

EXPOSURE DRAFT

2010-2011

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011

No. , 2011

(Justice)

**A Bill for an Act to amend the law relating to
extradition and mutual assistance in criminal
matters, and for related purposes**

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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 after this Act receives the Royal Assent.	
2. Schedules 1 to 3	A single day to be fixed by Proclamation. However, if any of 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.	

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

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

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

EXPOSURE DRAFT

General amendments relating to extradition and mutual assistance in criminal matters

Schedule 1

Amendments relating to Federal Magistrates **Part 1**

1

Schedule 1—General amendments relating to extradition and mutual assistance in criminal matters

2

3

4

Part 1—Amendments relating to Federal Magistrates

5

Extradition Act 1988

6

1 Section 5

7

Insert:

8

Federal Magistrate, other than in section 45A, means a Federal Magistrate in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) are in force.

9

10

11

2 Section 5 (before paragraph (a) of the definition of *magistrate*)

12

13

Insert:

14

(aa) a Federal Magistrate; or

15

3 Subsection 21(1)

16

Omit “of a State or Territory”.

17

4 Subsection 35(1)

18

Omit “of a State or Territory”.

19

5 After section 45

20

Insert:

21

45A Federal Magistrates—consent to nomination

22

(1) A Federal Magistrate may, by writing, consent to be nominated by the Attorney-General under subsection (2).

23

24

(2) The Attorney-General may, by writing, nominate a Federal Magistrate in relation to whom a consent is in force under subsection (1) to be a magistrate for the purposes of this Act.

25

26

27

EXPOSURE DRAFT

Schedule 1 General amendments relating to extradition and mutual assistance in criminal matters

Part 1 Amendments relating to Federal Magistrates

1 (3) A nomination under subsection (2) is not a legislative instrument.

2 **45B Magistrates—personal capacity**

3 (1) A function or power conferred on a magistrate by this Act is
4 conferred on the magistrate:

5 (a) in a personal capacity; and

6 (b) not as a court or a member of a court.

7 (2) A magistrate (other than a Federal Magistrate) need not accept a
8 function or power conferred.

9 (3) A magistrate has, in relation to the performance or exercise of a
10 function or power conferred on the magistrate by this Act, the same
11 protection and immunity as if he or she were exercising that
12 function or power as, or as a member of, the court of which the
13 magistrate is a member.

14 **6 Subparagraph 55(c)(vii)**

15 Omit “of magistrates,”.

16 ***Mutual Assistance in Criminal Matters Act 1987***

17 **7 Subsection 3(1)**

18 Insert:

19 *Federal Magistrate*, other than in section 38ZC, means a Federal
20 Magistrate in relation to whom a consent under subsection
21 38ZC(1) and a nomination under subsection 38ZC(2) are in force.

22 **8 Subsection 3(1) (before paragraph (a) of the definition of**
23 ***Magistrate*)**

24 Insert:

25 (aa) except in Division 2 of Part VI—a Federal Magistrate; or

26 **9 At the end of section 38C**

27 Add:

28 (8) To avoid doubt, subsections (6) and (7) do not apply if the
29 Magistrate is a Federal Magistrate.

EXPOSURE DRAFT

General amendments relating to extradition and mutual assistance in criminal matters

Schedule 1

Amendments relating to Federal Magistrates **Part 1**

1 **10 Before section 39**

2 Insert:

3 **38ZC Federal Magistrates—consent to nomination**

4 (1) A Federal Magistrate may, by writing, consent to be nominated by
5 the Attorney-General under subsection (2).

6 (2) The Attorney-General may, by writing, nominate a Federal
7 Magistrate in relation to whom a consent is in force under
8 subsection (1) to be a Magistrate for the purposes of this Act.

9 (3) A nomination under subsection (2) is not a legislative instrument.

10 **38ZD Magistrates—personal capacity**

11 (1) A function or power conferred on a Magistrate by this Act is
12 conferred on the Magistrate:

13 (a) in a personal capacity; and

14 (b) not as a court or a member of a court.

15 (2) A Magistrate (other than a Federal Magistrate) need not accept a
16 function or power conferred.

17 (3) A Magistrate has, in relation to the performance or exercise of a
18 function or power conferred on the Magistrate by this Act, the
19 same protection and immunity as if he or she were exercising that
20 function or power as, or as a member of, the court of which the
21 Magistrate is a member.

22 **11 Paragraph 44(c)**

23 Omit “of Magistrates,”.

24

EXPOSURE DRAFT

Schedule 1 General amendments relating to extradition and mutual assistance in criminal matters

Part 2 Amendments relating to information sharing

1

2 **Part 2—Amendments relating to information sharing**

3 *Extradition Act 1988*

4 **12 After section 54**

5 Insert:

6 **54A Collection, use or disclosure of personal information for** 7 **extradition purposes—the *Privacy Act 1988***

8 (1) The collection, use or disclosure of personal information about an
9 individual is taken to be authorised by law for the purposes of the
10 *Privacy Act 1988* if the collection, use or disclosure is reasonably
11 necessary for the purposes of the extradition of one or more
12 persons to or from Australia, including making, or considering
13 whether to make, an extradition request.

14 (2) In this section:

15 *personal information* has the same meaning as in the *Privacy Act*
16 *1988*.

