid doubt, this section does not limit any other law of the
26 Commonwealth that:
27 (a) requires or authorises the use of a document or other thing; or
28 (b) requires or authorises the making available (however
29 described) of a document or other thing.

30 *Sharing returnable item for use by State, Territory or foreign
31 agency*

32 (8) The CEO may make a returnable item available to:
33 (a) a State or Territory law enforcement agency; or

- 1 (b) an agency that has responsibility for:
2 (i) law enforcement in a foreign country; or
3 (ii) intelligence gathering for a foreign country; or
4 (iii) the security of a foreign country;
5 to be used by that agency for a purpose mentioned in
6 subsection (1), (5) or (6) and the purpose of any or all of the
7 following (but not for any other purpose):
8 (c) preventing, investigating or prosecuting an offence against a
9 law of a State or Territory;
10 (d) proceedings under a corresponding law (within the meaning
11 of the *Proceeds of Crime Act 1987* or the *Proceeds of Crime*
12 *Act 2002*);
13 (e) proceedings for the forfeiture of the item under a law of a
14 State or Territory;
15 (f) deciding whether to institute proceedings or to take any other
16 action mentioned in any of paragraphs 3ZQU(1)(a) to (l)
17 (inclusive) of the *Crimes Act 1914*, subsection (5) or (6) of
18 this section, or paragraph (c), (d) or (e) of this subsection.

19 *Ministerial arrangements for sharing*

- 20 (9) This section does not prevent the Minister from making an
21 arrangement with a Minister of a State or Territory for:
22 (a) the making available to a State or Territory law enforcement
23 agency of that State or Territory, for purposes mentioned in
24 subsections (1), (6) and (8), of returnable items; and
25 (b) the disposal by the agency of such items when they are no
26 longer of use to that agency for those purposes.

27 Note: This subsection does not empower the Minister to make such an
28 arrangement.

29 **24AB When returnable items must be returned**

- 30 (1) If the CEO is satisfied that a returnable item is not required (or is
31 no longer required) for a purpose mentioned in section 24AA or for
32 other judicial or administrative review proceedings, the CEO must
33 take reasonable steps to return the item to:
34 (a) the person from whom the item was seized, or the person
35 who produced the item; or

- 1 (b) the owner, if the person mentioned in paragraph (a) is not
2 entitled to possess it.
- 3 (2) However, the CEO does not have to take those steps if:
4 (a) either:
5 (i) the returnable item may be retained because of an order
6 under subsection 24AC(2), or any other order under that
7 subsection has been made in relation to the item; or
8 (ii) the CEO has applied for such an order and the
9 application has not been determined; or
10 (b) the returnable item may otherwise be retained, destroyed or
11 disposed of under a law, or an order of a court or tribunal, of
12 the Commonwealth or of a State or a Territory; or
13 (c) the returnable item is forfeited or forfeitable to the
14 Commonwealth or is the subject of a dispute as to ownership.
- 15 (3) To avoid doubt, if the returnable item is a document, the CEO is
16 required to take reasonable steps to return the document only if the
17 ACC took possession of that document.

18 **24AC Issuing officer may permit a returnable item to be retained,**
19 **forfeited etc.**

- 20 (1) An issuing officer may, on application by the CEO, make an order
21 under subsection (2) in relation to a returnable item.
- 22 *Preventing use in committing terrorist act, terrorism offence or*
23 *serious offence*
- 24 (2) The issuing officer may make any of the orders referred to in
25 subsection (3) if the issuing officer is satisfied that there are
26 reasonable grounds to suspect that, if the returnable item is
27 returned to either of the following persons, the item is likely to be
28 used by that person or another person in the commission of a
29 terrorist act, a terrorism offence or a serious offence:
30 (a) the owner of the item;
31 (b) the person from whom the item was seized, or the person
32 who produced the item.
- 33 (3) The orders are as follows:
34 (a) an order that the item may be retained for the period specified
35 in the order;

- 1 (b) an order that the item is forfeited to the Commonwealth;
2 (c) if the item is not a document—an order that:
3 (i) the item be sold and the proceeds given to the owner of
4 the item; or
5 (ii) the item be sold in some other way;
6 (d) an order that the item is to be destroyed or otherwise
7 disposed of.

8 *Item must be returned if issuing officer not satisfied*

- 9 (4) The issuing officer must order that the returnable item be returned
10 to the following person if the issuing officer is not satisfied as
11 mentioned in subsection (2):
12 (a) the person from whom the item was seized, or the person
13 who produced the item;
14 (b) if the person referred to in paragraph (a) is not entitled to
15 possess the item—the owner of the item.

16 *CEO to notify persons with an interest in returnable item*

- 17 (5) Before making the application, the CEO must:
18 (a) take reasonable steps to discover who has an interest in the
19 returnable item; and
20 (b) if it is practicable to do so, notify each person who the CEO
21 believes to have such an interest of the proposed application.

22 *Person with interest may appear and be heard*

- 23 (6) The issuing officer must allow a person who has an interest in the
24 returnable item to appear and be heard in determining the
25 application.

26 *Function conferred in personal capacity*

- 27 (7) A function of making an order under this section is conferred on an
28 issuing officer in a personal capacity and not as a court or a
29 member of a court.
30 (8) An issuing officer performing a function of, or connected with,
31 making an order under this section has the same protection and
32 immunity as if he or she were performing that function as, or as a

1 member of, a court (being the court of which the issuing officer is a
2 member).

3 **11 Application of this Schedule**

4 The amendments made by this Schedule apply to any returnable item,
5 whether seized or produced before or after this Schedule commences.
6

1 **Schedule 4—Amendments relating to the**
2 **Integrity Commissioner's investigative**
3 **powers**
4

5 *Law Enforcement Integrity Commissioner Act 2006*

6 **1 Subsection 5(1)**

7 Insert:

8 *constable* means:

9 (a) a member or special member of the AFP; or

10 (b) a member of the police force or police service of a State.

11 **2 Subsection 5(1)**

12 Insert:

13 *Federal Court* means the Federal Court of Australia.

14 **3 Subsection 5(1)**

15 Insert:

16 *in contempt of ACLEI* has the meaning given by section 96A.

17 **4 Subsection 20(1) (note)**

18 Omit “referred”, substitute “notified”.

19 **5 Section 21 (heading)**

20 Repeal the heading, substitute:

21 **21 Law enforcement agency head to pass on new information in**
22 **relation to corruption issue already notified**

23 **6 Part 8 (heading)**

24 Repeal the heading, substitute:

25 **Part 8—Public inquiries by Integrity Commissioner**

26 **7 Subdivision A of Division 1 of Part 9 (heading)**

1 Repeal the heading, substitute:

2 **Subdivision A—Notices to give information or to produce**
3 **documents or things**

4 **8 Sections 75 and 76**

5 Repeal the sections, substitute:

6 **75 Notice to give information or to produce document or thing**

7 *Giving notice*

8 (1) For the purpose of investigating a corruption issue, the Integrity
9 Commissioner may, by notice in writing, require a person to do
10 either or both of the following:

- 11 (a) give the information specified in the notice;
12 (b) produce the documents or things specified in the notice;
13 if the Integrity Commissioner has reasonable grounds to suspect
14 that the information, documents or things will be relevant to the
15 investigation.

16 Note: In certain cases, disclosing the existence of a notice, or any
17 information about it, is an offence: see section 77B.

18 (2) The Integrity Commissioner may require that information specified
19 under paragraph (1)(a) is to be given in writing.

- 20 (3) The notice must:
21 (a) be served on the person; and
22 (b) be signed by the Integrity Commissioner; and
23 (c) specify the period within which, and the manner in which,
24 the person must comply with the notice.

25 (4) The period specified under paragraph (3)(c) must be at least 14
26 days after the day the notice is served on the person, unless the
27 Integrity Commissioner considers that allowing a 14-day period
28 would significantly prejudice a corruption investigation, in which
29 case a shorter period may be specified.

30 (5) If a shorter period is specified under paragraph (3)(c), the Integrity
31 Commissioner must record, in writing:

- 1 (a) the name of the corruption investigation that would be
2 prejudiced; and
3 (b) why a 14-day period would significantly prejudice the
4 investigation.
- 5 (6) The Integrity Commissioner may serve a notice on a person
6 without holding a hearing.

7 **76 Compliance with notice**

8 *Compliance with notice*

- 9 (1) A person served with a notice under section 75 must comply with
10 the notice:
11 (a) within the period specified in the notice; or
12 (b) within such further time as the Integrity Commissioner
13 allows under subsection (3).

14 Note 1: Failure to comply with a notice is an offence: see section 78.

15 Note 2: See also subsection 150(2) in relation to section 149 certified
16 information.

17 *Extension of time*

- 18 (2) A person served with a notice under section 75 may apply to the
19 Integrity Commissioner, in writing, for further time to comply with
20 the notice:
21 (a) before the period expires; or
22 (b) as soon as possible after the period expires.
- 23 (3) The Integrity Commissioner may allow a person served with a
24 notice further time to comply with the notice whether or not an
25 application has been made.

26 *Acknowledgement*

- 27 (4) If a person served with a notice has given the information and/or
28 produced the documents or things specified in the notice, the
29 Integrity Commissioner must give the person a written
30 acknowledgement of that fact.

31 **9 Subsection 77(1)**

1 Omit “to the Integrity Commissioner in accordance with a request under
2 section 75 or 76”, substitute “in accordance with a notice under
3 section 75”.

4 **10 After Subdivision A of Division 1 of Part 9**

5 Insert:

6 **Subdivision AA—Prohibitions against disclosing information**
7 **about notices**

8 **77A Disclosure of notice may be prohibited**

9 *Application*

10 (1) This section applies in respect of a notice served on a person under
11 section 75.

12 *Notation prohibiting disclosure of information about notice*

13 (2) The Integrity Commissioner may include a notation in the notice to
14 the effect that disclosure of information about:

15 (a) the notice; or

16 (b) any official matter connected with the notice;

17 is prohibited except in the circumstances (if any) specified in the
18 notation.

19 (3) The Integrity Commissioner must include a notation in the notice if
20 the Integrity Commissioner is satisfied that failure to do so would
21 reasonably be expected to prejudice:

22 (a) a person's safety or reputation; or

23 (b) the fair trial of a person who has been, or may be, charged
24 with an offence; or

25 (c) the investigation to which the notice relates or another
26 corruption investigation; or

27 (d) any action taken as a result of an investigation referred to in
28 paragraph (c).

29 (4) The Integrity Commissioner may include a notation in the notice if
30 the Integrity Commissioner is satisfied that:

31 (a) failure to do so might prejudice:

32 (i) a person's safety or reputation; or

- 1 (ii) the fair trial of a person who has been, or may be,
2 charged with an offence; or
3 (iii) the investigation to which the notice relates or another
4 corruption investigation; or
5 (iv) any action taken as a result of an investigation referred
6 to in subparagraph (iii); or
7 (b) failure to do so might otherwise be contrary to the public
8 interest.

- 9 (5) The Integrity Commissioner must not include a notation in the
10 notice in any other case.

11 *Written statement to accompany notation*

- 12 (6) If a notation is included in the notice, it must be accompanied by a
13 written statement setting out the rights and obligations conferred or
14 imposed by section 77B on the person on whom the notice is
15 served.

16 *Cancellation of notation*

- 17 (7) A notation included in the notice is cancelled by this subsection if:
18 (a) the Integrity Commissioner concludes the investigation to
19 which the notice relates; and
20 (b) any criminal proceedings or civil penalty proceedings
21 resulting from the investigation are commenced.
- 22 (8) If a notation is cancelled by subsection (7), the Integrity
23 Commissioner must advise the person who was served with the
24 notated notice, in writing, of the cancellation.

25 *Relationship of notation with the Privacy Act 1988*

- 26 (9) If:
27 (a) a notation has been included in the notice in relation to the
28 disclosure of information about the notice or any official
29 matter connected with the notice; and
30 (b) the notation has not been cancelled; and
31 (c) apart from this subsection, a credit reporting agency (within
32 the meaning of section 11A of the *Privacy Act 1988*) would
33 be required, under subsection 18K(5) of that Act, to make a
34 note about the disclosure of the information;

1 such a note must not be made until the notation is cancelled.

2 **77B Offences of disclosure**

- 3 (1) A person commits an offence if:
- 4 (a) the person is served with a notice under section 75; and
- 5 (b) the notice includes a notation under section 77A; and
- 6 (c) the person discloses the existence of, or any information
- 7 about:
- 8 (i) the notice; or
- 9 (ii) any official matter connected with the notice; and
- 10 (d) when the disclosure is made:
- 11 (i) the notation has not been cancelled by subsection
- 12 77A(7); and
- 13 (ii) the period of 5 years after the notice is served under
- 14 section 75 has not ended.

15 Penalty: Imprisonment for 12 months.

- 16 (2) In proceedings for an offence against subsection (1), it is a defence
- 17 if the person makes the disclosure:
- 18 (a) in the circumstances, if any, permitted by the terms of the
- 19 notation; or
- 20 (b) to a legal practitioner for the purpose of obtaining legal
- 21 advice or representation in relation to the notice; or
- 22 (c) to a legal aid officer for the purpose of seeking assistance
- 23 under section 221 in relation to the notice; or
- 24 (d) if the person is a body corporate—to an officer or agent of
- 25 the body corporate for the purpose of ensuring compliance
- 26 with the notice; or
- 27 (e) if the person is a legal practitioner—for the purpose of
- 28 obtaining the agreement of another person under subsection
- 29 79(3) to the legal practitioner answering a question or
- 30 producing a document or thing.