17 *Migration Act 1958*

18 **13 After paragraph 336E(2)(ga)**

19 Insert:

20 (gb) is for the purposes of the extradition of persons to or from
21 Australia, including the making of, or the consideration of
22 whether to make, a request for extradition; or

23 (gc) is for the purposes of:

24 (i) the provision, or proposed provision, of international
25 assistance in criminal matters by the Attorney-General,
26 or an officer of his or her Department, to a foreign
27 country; or

28 (ii) the obtaining, or proposed obtaining, of international
29 assistance in criminal matters by the Attorney-General,
30 or an officer of his or her Department, from a foreign
31 country; or

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General amendments relating to extradition and mutual assistance in criminal matters

Schedule 1

Amendments relating to information sharing Part 2

Mutual Assistance in Criminal Matters Act 1987

14 After section 43C

Insert:

43D Collection, use or disclosure of personal information for international assistance purposes—the *Privacy Act 1988*

(1) The collection, use or disclosure of personal information about an individual is taken to be authorised by law for the purposes of the *Privacy Act 1988* if the collection, use or disclosure is reasonably necessary for the purposes of:

- (a) the provision, or proposed provision, of international assistance in criminal matters by the Attorney-General, or an officer of his or her Department, to a foreign country; or
- (b) the obtaining, or proposed obtaining, of international assistance in criminal matters by the Attorney-General, or an officer of his or her Department, from a foreign country.

(2) In this section:

personal information has the same meaning as in the *Privacy Act 1988*.

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Schedule 2 Amendments relating to extradition

Part 1 Statutory appeal of extradition decisions

1

Schedule 2—Amendments relating to extradition

2

3

4

Part 1—Statutory appeal of extradition decisions

5

Division 1—Amendments

6

Extradition Act 1988

7

1 Subsection 21(1)

8

Omit “, or to the Supreme Court of the State or Territory,”.

9

2 Subsection 21(2)

10

Before “Court”, insert “Federal”.

11

3 Subsections 21(3) and (4)

12

Omit “or the Supreme Court”.

13

4 At the end of paragraph 21(6)(a)

14

Add “or”.

15

5 Paragraph 26(5)(c)

16

Omit “or the Supreme Court of the State or Territory in which the person is in custody”.

17

18

6 Subsections 26(5) and (6)

19

Omit “the Court” (wherever occurring), substitute “the Federal Court”.

20

7 Subsection 35(1)

21

Omit “, or to the Supreme Court of the State or Territory,”.

22

8 Subsection 35(2)

23

Before “Court”, insert “Federal”.

24

9 Subsections 35(3) and (4)

25

Omit “or the Supreme Court”.

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Schedule 2 Amendments relating to extradition

Part 1 Statutory appeal of extradition decisions

- 1 (2) Section 35 and subsection 51(1) of the *Extradition Act 1988*, as in force
2 immediately before commencement, continue to apply in relation to an
3 order made before commencement under section 34 of that Act as if
4 those amendments had not happened.

5 **16 Application of amendment made by item 10**

- 6 (1) The amendment made by item 10 of this Schedule applies in relation to
7 a surrender warrant or a temporary surrender warrant issued after
8 commencement under Part III of the *Extradition Act 1988*.
- 9 (2) Section 38 of the *Extradition Act 1988*, as in force immediately before
10 commencement, continues to apply in relation to a surrender warrant or
11 a temporary surrender warrant issued after commencement under
12 Part III of that Act as if that amendment had not happened.

13 **17 Definition**

14 In this Division:

15 *commencement* means the commencement of this item.
16

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Amendments relating to extradition **Schedule 2**
Waiver of extradition **Part 2**

1

2 **Part 2—Waiver of extradition**

3 *Extradition Act 1988*

4 **18 Section 5 (definition of *surrender offence*)**

5 Before “22(2)”, insert “15B(2) or”.

6 **19 Section 5 (paragraph (b) of the definition of *surrender***
7 ***offence*)**

8 Before “any”, insert “in the case of a determination under subsection
9 22(2)—”.

10 **20 Section 5 (at the end of subparagraph (b)(i) of the**
11 **definition of *surrender warrant*)**

12 Add “or”.

13 **21 Subsection 15(2)**

14 Omit “section 18 or 19, or both,”, substitute “one or more of
15 sections 15A, 18 and 19”.

16 **22 Subsection 15(4)**

17 Omit “section 18”, substitute “section 15A, 18”.

18 **23 Subsection 15(5)**

19 Omit “section 18 or 19, or both,”, substitute “one or more of
20 sections 15A, 18 and 19”.

21 **24 After section 15**

22 Insert:

23 **15A Waiver of extradition**

24 *Application of section—before decision has been made as to*
25 *whether or not to give section 16 notice*

26 (1) This section applies to a person who is on remand under section 15
27 at a particular time (the ***waiver time***) if, as at the waiver time, the

EXPOSURE DRAFT

Schedule 2 Amendments relating to extradition

Part 2 Waiver of extradition

1 Attorney-General has not yet made a decision as to whether or not
2 to give a notice in relation to the person under subsection 16(1) in
3 relation to one or more extradition offences.

4 *Application of section—after section 16 notice given*

- 5 (2) This section also applies to a person who is on remand under
6 section 15 at a particular time (the *waiver time*) if:
- 7 (a) before the waiver time, the Attorney-General gave a notice in
8 relation to the person under subsection 16(1) in relation to
9 one or more extradition offences; and
 - 10 (b) as at the waiver time, a magistrate has not done either of the
11 following:
 - 12 (i) advised the Attorney-General under subparagraph
13 18(2)(b)(ii) that the person has consented to be
14 surrendered in relation to the extradition offence or all
15 of the extradition offences;
 - 16 (ii) determined under subsection 19(1) that the person is
17 eligible for surrender in relation to any of the extradition
18 offences.