31 Note: A defendant bears an evidential burden in relation to the matters in

32 subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- 33 (3) A person commits an offence if:
- 34 (a) a disclosure is made to a person about:

- 1 (i) a notice under section 75 that includes a notation under
2 section 77A; or
3 (ii) any official matter connected with a notice under
4 section 75 that includes a notation under section 77A;
5 and
6 (b) the disclosure is permitted under subsection (2) or (4)
7 because the person is a person of a particular kind; and
8 (c) while the person is a person of that kind, the person discloses
9 the existence of, or any information about:
10 (i) the notice; or
11 (ii) any official matter connected with the notice; and
12 (d) when the disclosure by the person is made:
13 (i) the notation has not been cancelled by subsection
14 77A(7); and
15 (ii) the period of 5 years after the notice is served under
16 section 75 has not ended.

17 Penalty: Imprisonment for 12 months.

- 18 (4) In proceedings for an offence against subsection (3), it is a defence
19 if the person discloses the information:
20 (a) if the person is an officer or agent of a body corporate
21 referred to in paragraph (2)(d):
22 (i) to another officer or agent of the body corporate for the
23 purpose of ensuring compliance with the notice; or
24 (ii) to a legal practitioner for the purpose of obtaining legal
25 advice or representation in relation to the notice; or
26 (iii) to a legal aid officer for the purpose of seeking
27 assistance under section 221 in relation to the notice; or
28 (b) if the person is a legal practitioner—for the purpose of giving
29 legal advice, making representations, or seeking assistance
30 under section 221, in relation to the notice; or
31 (c) if the person is a legal aid officer—for the purpose of
32 obtaining legal advice or representation in relation to the
33 notice.

34 Note: A defendant bears an evidential burden in relation to the matters in
35 subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- 36 (5) A person commits an offence if:
37 (a) a disclosure is made to a person about:

- 1 (i) a notice under section 75 that includes a notation under
2 section 77A; or
3 (ii) any official matter connected with a notice under
4 section 75 that includes a notation under section 77A;
5 and
6 (b) the disclosure is permitted under subsection (2) or (4)
7 because the person is a person of a particular kind; and
8 (c) when the person is no longer a person of that kind, the
9 person:
10 (i) makes a record of the notice; or
11 (ii) discloses the existence of the notice; or
12 (iii) discloses any information about the notice or the
13 existence of it; and
14 (d) when the record, or disclosure, is made by the person:
15 (i) the notation has not been cancelled by subsection
16 77A(7); and
17 (ii) the period of 5 years after the notice is served under
18 section 75 has not ended.

19 Penalty: Imprisonment for 12 months.

- 20 (6) A reference in this section to disclosing something's existence
21 includes disclosing information from which a person could
22 reasonably be expected to infer its existence.

23 **11 Section 78**

24 Repeal the section, substitute:

25 **78 Failure to comply with notice**

- 26 (1) A person commits an offence if:
27 (a) the person is served with a notice under section 75; and
28 (b) the person fails to comply with the notice:
29 (i) within the period specified in the notice; or
30 (ii) if the Integrity Commissioner has allowed the person
31 further time under subsection 76(3)—within such
32 further time.

33 Penalty: Imprisonment for 2 years.

- 1 Note 1: If a notice requires a document or thing to be produced, a legal
2 practitioner may refuse to produce the document or thing in certain
3 circumstances: see section 79.
- 4 Note 2: This section is not subject to the privilege against self-incrimination
5 but there are limits on the uses to which the evidence the person gives
6 may be put: see section 80.
- 7 (2) In proceedings for an offence against subsection (1), it is a defence
8 if it is not reasonably practicable for the person to comply with the
9 notice:
- 10 (a) within the period specified in the notice; or
11 (b) within such further time as allowed by the Integrity
12 Commissioner under subsection 76(3).
- 13 Note: A defendant bears an evidential burden in relation to the matter in
14 subsection (2): see subsection 13.3(3) of the *Criminal Code*.

15 **12 Paragraphs 79(1)(a) and (b)**

16 Omit "to the Integrity Commissioner".

17 **13 Subsection 79(1)**

18 Omit "requested to do so under section 76", substitute "served with a
19 notice to do so under section 75".

20 **14 Subsection 79(5)**

21 Repeal the subsection, substitute:

- 22 (5) If a legal practitioner gets agreement, as mentioned in
23 subsection (3):
- 24 (a) the fact that he or she:
- 25 (i) gives information; or
26 (ii) produces a document or thing;
27 does not otherwise affect a claim of legal professional
28 privilege that anyone may make in relation to that
29 information, document or thing; and
- 30 (b) the information or document does not cease to be the subject
31 of legal professional privilege merely because it is given,
32 produced or referred to.

33 **15 Subsection 80(1)**

34 Omit "requested to do so under section 75 or 76", substitute "served
35 with a notice to do so under section 75".

1 **16 Subsection 80(2)**

2 Repeal the subsection.

3 **17 Subsection 80(5)**

4 Omit “requested to do so under section 75 or 76”, substitute “served
5 with a notice to do so under section 75”.

6 **18 Subsection 80(7)**

7 Omit “or 76”.

8 **19 Subsections 81(1) and (2)**

9 Omit “to the Integrity Commissioner in response to a request under
10 section 75 or 76”, substitute “in response to a notice served on the
11 person under section 75”.

12 **20 Subsection 82(3)**

13 Omit “corruption issue”, substitute “a corruption issue”.

14 **21 Subsection 83(1)**

15 After “the summons” (first occurring), insert “to do either or both of the
16 following”.

17 **22 Paragraph 83(1)(a)**

18 Omit “or”.

19 **23 Paragraph 83(1)(b)**

20 Repeal the paragraph, substitute:

21 (b) to produce documents or things specified in the summons;
22 if the Integrity Commissioner has reasonable grounds to suspect
23 that the evidence, documents or things will be relevant to the
24 investigation of a corruption issue or the conduct of a public
25 inquiry.

26 **24 Subsection 90(2)**

27 Omit “give a such a direction”, substitute “give such a direction”.

28 **25 Paragraph 92(2)(e)**

29 Omit “95(2)”, substitute “95(3)”.

1 **26 Subsection 95(5)**

2 Repeal the subsection, substitute:

3 (5) If a legal practitioner gets agreement, as mentioned in
4 subsection (3):

5 (a) the fact that he or she:

6 (i) answers the question; or

7 (ii) produces a document or thing;

8 does not otherwise affect a claim of legal professional
9 privilege that anyone may make in relation to the answer,
10 document or thing; and

11 (b) the answer or document does not cease to be the subject of
12 legal professional privilege merely because it is given,
13 produced or referred to.

14 **27 Subsection 96(2)**

15 Repeal the subsection.

16 **28 Paragraph 96(4)(c)**

17 After "section", insert "77B, 92 or".

18 **29 After Subdivision E of Division 2 of Part 9**

19 Insert:

20 **Subdivision EA—Contempt of ACLEI**

21 **96A Contempt of ACLEI**

22 (1) A person is *in contempt of ACLEI* if he or she:

23 (a) when served with a summons to attend a hearing:

24 (i) fails to attend as required by the summons; or

25 (ii) fails to appear and report from day to day unless
26 excused or released from further attendance by the
27 Integrity Commissioner; or

28 (iii) refuses or fails to be sworn or make an affirmation at
29 the hearing; or

30 (iv) subject to subsection (2), refuses or fails to answer a
31 question at the hearing that the Integrity Commissioner
32 requires the person to answer; or

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- (v) subject to subsection (3), refuses or fails to produce a document or thing that the person was required to produce by a summons or notice under this Act that was served on him or her as prescribed; or
- (b) is a legal practitioner who is required to answer a question or produce a document or thing at a hearing and both of the following apply:
 - (i) the answer to the question would disclose, or the document or thing contains, a privileged communication made by or to the legal practitioner in his or her capacity as a legal practitioner;
 - (ii) he or she refuses to comply with the requirement and does not, when required by the Integrity Commissioner, give the Integrity Commissioner the name and address of the person to whom or by whom the communication was made; or
- (c) gives evidence at a hearing that he or she knows is false or misleading in a material particular; or
- (d) insults, disturbs or uses insulting language towards someone who the person knows:
 - (i) is the Integrity Commissioner; and
 - (ii) is holding a hearing in the performance of his or her functions, or the exercise of his or her powers, as Integrity Commissioner; or
- (e) creates a disturbance, or takes part in creating or continuing a disturbance, in or near a place that the person knows is being used to hold a hearing for the purpose of:
 - (i) investigating a corruption issue; or
 - (ii) conducting a public inquiry; or
- (f) obstructs or hinders the Integrity Commissioner in the performance of his or her functions; or
- (g) interrupts a hearing that is being held for the purpose of:
 - (i) investigating a corruption issue; or
 - (ii) conducting a public inquiry; or
- (h) threatens a person present at a hearing that is being held for the purpose of:
 - (i) investigating a corruption issue; or
 - (ii) conducting a public inquiry.

- 1 (2) Subparagraph (1)(a)(iv) does not apply in the case of a legal
2 practitioner who refuses or fails to answer a question at a hearing
3 on the ground that the answer to the question would disclose a
4 privileged communication made by or to the legal practitioner in
5 his or her capacity as a legal practitioner.
- 6 (3) Subparagraph (1)(a)(v) does not apply in the case of a legal
7 practitioner who refuses or fails to produce a document or thing at
8 a hearing on the ground that the document or thing contains a
9 privileged communication made by or to the legal practitioner in
10 his or her capacity as a legal practitioner.

11 **96B Federal Court or Supreme Court to deal with contempt**

12 *Application*

- 13 (1) If, in respect of a hearing, the Integrity Commissioner is of the
14 opinion that a person is in contempt of ACLEI, the Integrity
15 Commissioner may apply to either of the following courts for the
16 person to be dealt with in relation to the contempt:
17 (a) the Federal Court;
18 (b) the Supreme Court of the State or Territory in which the
19 hearing is held.
- 20 (2) Before making the application, the Integrity Commissioner must
21 inform the person that the Integrity Commissioner proposes to
22 make the application.
- 23 (3) The application must be accompanied by a certificate that states:
24 (a) the grounds for making the application; and
25 (b) evidence in support of the application.
- 26 (4) A copy of the certificate must be given to the person before, or at
27 the same time as, the application is made.
- 28 (5) To avoid doubt, if the Integrity Commissioner makes an
29 application under this section, the Integrity Commissioner need not
30 give the evidence to the relevant person or authority under
31 section 142.

32 *How court may deal with application*

- 33 (6) If, after:
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- 1 (a) considering the matters specified in the certificate; and
2 (b) hearing or receiving any evidence or statements by or in
3 support of ACLEI; and
4 (c) hearing or receiving any evidence or statements by or in
5 support of the person;
6 the court to which the application was made finds that the person
7 was in contempt of ACLEI, the court may deal with the person as
8 if the acts or omissions involved constituted a contempt of that
9 court.

- 10 (7) For the purposes of determining whether a person is in contempt of
11 ACLEI under subsection (1), Chapter 2 of the *Criminal Code*
12 applies as if:
13 (a) being in contempt of ACLEI were an offence; and
14 (b) references to a person being criminally responsible for an
15 offence were references to a person being responsible for
16 being in contempt of ACLEI.

17 **96C Conduct of contempt proceedings**

- 18 (1) This section applies if an application is made to the Federal Court
19 or to the Supreme Court of a State or Territory under section 96B.
20 (2) Proceedings in relation to the application are, subject to this Act, to
21 be instituted, carried on, heard and determined in accordance with
22 the laws (including any Rules of Court) that apply in relation to the
23 punishment of a contempt of the court to which the application was
24 made.
25 (3) In proceedings relating to the application, a certificate under
26 subsection 96B(3) is prima facie evidence of the matters specified
27 in the certificate.

28 **96D Person in contempt may be detained**

- 29 (1) If the Integrity Commissioner proposes to make an application
30 under subsection 96B(1) in respect of a person, the Integrity
31 Commissioner may, during the hearing concerned, direct a
32 constable or an authorised officer to detain the person for the
33 purpose of bringing the person before the relevant court for the
34 hearing of the application.

- 1 (2) If the person is so detained:
2 (a) the Integrity Commissioner must apply to the court as soon
3 as practicable under subsection 96B(1) in respect of the
4 person; and
5 (b) the person must, subject to subsection (3) of this section, be
6 brought before the court as soon as practicable.
- 7 (3) The court may:
8 (a) direct that the person be released from detention on condition
9 that he or she will appear before the court in relation to the
10 application; or
11 (b) order that the person continue to be detained until the
12 application is determined.
- 13 (4) The court may also impose any other condition on the release, for
14 example:
15 (a) that the person surrender his or her passport; or
16 (b) that the person give an undertaking as to his or her living
17 arrangements; or
18 (c) that the person report as required to:
19 (i) the AFP; or
20 (ii) a police force or police service of a State; or
21 (iii) any other authority or person responsible for the
22 enforcement of the laws of the Commonwealth or of the
23 States.
- 24 (5) The court may at any time vary or revoke a condition imposed
25 under subsection (4).

26 **96E Integrity Commissioner may withdraw contempt application**

- 27 (1) The Integrity Commissioner may, at any time, withdraw an
28 application under subsection 96B(1).
- 29 (2) If:
30 (a) the Integrity Commissioner does so; and
31 (b) the person to whom the application relates is in detention
32 under section 96D;
33 the person must be released from detention immediately.