19 *Person may inform a magistrate that he or she wishes to waive*
20 *extradition*

- 21 (3) The person may inform a magistrate that he or she wishes to waive
22 extradition in relation to:
- 23 (a) if an extradition request has not been made for the surrender
24 of the person—the extradition offence or all of the extradition
25 offences specified in the extradition arrest warrant to which
26 the remand relates; or
 - 27 (b) if an extradition request has been made for the surrender of
28 the person—the extradition offence or all of the extradition
29 offences for which surrender of the person is sought.
- 30 (4) The magistrate must, after being informed under subsection (3),
31 advise the Attorney-General in writing of the offence or offences in
32 relation to which the person wishes to waive extradition.

33 *Magistrate must make order etc. if satisfied of matters*

- 34 (5) If a magistrate is satisfied of the matters in subsection (6) in
35 relation to the person, the magistrate must:
-

EXPOSURE DRAFT

Amendments relating to extradition **Schedule 2**
Waiver of extradition **Part 2**

- 1 (a) by warrant in the statutory form, order that the person be
2 committed to prison pending a determination by the
3 Attorney-General under subsection 15B(2) that the person be
4 surrendered, or not be surrendered, in relation to the
5 extradition offence or extradition offences mentioned in
6 paragraph (3)(a) or (b), as the case may be; and
7 (b) advise the Attorney-General in writing that the person wishes
8 to waive extradition for those offences.

- 9 (6) Before making an order under paragraph (5)(a) in relation to a
10 person, the magistrate must be satisfied that:
11 (a) the person voluntarily informed a magistrate under
12 subsection (3); and
13 (b) the person understands the following:
14 (i) that, once the order is made, the person cannot apply for
15 the order to be revoked;
16 (ii) the consequences of the fact that the extradition country
17 concerned may not have given, and if the order is made
18 will not be required to give, a speciality assurance (of a
19 kind mentioned in subsection 22(4)) in relation to the
20 person;
21 (iii) that certain requirements in this Act that would
22 otherwise apply in respect of the person will not apply if
23 the order is made (including, but not limited to,
24 requirements relating to extradition objections);
25 (iv) that, after the order is made, the person will be
26 surrendered to the extradition country concerned if the
27 Attorney-General determines under subsection 15B(2)
28 that the person is to be so surrendered; and
29 (c) the person is legally represented, or was given an adequate
30 opportunity to be legally represented, in the proceedings
31 before the magistrate.

32 *Rules that apply until magistrate decides not to make an order*

- 33 (7) After a person informs a magistrate under subsection (3) that the
34 person wishes to waive extradition in relation to an extradition
35 offence or extradition offences, the following rules apply unless
36 and until a magistrate decides not to make an order under
37 paragraph (5)(a) in relation to the person:

EXPOSURE DRAFT

Schedule 2 Amendments relating to extradition

Part 2 Waiver of extradition

- 1 (a) if a decision as to whether or not to give a notice under
2 subsection 16(1) had not, as at the waiver time, been made in
3 relation to the person in relation to the extradition offence or
4 extradition offences—the Attorney-General must not decide
5 whether or not to issue such a notice;
- 6 (b) if, before the waiver time, a notice under subsection 16(1)
7 had been given in relation to the person in relation to the
8 extradition offence or extradition offences:
- 9 (i) sections 18 and 19 do not apply to the person in relation
10 to the extradition offence or extradition offences; and
11 (ii) any proceedings that were on foot as at the waiver time
12 under section 18 or 19 in relation to the person in
13 relation to the extradition offence or extradition offences
14 are stayed.

15 *Magistrate must advise Attorney-General if not satisfied of matters*

- 16 (8) If a magistrate is not satisfied of the matters in subsection (6) in
17 relation to the person, the magistrate must advise the
18 Attorney-General in writing that the magistrate has decided not to
19 make an order under paragraph (5)(a) in relation to the person.

20 **15B Attorney-General must make surrender determination**

- 21 (1) This section applies if a magistrate has advised the
22 Attorney-General under paragraph 15A(5)(b) that a person wishes
23 to waive extradition in relation to one or more extradition offences.
- 24 (2) The Attorney-General must, as soon as is reasonably practicable,
25 having regard to all the circumstances, determine whether or not
26 the person is to be surrendered to the extradition country concerned
27 in relation to the extradition offences.
- 28 (3) The Attorney-General may only determine that the person be
29 surrendered to the extradition country concerned if:
- 30 (a) the Attorney-General does not have substantial grounds for
31 believing that, if the person were surrendered to the
32 extradition country, the person would be in danger of being
33 subjected to torture; and
34 (b) the Attorney-General is satisfied that, on surrender to the
35 extradition country, there is no real risk that the death penalty
36 will be carried out upon the person in relation to any offence.

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Amendments relating to extradition **Schedule 2**
Waiver of extradition **Part 2**

- 1 (4) If the Attorney-General determines that the person is not to be
2 surrendered, the Attorney-General must, by notice in writing in the
3 statutory form, direct a magistrate to order the release of the person
4 from custody.

25 At the end of section 17

5 Add:

- 6 (4) Subsection (2) does not apply to a person at any time after the
7 person has informed a magistrate under subsection 15A(3) that the
8 person wishes to waive extradition, unless and until a magistrate
9 decides not to make an order under paragraph 15A(5)(a) in relation
10 to the person.
11

12 (5) If:

13 (a) a person informs a magistrate under subsection 15A(3) that
14 the person wishes to waive extradition; and

15 (b) a magistrate decides not to make an order under paragraph
16 15A(5)(a) in relation to the person;

17 then, for the purposes of applying subsection (2) of this section to
18 the person, the period of days referred to in paragraph (2)(a) of this
19 section is to be calculated exclusive of the period:

20 (c) beginning on the day on which the person informs the
21 magistrate that the person wishes to waive extradition; and

22 (d) ending on the day on which the Attorney-General receives
23 the magistrate's advice under subsection 15A(8) that the
24 magistrate has decided not to make an order under paragraph
25 15A(5)(a) in relation to the person.