1 **96F Double jeopardy**

2 (1) If an act or omission by a person is an offence against this Act and
3 is also an offence against a law of a State, the person may be
4 prosecuted and convicted under this Act or under that law of that
5 State in respect of the act or omission, but nothing in this Act
6 renders a person liable to be punished twice in respect of the same
7 act or omission.

8 (2) If:

9 (a) an application is made to the Federal Court or a Supreme
10 Court under subsection 96B(1) in respect of an act or
11 omission by a person; and

12 (b) the person is dealt with by the court under that section in
13 respect of the act or omission;

14 the person is not liable to be prosecuted for an offence in respect of
15 that act or omission.

16 (3) If a person is prosecuted for an offence in respect of an act or
17 omission referred to in subsection 96A(1) without an application
18 being made to the Federal Court or a Supreme Court under
19 subsection 96B(1) in respect of the act or omission, an application
20 must not be made under subsection 96B(1) in respect of the act or
21 omission.

22 **30 Section 93 (heading)**

23 Repeal the heading, substitute:

24 **93 Offences—attendance at hearings etc.**

25 **31 Section 94 (heading)**

26 Repeal the heading, substitute:

27 **94 Offences—disturbing or interrupting hearings**

28 **32 Subsection 99(1)**

29 Repeal the subsection, substitute:

30 (1) An authorised officer may apply to a Judge of the Federal Court or
31 of the Supreme Court of a State or Territory for a warrant to arrest
32 a person if:

- 1 (a) both of the following apply:
2 (i) the person has been ordered to deliver his or her
3 passport to the Integrity Commissioner (whether or not
4 the person has complied with the order);
5 (ii) the authorised officer has reasonable grounds to believe
6 that the person is likely to leave Australia for the
7 purpose of avoiding giving evidence at a hearing before
8 the Integrity Commissioner; or
9 (b) the person is to be served with a summons under section 83
10 and the authorised officer has reasonable grounds to believe
11 that the person:
12 (i) has absconded or is likely to abscond; or
13 (ii) is otherwise attempting, or likely to attempt, to evade
14 service of the summons; or
15 (c) the authorised officer has reasonable grounds to believe that
16 the person has committed an offence under subsection 93(1)
17 or is likely to do so.

18 **33 Subsection 100(1)**

19 Omit all the words after “authorising”, substitute “the arrest of the
20 person”.

21 **34 After subsection 100(9)**

22 Insert:

23 (9A) To avoid doubt, the authorised officer executing the warrant need
24 not be the authorised officer who applied for the warrant.

25 **35 Subsection 104(4)**

26 Omit “a hearing that been held”, substitute “a hearing that has been
27 held”.

28 **36 At the end of subparagraph 110(4)(b)(iv)**

29 Add “or”.

30 **37 At the end of paragraph 110(4)(b)**

31 Add:

32 (v) in any case—any eligible seizable item;

33 **38 Paragraph 117(2)(a)**

1 After "authorised officer", insert "or a constable".

2 **39 Paragraph 117(2)(b)**

3 After "not an authorised officer", insert "or a constable".

4 **40 Subsection 117(3)**

5 Repeal the subsection, substitute:

6 (3) Only an authorised officer or a constable may take part in
7 searching a person.

8 **41 At the end of section 142**

9 Add:

10 Note: See also subsection 96B(5).

11 **42 Paragraph 147(1)(d)**

12 Omit "must".

13 **43 Paragraph 150(2)(a)**

14 Repeal the paragraph, substitute:

15 (a) a person is served with a notice under Division 1 of Part 9:
16 (i) to give information; or
17 (ii) to produce a document or thing; and

18 **44 Subsection 150(2)**

19 Omit "request", substitute "notice".

20 **45 Paragraph 156(5)(a)**

21 Omit "authorises", substitute "authorise".

22 **46 Section 166 (heading)**

23 Repeal the heading, substitute:

24 **166 Application of Division**

25 **47 Section 166**

26 Omit "Part", substitute "Division".

27 **48 Subsection 167(5)**

1 After “proposes to take action”, insert “, or takes action,”.

2 **49 Subsection 167(5)**

3 Omit “subsection 142(3) or (4)”, substitute “subsection 144(3) or (4)”.

4 **50 Paragraph 167(6)(b)**

5 Omit “Integrity Commissioner’s”, substitute “special investigator’s”.

6 **51 Subsection 187(2)**

7 Omit “Integrity Commissioner”, substitute “Assistant Integrity
8 Commissioner”.

9 ***Privacy Act 1988***

10 **52 Subsection 18K(5) (note)**

11 Omit “section 91”, substitute “sections 77A and 91”.

12 ***Surveillance Devices Act 2004***

13 **53 Subsection 6(1) (definition of *federal law enforcement***
14 ***officer*)**

15 After “paragraph (a)”, insert “, (aa)”.

16 **54 Application—items 7 to 19**

17 The amendments made by items 7 to 19 of this Schedule apply in
18 relation to a notice served on a person under the *Law Enforcement*
19 *Integrity Commissioner Act 2006* on or after this Schedule commences.

20 **55 Application—section 96 of the *Law Enforcement Integrity***
21 ***Commissioner Act 2006***

22 Section 96 of the *Law Enforcement Integrity Commissioner Act 2006*,
23 as amended by this Schedule, applies in relation to a hearing under that
24 Act that begins on or after this Schedule commences.

25 **56 Application—sections 96A to 96F of the *Law Enforcement***
26 ***Integrity Commissioner Act 2006***

27 Sections 96A to 96F of the *Law Enforcement Integrity Commissioner*
28 *Act 2006*, as inserted by this Schedule, apply in relation to a hearing
29 under that Act that begins on or after this Schedule commences.

1 **57 Application—section 100 of the *Law Enforcement Integrity***
2 ***Commissioner Act 2006***

3 Section 100 of the *Law Enforcement Integrity Commissioner Act 2006*,
4 as amended by this Schedule, applies in relation to a warrant that is
5 issued on or after this Schedule commences.

6 **58 Application—item 37**

7 The amendment made by item 37 of this Schedule applies in relation to
8 a warrant issued on or after this Schedule commences.

9 **59 Application—section 117 of the *Law Enforcement Integrity***
10 ***Commissioner Act 2006***

11 Section 117 of the *Law Enforcement Integrity Commissioner Act 2006*,
12 as amended by this Schedule, applies in relation to a warrant that is
13 executed on or after this Schedule commences.
14

Schedule 5—Drugs, plants and precursors

Criminal Code Act 1995

1 Subsection 314.1(1) of the *Criminal Code* (after table item 1)

Insert:

1A	Benzylpiperazine (BZP)	2.0	250.0	0.75
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2 Subsection 314.1(1) of the *Criminal Code* (after table item 7)

Insert:

7A	Ketamine	3.0	500.0	1.0
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3 Subsection 314.1(1) of the *Criminal Code* (after table item 9)

Insert:

9A	Methcathinone	2.0	250.0	0.75
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4 Subsection 314.1(1) of the *Criminal Code* (after table item 11)

Insert:

11A	4-Methylmethcathinone (4-MMC)	2.0	250.0	0.75
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5 Subsection 314.3(1) of the *Criminal Code* (after table item 8)

Insert:

8A	Phenylpropanolamine		400.0	1.2
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6 Subsection 314.4(1) of the *Criminal Code* (after table item 20)

Insert:

20A	Benzylpiperazine (BZP)		2.0	0.75
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7 Subsection 314.4(1) of the *Criminal Code* (after table item 83)

Insert:

83A	Ketamine	3.0	1.0
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8 Subsection 314.4(1) of the *Criminal Code* (after table item 93)

Insert:

93A	Methamphetamine	2.0	0.75
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9 Subsection 314.4(1) of the *Criminal Code* (table item 95)

Repeal the item, substitute:

95	Methcathinone	2.0	0.75
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10 Subsection 314.4(1) of the *Criminal Code* (table item 99)

Repeal the item.