26 Section 23

26 After "subsection", insert "15B(2) or".

27 Paragraph 24(1)(a)

27 After "subsection", insert "15B(2) or".

28 Subsection 25(2)

28 Omit "The", substitute "If the temporary surrender warrant referred to
29 in paragraph (1)(a) was issued after the Attorney-General determined
30 under subsection 22(2) that the person was to be surrendered, the".
31
32
33

EXPOSURE DRAFT

Schedule 2 Amendments relating to extradition

Part 2 Waiver of extradition

1 **29 After paragraph 25(2)(a)**

2 Insert:

3 (ba) the Attorney-General does not have substantial grounds for
4 believing that, if the person were surrendered to the
5 extradition country, the person would be in danger of being
6 subjected to torture; and

7 **30 At the end of section 25**

8 Add:

9 (3) If the temporary surrender warrant referred to in paragraph (1)(a)
10 was issued after the Attorney-General determined under subsection
11 15B(2) that the person was to be surrendered, the Attorney-General
12 may only issue a surrender warrant under subsection (1) if:
13 (a) the Attorney-General does not have substantial grounds for
14 believing that, if the person were surrendered to the
15 extradition country, the person would be in danger of being
16 subjected to torture; or
17 (b) the Attorney-General is satisfied that, on surrender to the
18 extradition country, there is no real risk that the death penalty
19 will be carried out upon the person in relation to any offence.

20 **31 Paragraph 45(4)(b)**

21 After “section”, insert “15B or”.

22 **32 Application of amendments made by this Part**

23 The amendments made by this Part apply to a person who is remanded
24 under section 15 of the *Extradition Act 1988* on or after the
25 commencement of this item.
26

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Amendments relating to extradition **Schedule 2**
Other amendments **Part 3**

1

2 **Part 3—Other amendments**

3 **Division 1—Amendments relating to political offences**

4 *Extradition Act 1988*

5 **33 Section 5 (paragraphs (a) to (d) of the definition of *political***
6 ***offence*)**

7 Repeal the paragraphs, substitute:

- 8 (a) an offence that involves an act of violence against a person’s
9 life or liberty; or
10 (b) an offence prescribed by regulations for the purposes of this
11 paragraph to be an extraditable offence in relation to the
12 country or all countries; or
13 (c) an offence prescribed by regulations for the purposes of this
14 paragraph not to be a political offence in relation to the
15 country or all countries.

16 **34 At the end of paragraphs 7(b) and (c)**

17 Add “or”.

18 *Migration Act 1958*

19 **35 Subsection 91T(3)**

20 Omit “paragraph (a), (b), (c) or (d)”, substitute “paragraph (a), (b) or
21 (c)”.

22 **36 Application of amendments made by this Division**

23 The amendments made by this Division apply in respect of requests
24 made by a foreign country on or after the commencement of this item.

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Schedule 2 Amendments relating to extradition

Part 3 Other amendments

1 **Division 2—Extradition objection on the grounds of sex**
2 **and sexual orientation**

3 *Extradition Act 1988*

4 **37 Paragraphs 7(b) and (c)**

5 After “race,” insert “sex, sexual orientation.”

6 **38 Application of amendment made by item 37**

7 The amendment made by item 37 of this Schedule applies in relation to
8 an extradition request from an extradition country that is made on or
9 after the commencement of this item.

10 **Division 3—Notice of receipt of extradition request**

11 *Extradition Act 1988*

12 **39 Subsection 10(3)**

13 Omit “, subparagraph 16(2)(a)(ii) or paragraph”, substitute “or”.

14 **40 Subparagraph 12(3)(c)(i)**

15 Omit “issue”, substitute “give”.

16 **41 Subsection 16(2)**

17 Repeal the subsection, substitute:

18 *Person must be extraditable person in relation to extradition*
19 *country*

20 (2) The Attorney-General must not give the notice unless the
21 Attorney-General is of the opinion that the person is an extraditable
22 person in relation to the extradition country.

23 **42 Subsection 16(3)**

24 Omit “issued”, substitute “given”.

25 **43 Application of amendments made by this Division**

EXPOSURE DRAFT

Schedule 2 Amendments relating to extradition

Part 3 Other amendments

1 must, in those proceedings, ask the person whether he or she
2 consents to being surrendered to the extradition country in respect
3 of the additional extradition offences.

- 4 (3) Before asking the person whether he or she consents to being
5 surrendered in respect of the additional extradition offences, the
6 magistrate must:
- 7 (a) either:
 - 8 (i) be satisfied that the person is legally represented; or
 - 9 (ii) if the magistrate is not so satisfied—give the person an
10 adequate opportunity to be legally represented; and
 - 11 (b) inform the person that, if the person is surrendered, the
12 person may be tried and sentenced in the extradition country
13 for any additional extradition offence in relation to which the
14 person gives consent; and
 - 15 (c) inform the person that the person may be tried and sentenced
16 in the extradition country even though, had the conduct of the
17 person constituting the additional extradition offences, or
18 equivalent conduct, taken place in Australia at the time the
19 extradition request concerned was received, that conduct may
20 not have constituted an extradition offence in relation to
21 Australia.

22 *Magistrate to advise Attorney-General of consent*

- 23 (4) If the person gives his or her consent to being so surrendered, the
24 magistrate must, unless he or she considers that the consent was
25 not given voluntarily, advise the Attorney-General in writing of the
26 additional extradition offences in respect of which the person has
27 so consented.

28 Note: The heading to section 20 is altered by adding at the end “—offences that are not
29 extradition offences”.

30 **45 Subsection 22(1) (definition of *qualifying extradition*** 31 ***offence*)**

32 Repeal the definition, substitute:

33 ***qualifying extradition offence***, in relation to an eligible person,
34 means the following:

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Amendments relating to extradition **Schedule 2**
Other amendments **Part 3**

- 1 (a) if paragraph (a) of the definition of *eligible person* applies—
2 any extradition offence in relation to which the person
3 consented in accordance with section 18;
- 4 (b) if paragraph (b) of the definition of *eligible person* applies—
5 any extradition offence in relation to which:
6 (i) the magistrate referred to in that paragraph; or
7 (ii) the court that conducted the final proceedings under
8 section 21;
9 determined that the person was eligible for surrender within
10 the meaning of subsection 19(2);
- 11 (c) in any case—any extradition offence in relation to which the
12 person has consented in accordance with section 19A.

13 **Division 5—Extradition to Australia from other countries**

14 *Extradition Act 1988*

15 **46 At the end of Part IV**

16 Add:

17 **44A Persons permanently surrendered to Australia**

- 18 (1) This section applies if:
19 (a) a person is surrendered by a country to Australia; and
20 (b) before the person is surrendered to Australia, the
21 Attorney-General of Australia gives an undertaking to the
22 country:
23 (i) that life imprisonment will not be imposed on the
24 person; or
25 (ii) specifying the maximum period of imprisonment that
26 may be imposed on the person;
27 in the event that the person is found to have committed a
28 particular offence or offences punishable by Australian law.
- 29 (2) The person must not, under a law of the Commonwealth, a State or
30 Territory, be sentenced to:
31 (a) if subparagraph (1)(b)(i) applies—life imprisonment; or

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Part 3 Other amendments

- 1 (b) if subparagraph (1)(b)(ii) applies—a period of imprisonment
2 that is more than the period specified in the
3 Attorney-General’s undertaking.
- 4 (3) For an offence that is to be prosecuted in a State or Territory, the
5 Attorney-General of Australia must, before giving an undertaking,
6 consult with the Attorney-General of the State or Territory.
- 7 (4) If the undertaking mentioned in subsection (1) is given in writing,
8 the undertaking is not a legislative instrument.
- 9 (5) To avoid doubt, the undertaking mentioned in subsection (1) must
10 not specify a period that is longer than:
- 11 (a) in the event that the person is found to have committed a
12 particular offence—the maximum period of imprisonment
13 that applies to the offence; or
- 14 (b) in the event that the person is found to have committed
15 particular offences—the total of each maximum period of
16 imprisonment that applies to each offence.

17 Division 6—Prosecution instead of extradition

18 *Extradition Act 1988*

19 **47 Subsections 45(1), (2) and (3)**

20 Repeal the subsections, substitute:

21 *Offence*

- 22 (1) A person commits an offence if:
- 23 (a) a magistrate in a State or Territory remands the person under
24 section 15; and
- 25 (b) the person engaged in conduct outside Australia at an earlier
26 time; and
- 27 (c) the conduct, or equivalent conduct, would have constituted
28 an offence (the *notional Australian offence*) against a law of
29 the Commonwealth, or the State or Territory, if the conduct
30 or equivalent conduct had occurred in the State or Territory
31 at the earlier time.

32 Note: This subsection creates an offence distinct from the notional
33 Australian offence.

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Amendments relating to extradition **Schedule 2**
Other amendments **Part 3**

1

Absolute liability

2

- (2) Absolute liability applies to paragraphs (1)(a) and (b), and to the circumstance in paragraph (1)(c) that the conduct, or equivalent conduct, referred to in that paragraph would have constituted the notional Australian offence if the conduct or equivalent conduct had occurred in the State or Territory at the earlier time.

3

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Note: Paragraph (3)(a) provides for physical and fault elements etc. to apply in determining whether conduct would have constituted the notional Australian offence.

8

9

10

Determining whether conduct would have constituted notional Australian offence

11

12

- (3) In determining whether the conduct, or equivalent conduct, referred to in paragraph (1)(c) would have constituted the notional Australian offence:

13

14

15

(a) the physical elements and fault elements (however described), if any, that apply in relation to the notional Australian offence have effect; and

16

17

18

(b) any defences or special liability provisions (however described) that apply in relation to the notional Australian offence have effect; and

19

20

21

(c) any procedures or limitations (however described) that apply in relation to the prosecution of the notional Australian offence have effect; and

22

23

24

(d) if the conduct outside Australia consisted of 2 or more acts or omissions, regard may be had to all, some or only one of those acts or omissions.

25

26

27

- (3A) Subsection (3) does not limit the *Judiciary Act 1903*.

28

Note: Division 1 of Part X, and subsection 79(1), of the *Judiciary Act 1903* apply various State or Territory laws in relation to persons charged with offences against Commonwealth laws.

29

30

31

Penalty for offence

32

- (3B) The maximum penalty for an offence against subsection (1) is the maximum penalty that applied to the notional Australian offence at the time the conduct referred to in paragraph (1)(b) was engaged in.

33

34

35

EXPOSURE DRAFT

Schedule 2 Amendments relating to extradition

Part 3 Other amendments

1 *Offence is indictable*

2 (3C) An offence against subsection (1) is an indictable offence.