11 Subsection 314.4(1) of the *Criminal Code* (after table item 104)

Insert:

104A	4-Methylmethcathinone (4-MMC)	2.0	0.75
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12 Subsection 314.6(1) of the *Criminal Code* (table item 10)

Repeal the item, substitute:

10	Phenylpropanolamine	3.2	1.2
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Customs Act 1901

13 Subsection 4(1)

Insert:

border controlled precursor has the same meaning as in Part 9.1 of the *Criminal Code*.

1 **14 Subsection 183UA(1) (definition of *special forfeited***
2 ***goods*)**

3 Repeal the definition, substitute:

4 *special forfeited goods* means:

5 (a) forfeited goods referred to in paragraph 229(1)(a) that are
6 narcotic goods or consist of a border controlled precursor;
7 and

8 (b) forfeited goods referred to in paragraph 229(1)(b), (e) or (n).

9 **15 Subsection 183UA(1) (paragraph (b) of the definition of**
10 ***special forfeited goods*)**

11 Omit “or (n)”, substitute “, (n) or (na)”.

12

1 **Schedule 6—Proceeds of crime amendments**

2 **Part 1—Amendments**

3 *Director of Public Prosecutions Act 1983*

4 **1 Subsection 16A(1AB)**

5 Repeal the subsection.

6 **2 At the end of subsection 16A(1B)**

7 Add:

8 Note: If the Director (or the Commissioner for the Australian Federal Police)
9 applies for a restraining order under the *Proceeds of Crime Act 2002*, a
10 court may make an order corresponding to the order mentioned in this
11 subsection under section 28A of that Act.

12 **3 Subsection 16A(2)**

13 Omit “, (1AB)”.

14 *Proceeds of Crime Act 2002*

15 **4 Subsection 15B(1) (note 1)**

16 Repeal the note, substitute:

17 Note 1: Paragraphs (a), (aa), (b) and (c) of the definition of *authorised officer*
18 in section 338 cover certain persons performing functions under this
19 Act for the Australian Federal Police, the Australian Commission for
20 Law Enforcement Integrity, the Australian Crime Commission and
21 Customs.

22 **5 Section 15C (note)**

23 Repeal the note, substitute:

24 Note: Paragraphs (a), (aa), (b) and (c) of the definition of *authorised officer*
25 in section 338 cover certain persons performing functions under this
26 Act for the Australian Federal Police, the Australian Commission for
27 Law Enforcement Integrity, the Australian Crime Commission and
28 Customs.

29 **6 Subsection 15D(1) (note)**

30 Repeal the note, substitute:

1 Note: Paragraphs (a), (aa), (b) and (c) of the definition of *authorised officer*
2 in section 338 cover certain persons performing functions under this
3 Act for the Australian Federal Police, the Australian Commission for
4 Law Enforcement Integrity, the Australian Crime Commission and
5 Customs.

6 **7 After section 15F**

7 Insert:

8 **15FA Prohibition of publication of evidence—proceedings for** 9 **freezing orders**

- 10 (1) If an *authorised officer applies to a magistrate for a *freezing
11 order in accordance with this Division, the magistrate may make an
12 order under subsection (2).
- 13 (2) If it appears to the magistrate to be necessary in order to prevent
14 prejudice to the administration of justice, the magistrate may make
15 an order prohibiting or restricting the publication of all or any of
16 the following matters:
- 17 (a) if the application is made under section 15C (in person)—the
18 matters referred to in that section that are contained in an
19 affidavit made in support of the application;
- 20 (b) if the application is made under section 15D (by telephone or
21 other electronic means)—the matters referred to in paragraph
22 15D(2)(a) that are contained, or that are to be contained, in an
23 affidavit made in support of the application.
- 24 (3) The magistrate may make an order under subsection (2) at any time
25 after the application is made and before it is determined.
- 26 (4) The power conferred by subsection (2) is in addition to, and is not
27 taken to derogate from, any other power of the magistrate.

28 **8 At the end of subsection 15P(1)**

29 Add:

30 Note: Paragraphs (a), (aa), (b) and (c) of the definition of *authorised officer*
31 in section 338 cover certain persons performing functions under this
32 Act for the Australian Federal Police, the Australian Commission for
33 Law Enforcement Integrity, the Australian Crime Commission and
34 Customs.

35 **9 At the end of Division 2 of Part 2-1**

1

Add:

2

**28A Prohibition of publication of evidence—proceedings for
restraining orders**

3

4

(1) If a *proceeds of crime authority applies to a court for a
*restraining order, the court may make an order under
subsection (2).

5

6

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(2) If it appears to the court to be necessary in order to prevent
prejudice to the administration of justice, the court may make an
order prohibiting or restricting the publication of all or any of the
matters referred to in the following provisions (whichever is
applicable) that are contained in an affidavit made in support of the
application:

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(a) subsection 17(3);

14

(b) subsection 18(3);

15

(c) paragraph 19(1)(e);

16

(d) subsection 20(3);

17

(e) subsection 20A(3).

18

(3) The court may make an order under subsection (2) at any time after
the application is made and before it is determined.

19

20

(4) The power conferred by subsection (2) is in addition to, and is not
taken to derogate from, any other power of the court.

21

22

**10 Section 338 (paragraph (a) of the definition of *authorised
officer*)**

23

24

Repeal the paragraph, substitute:

25

(a) any of the following, if authorised by the Commissioner of
the Australian Federal Police:

26

27

(i) an *AFP member;

28

(ii) an AFP employee within the meaning of the *Australian
Federal Police Act 1979*;

29

30

(iii) an employee of an authority of a State or Territory, or
an authority of the Commonwealth, within the meaning
of the *Australian Federal Police Act 1979*, while he or
she is assisting the Australian Federal Police in the
performance of its functions under an agreement under
section 69D of that Act; or

31

32

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35

1 **Part 2—Application of amendments**

2 **11 Application—publication prohibitions relating to**
3 **restraining and freezing orders**

4 (1) The amendments of the *Director of Public Prosecutions Act 1983* made
5 by items 1, 2 and 3 of this Schedule, and the amendment of the
6 *Proceeds of Crime Act 2002* made by item 9 of this Schedule, apply in
7 relation to an application made on or after the commencement of those
8 items for a restraining order under the *Proceeds of Crime Act 2002*
9 (whether the conduct on the basis of which the restraining order is
10 sought occurred before, on or after that commencement).

11 Note: For the commencement of items 1, 2, 3 and 9 of this Schedule, see section 2.

12 (2) The amendment of the *Proceeds of Crime Act 2002* made by item 7 of
13 this Schedule applies in relation to an application made on or after the
14 commencement of that item for a freezing order under that Act (whether
15 the conduct on the basis of which the freezing order is sought occurred
16 before, on or after that commencement).

17 Note: Item 7 of this Schedule commences on the day after this Act receives the Royal Assent
18 (see section 2).
19

1 **Schedule 7—Releasing federal offenders from**
2 **prison**
3

4 ***Crimes Act 1914***

5 **1 Subsection 16(1) (definition of *licence period*)**

6 Repeal the definition, substitute:

7 ***licence period***, for a person who is released on licence for a federal
8 sentence, means the period starting on the day of release on licence
9 and ending:

- 10 (a) if a recognizance release order has been made for the federal
11 sentence—at the end of the day before the person is eligible
12 for release in accordance with the recognizance release order;
13 and
14 (b) in any other case:
15 (i) at the end of the last day of any federal sentence that is,
16 on the day of the release, being served or to be served
17 (after deducting any remission or reduction that is
18 applicable); or
19 (ii) if the person has been given a federal life sentence—at
20 the end of the day specified in the licence as the day on
21 which the licence period ends.

22 **2 Subsection 16(1) (definition of *parole order*)**

23 Repeal the definition, substitute:

24 ***parole order*** means an order made under subsection 19AL(1) or
25 (2) directing that a person be released from prison on parole.

26 **3 Subsection 16(1) (definition of *parole period*)**

27 Repeal the definition, substitute:

28 ***parole period***, for a person for whom a parole order has been
29 made, has the meaning given by section 19AMA.

30 **4 Subsection 16(1) (definition of *released on parole*)**

31 Omit “section 19AL”, substitute “a parole order in accordance with
32 section 19AM”.

1 **5 Subsection 16(1) (definition of *supervision period*)**

2 Repeal the definition, substitute:

3 *supervision period*, in relation to a person who is released on
4 parole or on licence, means the period:

5 (a) starting when the person is released from prison on parole or
6 licence; and

7 (b) ending at the earlier of the following times:

8 (i) the end of the person's parole period or licence period;

9 (ii) if the parole order or licence specifies an earlier time at
10 which the supervision period is to end—that earlier
11 time.

12 **6 Sections 19AL and 19AM**

13 Repeal the sections, substitute:

14 **19AL Release on parole—making of parole order**

15 (1) The Attorney-General must, before the end of a non-parole period
16 fixed for one or more federal sentences imposed on a person, either
17 make, or refuse to make, an order directing that the person be
18 released from prison on parole (a *parole order*).

19 Note 1: For when a person is released on parole in accordance with a parole
20 order, see section 19AM.

21 Note 2: A person released on parole must comply with any conditions of the
22 parole order during the parole period (see sections 19AMA, 19AN and
23 19AU).

24 Note 3: Subsection (4) of this section affects the operation of subsection (1) if
25 the person will be serving a State or Territory sentence at the end of
26 the non-parole period.

27 (2) If the Attorney-General refuses to make a parole order for a person
28 under subsection (1) or paragraph (b) of this subsection, the
29 Attorney-General must:

30 (a) give the person a written notice, within 14 days after the
31 refusal, that:

32 (i) informs the person of the refusal; and

33 (ii) includes a statement of reasons for the refusal; and

34 (iii) sets out the effect of paragraph (b) of this subsection;
35 and

- 1 (b) reconsider the making of a parole order for the person and
2 either make, or refuse to make, such an order, within 12
3 months after the refusal.
- 4 (3) A parole order must:
5 (a) be in writing; and
6 (b) specify whether or not the person is to be released subject to
7 supervision; and
8 (c) if it is proposed that the supervision period for a person
9 released on parole subject to supervision should end before
10 the end of the person's parole period—specify the day on
11 which the supervision period ends.
- 12 (4) Despite subsection (1), if the person will be serving a State or
13 Territory sentence on the day after the end of the non-parole
14 period, the requirement under that subsection to make, or refuse to
15 make, a parole order does not apply:
16 (a) for a federal sentence, or federal sentences, that do not
17 include a life sentence—if the parole period would end while
18 the person would still be imprisoned for the State or Territory
19 offence; and
20 (b) for a federal sentence, or federal sentences, that include a life
21 sentence—until the release of the person from prison for the
22 State or Territory offence (but a decision may be made under
23 that subsection at any time during the 3 month period before
24 the person's expected release); and
25 (c) in any case—if the State or Territory sentence is a life
26 sentence for which a non-parole period has not been fixed.
- 27 Note: The effect of this subsection and subsection 19AM(2) is that a parole
28 order may sometimes still be made for a person while the person is
29 serving a State or Territory sentence, but the person will not be
30 released in accordance with the parole order until the person is
31 released from prison for the State or Territory sentence.

32 **19AM Release on parole—when is a person released**

- 33 (1) A person must be released from prison on parole in accordance
34 with a parole order on whichever of the following days is
35 applicable (subject to subsections (2) and (3) and 19AZD(2)):
36 (a) for a parole order made before the end of the non-parole
37 period—the earlier of the following days:
38 (i) the last day of the non-parole period;
-

- 1 (ii) an earlier day (if any) specified in the parole order for
2 the purposes of this subparagraph (not being earlier than
3 30 days before the end of the non-parole period);
4 (b) for a parole order made after the end of the non-parole
5 period—the later of the following days:
6 (i) the day after the parole order is made;
7 (ii) a later day (if any) specified in the parole order for the
8 purposes of this subparagraph (not being later than 30
9 days after the order is made).

10 Note 1: Subsection (2) of this section provides a different release day if the
11 person is imprisoned for a State or Territory offence on the release day
12 that would otherwise apply under this subsection.

13 Note 2: Subsection (3) requires the person to certify his or her acceptance of
14 the parole order conditions before he or she may be released.

15 Note 3: Subsection 19AZD(2) may allow a person to be released slightly
16 earlier than the day that would otherwise apply under this
17 subsection (for example if the release day would otherwise fall on a
18 weekend or public holiday).

19 (2) However, if the person is imprisoned for a State or Territory
20 offence on the day he or she would otherwise be eligible for release
21 under subsection (1), the person must be released from prison on
22 parole in accordance with the parole order on the same day he or
23 she is released from prison (including on parole) for the State or
24 Territory offence.