3 *Attorney-General's consent to prosecution of offence*

4 (3D) Proceedings for an offence against subsection (1) must not be
5 commenced without the Attorney-General's written consent.

6 Note: The heading to section 45 is replaced by the heading "**Prosecution of persons instead**
7 **of extradition**".

8 **48 Application of item 47**

9 The amendment made by item 47 applies to conduct engaged in outside
10 Australia on or after the commencement of this item.

11 **49 Subsection 45(4)**

12 Omit "subsection (3)", substitute "subsection (3D)".

13 **50 Paragraph 45(4)(a)**

14 Omit "paragraph (1)(a);", substitute "paragraph (1)(b); and".

15 **51 Paragraph 45(4)(b)**

16 Omit "country; and", substitute "country."

17 **52 Paragraph 45(4)(c)**

18 Repeal the paragraph.

19 **53 Application of the amendment made by item 52**

20 The amendment made by item 52 of this Schedule applies in respect of
21 an extradition request made by an extradition country if the request is
22 made on or after the commencement of this item.

23 **54 Subsection 45(5)**

24 Omit "subsection (3)", substitute "subsection (3D)".

25 Note: The following heading to subsection 45(5) is inserted "*Arresting, charging and*
26 *remanding person before consent*".

EXPOSURE DRAFT

Amendments relating to extradition **Schedule 2**
Other amendments **Part 3**

1 **Division 7—Technical amendments relating to notices**

2 *Extradition Act 1988*

3 **55 After section 16**

4 Insert:

5 **16A Attorney-General may give an amended notice**

6 *Scope*

7 (1) This section applies if the Attorney-General has given a notice (the
8 *original notice*) under subsection 16(1) in relation to a person.

9 *Attorney-General may give an amended notice*

10 (2) Subject to subsection (4), the Attorney-General may, in his or her
11 discretion, give an amended notice at any time before:

12 (a) the person has consented in accordance with section 18 to
13 being surrendered to the extradition country concerned in
14 relation to the extradition offence or extradition offences
15 specified in the original notice; or

16 (b) a magistrate has determined in accordance with section 19
17 that the person is eligible for surrender in relation to the
18 extradition offence or extradition offences specified in the
19 original notice.

20 (3) The amended notice must be in writing in the statutory form
21 expressed to be directed to any magistrate.

22 (4) The Attorney-General must not give an amended notice under
23 subsection (2) that specifies one or more extradition offences that
24 were not specified in the original notice unless the
25 Attorney-General is satisfied that he or she could give a notice
26 under subsection 16(1) in the same form as the amended notice.

27 (5) For the purposes of this Act, a reference to a notice given under
28 subsection 16(1) includes a reference to an amended notice given
29 under subsection (2) of this section.

30 (6) An amended notice given under subsection (2) is not a legislative
31 instrument.

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Schedule 2 Amendments relating to extradition

Part 3 Other amendments

1 *Copies of amended notice and documents to be given to the person*

- 2 (7) As soon as practicable after the person is remanded under
3 section 15, or an amended notice is given under subsection (2) of
4 this section, whichever is the later:
5 (a) a copy of the amended notice; and
6 (b) if the amended notice specifies one or more extradition
7 offences that were not specified in the original notice—the
8 copies of the documents referred to in:
9 (i) paragraph 19(2)(a); and
10 (ii) if applicable—paragraph 19(2)(b);
11 to the extent that those documents relate to those extradition
12 offences;
13 must be given to the person.

14 *Revocation in accordance with the Acts Interpretation Act 1901*

- 15 (8) This section does not limit the power of the Attorney-General to
16 revoke the original notice in accordance with subsection 33(3) of
17 the *Acts Interpretation Act 1901*.

18 **56 Paragraph 17(1)(a)**

19 Omit “issue”, substitute “give”.

20 **57 After subsection 18(1)**

21 Insert:

22 (1A) If:

- 23 (a) the Attorney-General has given a notice (the *original notice*)
24 under subsection 16(1) in relation to a person; and
25 (b) during proceedings conducted in relation to the person under
26 this section, the Attorney-General gives an amended notice
27 under subsection 16A(2) in relation to the person; and
28 (c) the amended notice specifies one or more extradition
29 offences that were not specified in the original notice; and
30 (d) the magistrate considers it necessary to give the person time
31 to inform the magistrate whether the person consents to being
32 surrendered to the extradition country in relation to any of
33 those extradition offences;

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Amendments relating to extradition **Schedule 2**
Other amendments **Part 3**

1 the magistrate may adjourn the proceedings for such period as the
2 magistrate considers reasonable to allow the person to so inform
3 the magistrate.

4 **58 After subsection 19(4)**

5 Insert:

6 (4A) If:

- 7 (a) the Attorney-General has given a notice (the *original notice*)
8 under subsection 16(1) in relation to a person; and
9 (b) during proceedings conducted in relation to the person under
10 this section, the Attorney-General gives an amended notice
11 under subsection 16A(2) in relation to the person; and
12 (c) the amended notice specifies one or more extradition
13 offences that were not specified in the original notice; and
14 (d) the magistrate considers it necessary to give the person and
15 the extradition country time to prepare for the conduct of
16 proceedings under this section in relation to any of those
17 extradition offences;

18 the magistrate may adjourn the proceedings for such period as the
19 magistrate considers reasonable to allow the person and the
20 extradition country to prepare for the conduct of those proceedings.

21 **59 Subsection 43(1)**

22 After “statutory form”, insert “expressed to be directed to any
23 magistrate”.

24 **60 After section 46**

25 Insert:

26 **46A Giving notices to magistrates etc.**

27 *Scope*

28 (1) This section applies if:

- 29 (a) the Attorney-General decides to give a notice under
30 subsection 16(1), 16A(2) or 43(1) directed to a magistrate; or
31 (b) the Attorney-General is required to give a notice under
32 subsection 12(3), 15B(4) or 17(1) directing a magistrate.

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Amendments relating to extradition **Schedule 2**
Other amendments **Part 3**

1 Repeal the paragraph, substitute:

2 (b) either:

- 3 (i) the Attorney-General has not received an extradition
4 request from the extradition country concerned in
5 relation to the person; or
6 (ii) the Attorney-General has received such a request but a
7 notice has not been given under subsection 16(1) in
8 relation to the person within the period of 5 days after
9 the end of the period of days referred to in
10 paragraph (a);

11 **64 Subsection 17(2)**

12 Omit all the words after “the person” (third occurring), substitute “must
13 be brought before a magistrate”.

14 **65 After subsection 17(2)**

15 Insert:

16 (2A) The magistrate must order the release of the person from custody,
17 or the discharge of the recognisances on which bail was granted to
18 the person, unless the magistrate is satisfied:

19 (a) if subparagraph (2)(b)(i) applies:

- 20 (i) that the extradition country concerned has not made an
21 extradition request in relation to the person because of
22 exceptional circumstances; and
23 (ii) that the Attorney-General is likely to receive an
24 extradition request from the extradition country
25 concerned in relation to the person within a particular
26 period that is reasonable in the circumstances; and
27 (iii) that, after receiving the extradition request, the
28 Attorney-General is likely to make a decision to give, or
29 not to give, a notice under subsection 16(1) in relation
30 to the person within a particular period that is
31 reasonable in the circumstances; or

32 (b) if subparagraph (2)(b)(ii) applies—that the Attorney-General
33 is likely to make a decision to give, or not to give, a notice
34 under subsection 16(1) within a particular period that is
35 reasonable in the circumstances.

36 **66 Paragraphs 17(3)(a) and (b)**

EXPOSURE DRAFT

Schedule 2 Amendments relating to extradition

Part 3 Other amendments

1

Repeal the paragraphs, substitute:

2

(a) a magistrate was satisfied:

3

(i) under subparagraph (2A)(a)(ii) that an extradition request was likely to be received in relation to a person within a particular period; or

4

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(ii) under subparagraph (2A)(a)(iii) or paragraph (2A)(b) that a decision was likely to be made to give, or not to give, a notice under subsection 16(1) in relation to a person within a particular period; and

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(b) the request is not received, or the decision is not made, within the period;

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12

67 Subparagraph 18(2)(a)(i)

13

After “prison”, insert “, or subject to subsection (3), released on bail.”.

14

68 Paragraph 18(2)(b)

15

Repeal the paragraph, substitute:

16

(b) if, after the person has been advised as mentioned in paragraph (a), the person again consents to being surrendered—order that the person be committed to prison or (subject to subsection (3)) released on bail, to await:

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21

(i) the issue of a surrender warrant or temporary surrender warrant; or

22

23

(ii) release, or the discharge of the recognisances on which bail was granted, under an order under subsection 22(5).

24

69 At the end of section 18

25

Add:

26

(3) A magistrate must not release a person on bail under this section unless there are special circumstances justifying such release.

27

28

(4) If a magistrate makes an order under paragraph (2)(b), the magistrate must advise the Attorney-General in writing of the offence or the offences in respect of which the person has consented.

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(5) An order committing a person to prison under paragraph (2)(b) must be made by warrant in the statutory form.

33

EXPOSURE DRAFT

Amendments relating to extradition **Schedule 2**
Other amendments **Part 3**

70 Paragraph 19(9)(a)

Repeal the paragraph, substitute:

- (a) order that the person be committed to prison or (subject to subsection (9A)) released on bail, to await:
 - (i) the issue of a surrender warrant or temporary surrender warrant; or
 - (ii) release, or the discharge of the recognisances on which bail was granted, under an order under subsection 22(5);

71 Paragraph 19(9)(b)

Omit “in the warrant is made, seek a review of the order”, substitute “under paragraph (a) is made, seek a review of the order”.

72 After subsection 19(9)

Insert:

- (9A) A magistrate must not release a person on bail under paragraph (9)(a) unless there are special circumstances justifying such release.
- (9B) An order committing a person to prison under paragraph (9)(a) must be made by warrant in the statutory form.

73 Paragraph 21(2)(b)

Repeal the paragraph, substitute:

- (b) quash the order.

74 After subsection 21(2)

Insert:

- (2A) If the Federal Court quashes the order, it must:
 - (a) in the case of an order under subsection 19(9)—order the release of the person or the discharge of the recognisances on which bail was granted; or
 - (b) in the case of an order under subsection 19(10)—order that the person be committed to prison or (subject to subsection (2B)) released on bail, to await:
 - (i) the issue of a surrender warrant or temporary surrender warrant; or

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Schedule 2 Amendments relating to extradition

Part 3 Other amendments

1 (ii) release, or the discharge of the recognisances on which
2 bail was granted, under an order under subsection 22(5).

3 (2B) The Federal Court must not release a person on bail under
4 paragraph (2A)(b) unless there are special circumstances justifying
5 such release.

6 (2C) An order committing a person to prison under paragraph (2A)(b)
7 must be made by warrant in the statutory form.