25 (3) Despite subsections (1) and (2), the person must not be released
26 from prison on parole in accordance with the parole order unless,
27 before, on or after the release day provided by subsection (1) or
28 (2), the person certifies on the parole order (or a copy of the order)
29 that he or she accepts the conditions to which the order is subject.

30 Note: A person released on parole must comply with any conditions of the
31 parole order during the parole period (see sections 19AN and 19AU).

32 **19AMA Release on parole—parole period**

33 (1) For the purposes of this Part, the *parole period* for a person for
34 whom a parole order has been made is the period starting in
35 accordance with subsection (2) and ending in accordance with
36 subsection (3).

37 Note: A person released on parole must comply with any conditions of the
38 parole order during the parole period (see sections 19AN and 19AU).

- 1 (2) The person’s parole period starts at the earlier of the following
 2 times:
 3 (a) when the person is released from prison on parole;
 4 (b) if the person is serving a State or Territory sentence at the
 5 time the parole order is made—when the person certifies on
 6 the parole order (or a copy of the order) that he or she accepts
 7 the conditions to which the order is subject.
- 8 (3) The person’s parole period ends:
 9 (a) at the end of the last day of any federal sentence that is, on
 10 the day of the release, being served or to be served (after
 11 deducting any remission or reduction that is applicable); or
 12 (b) if the person has been given a federal life sentence—at the
 13 later of the following times:
 14 (i) 5 years after the person is released from prison on
 15 parole in accordance with section 19AM;
 16 (ii) the end of a later day (if any) specified in the parole
 17 order for the purposes of this subparagraph (not being a
 18 day earlier than 5 years after the person’s expected
 19 release from prison in accordance with the order).

20 **7 Paragraph 19AN(1)(b)**

21 Omit “if, under subsection 19AL(4), the day on which a supervision
 22 period ends is fixed in the parole order”, substitute “if the parole order
 23 specifies in accordance with subsection 19AL(3) that the person is to be
 24 released subject to supervision”.

25 **8 Subsection 19AN(2)**

26 Omit all the words after “order by”, substitute:

27 doing any or all of the following:

- 28 (a) varying or revoking a condition of the parole order;
 29 (b) imposing additional conditions on the parole order;
 30 (c) changing the day on which the supervision period ends.

31 **9 Paragraph 19AP(6)(b)**

32 Repeal the paragraph, substitute:

- 33 (b) specify whether or not the person is to be released subject to
 34 supervision; and

- 1 (c) if it is proposed that the supervision period for a person
2 released on licence subject to supervision should end before
3 the end of the person's licence period—specify the day on
4 which the supervision period ends.

5 **10 Paragraph 19AP(7)(b)**

- 6 Omit “if, under subsection (6), the day on which a supervision period
7 ends is fixed in the licence”, substitute “if the licence specifies in
8 accordance with subsection (6) that the person is to be released subject
9 to supervision”.

10 **11 Subsection 19AP(8)**

- 11 Omit all the words after “licence by”, substitute:

12 doing any or all of the following:

- 13 (a) varying or revoking a condition of the licence;
14 (b) imposing additional conditions on the licence;
15 (c) changing the day on which the supervision period ends.

16 **12 Application of amendments**

17 *Licences*

- 18 (1) The amendments made by items 1, 9 and 11 of this Schedule apply in
19 relation to a licence granted under section 19AP of the amended law at
20 or after the commencement.

21 *Parole*

- 22 (2) The amendments made by items 2, 3, 4, 6 and 8 of this Schedule:
23 (a) apply in relation to a person for whom a non-parole period
24 has been fixed, whether the person is sentenced before, at or
25 after the commencement; but
26 (b) do not apply in relation to a person if a parole order has been
27 made for the person under section 19AL of the old law.
- 28 (3) Paragraph 19AL(2)(b) of the amended law applies in accordance with
29 subitem (2) in relation to a person for whom an order has been made
30 under paragraph 19AL(2)(b) of the old law (directing that the person
31 not be released on parole) as if the Attorney-General had refused to
32 make a parole order for the person at the commencement.

1 Note: This means the Attorney-General will be required to reconsider making a parole order
2 for the person within 12 months of the commencement.

3 *Supervision periods for licences and parole*

4 (4) The amendments made by items 5, 7 and 10 of this Schedule apply in
5 relation to a parole order made under section 19AL of the amended law,
6 or a licence granted under section 19AP of the amended law, at or after
7 the commencement.

8 *Definitions*

9 (5) In this item:

10 ***amended law*** means the *Crimes Act 1914*, as in force at and after the
11 commencement.

12 ***commencement*** means the commencement of this item.

13 ***old law*** means the *Crimes Act 1914*, as in force immediately before the
14 commencement.
15

Schedule 8—Enforcement of fines

Crimes Act 1914

1 Paragraph 15A(1)(b)

After “the modifications”, insert “(if any)”.

2 Paragraphs 15A(1AB)(a), (b), (c) and (d)

Repeal the paragraphs.

3 Paragraph 15A(1AB)(g)

Omit “(a), (b), (c), (d),”.

4 Before subsection 15A(1AD)

Insert:

(1ACB) To avoid doubt, if a court makes an order imposing a penalty for failure to pay a fine, whether or not the penalty is described in subsection (1AB), a person or authority other than a court may take action to enforce the penalty without making an application under paragraph (1AA)(a), even if the penalty is imposed as an alternative penalty.

5 Application

The amendment made by item 4 of this Schedule applies in relation to an order that is made before, on or after the commencement of this item.

6 Pending applications to court

(1) If:

- (a) an application is made to a court under paragraph 15A(1AA)(a) of the *Crimes Act 1914* before the commencement of this item to impose a penalty described in:
 - (i) paragraph 15A(1AB)(a), (b), (c) or (d) of the old law; or
 - (ii) paragraph 15A(1AB)(g) of the old law to the extent that that paragraph relates to paragraph 15A(1AB)(a), (b), (c) or (d) of the old law; and
- (b) at commencement, the court has not made an order in relation to the application;

1 the application is taken to have been withdrawn.

2 (2) In this item:

3 *old law* means section 15A of the *Crimes Act 1914* as in force
4 immediately before the commencement of this item.

5 **7 Authority for past actions taken to enforce fines etc.**

6 (1) This item applies in relation to an action taken, before the
7 commencement of this item, by a person or authority (other than a
8 court) to impose a penalty described in:

- 9 (a) paragraph 15A(1AB)(a), (b), (c) or (d) of the old law; or
10 (b) paragraph 15A(1AB)(g) of the old law to the extent that that
11 paragraph relates to paragraph 15A(1AB)(a), (b), (c) or (d) of
12 the old law.

13 (2) The person or authority had the power to take the action, and is taken
14 always to have had the power to take the action, to impose such a
15 penalty.

16 (3) In this item:

17 *old law* means section 15A of the *Crimes Act 1914* as in force
18 immediately before the commencement of this item.