8 **75 Paragraph 21(6)(e)**

9 Repeal the paragraph, substitute:

10 (e) if an order for the release of the person (whether or not on
11 bail) has been made under subsection 19(9) or (10), or
12 subsection (2A) of this section—the court to which the
13 application or appeal is made may order both:

14 (i) if the person was released on bail—the discharge of the
15 recognisances on which bail was granted; and

16 (ii) the arrest of the person;

17 **76 Subparagraph 21(6)(f)(i)**

18 Repeal the subparagraph, substitute:

19 (i) if an order for the release of the person has not been
20 made; or

21 **77 Subparagraph 21(6)(f)(iv)**

22 Omit “on such terms and conditions as the court thinks fit”.

23 **78 Subsection 22(1) (definition of *eligible person*)**

24 After “prison”, insert “or released on bail”.

25 **79 Subsection 22(1) (paragraph (b) of the definition of *eligible*** 26 ***person*)**

27 Repeal the paragraph, substitute:

28 (b) by order made under subsection 19(9) or 21(2A) (including
29 because of an appeal referred to in section 21), where no
30 proceedings under section 21 are being conducted or are
31 available in relation to the determination under subsection
32 19(9) to which the order relates.

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Amendments relating to extradition **Schedule 2**
Other amendments **Part 3**

1 **80 Subsection 22(5)**

2 Omit “the Attorney-General shall order, in writing, the release of the
3 person.”, substitute “the Attorney-General must, by notice in writing,
4 order:

5 (a) if the person has been committed to prison—the release of
6 the person; or

7 (b) if the person has been released on bail—the discharge of the
8 recognisances on which bail was granted.”.

9 **81 Paragraph 26(1)(c)**

10 Before “require”, insert “if the person has been committed to prison—”.

11 **82 After paragraph 26(1)(c)**

12 Insert:

13 (ca) if the person has been released on bail—authorise any police
14 officer to take the person into custody;

15 **83 Subparagraph 35(6)(g)(iv)**

16 Omit “on such terms and conditions as the court thinks fit”.

17 **84 After section 49A**

18 Insert:

19 **49B Orders for bail to be on terms and conditions court or**
20 **magistrate thinks fit**

21 A decision under this Act of a court or a magistrate to remand or
22 release a person on bail may be made on such terms and conditions
23 as the court or magistrate thinks fit.

24 **49C Availability of bail during judicial review proceedings relating**
25 **to certain determinations**

26 (1) This section applies if:

27 (a) the Attorney-General determines under subsection 15B(2) or
28 22(2) that a person is to be surrendered to an extradition
29 country in relation to one or more extradition offences; and

30 (b) the person applies to a court for judicial review of the
31 determination.

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Schedule 2 Amendments relating to extradition

Part 3 Other amendments

1 (2) The court to which the application is made, or any court hearing an
2 appeal in relation to the determination, may, subject to
3 subsection (3), order the release of the person on bail until the
4 application has been determined or the appeal has been heard (as
5 the case requires).

6 (3) A court must not release a person on bail under subsection (2)
7 unless there are special circumstances justifying such release.

8 **85 Application**

9 The amendments of subsections 17(2) and (3) of the *Extradition Act*
10 *1988* made by this Division apply to a person who is remanded under
11 section 15 of the *Extradition Act 1988* on or after the commencement of
12 this item.

13 **Division 9—Other minor technical amendments**

14 *Extradition Act 1988*

15 **86 Section 5**

16 Insert:

17 *extraditable person* has the meaning given by section 6.

18 **87 Section 5**

19 Insert:

20 *extradition arrest warrant* means a warrant issued under
21 section 12.

22 **88 Section 5 (at the end of paragraph (a) of the definition of** 23 ***extradition country*)**

24 Add “or”.

25 **89 Section 5 (subparagraph (b)(ii) of the definition of** 26 ***extradition country*)**

27 Omit “responsible; and”, substitute “responsible; or”.

28 **90 Section 5**

29 Insert:

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Schedule 2 Amendments relating to extradition

Part 3 Other amendments

1 **98 Subsection 15(1)**

2 Omit “a provisional arrest warrant”, substitute “an extradition arrest
3 warrant”.

4 **99 At the end of section 16**

5 Add:

6 (4) A notice given under subsection (1) is not a legislative instrument.

7 **100 At the end of section 17**

8 Add:

9 (6) A notice given under subsection (1) is not a legislative instrument.

10 **101 Paragraph 21(6)(d)**

11 Before “the court”, insert “subject to section 21A,”.

12 **102 After section 21**

13 Insert:

14 **21A Admission of evidence etc. on review or appeal**

15 *Scope*

- 16 (1) This section applies if a person or extradition country:
17 (a) applies under subsection 21(1) for a review of an order;
18 (b) appeals under subsection 21(3) against an order made on that
19 review; or
20 (c) appeals to the High Court against an order made on that
21 appeal.

22 *Admission of evidence*

- 23 (2) If:
24 (a) a party to the relevant proceedings under section 19 was
25 prevented from adducing evidence (the *excluded evidence*) in
26 the proceedings; and
27 (b) the review court considers that the party should have been
28 permitted to adduce the excluded evidence in those
29 proceedings;

EXPOSURE DRAFT

Amendments relating to extradition **Schedule 2**
Other amendments **Part 3**

1 the court may receive:

2 (c) the excluded evidence; and

3 (d) further evidence, or submissions, that directly relate to the
4 excluded evidence.

5 *Documents containing deficiencies*

6 (3) If:

7 (a) a document is:

8 (i) a document to which the review court must have regard
9 under paragraph 21(6)(d); or

10 (ii) a document that is received by the review court under
11 subsection (2) of this section; and

12 (b) the document contains a deficiency of relevance to the review
13 or appeal; and

14 (c) the court considers the deficiency to be of a minor nature;
15 the court must adjourn the proceedings for such period as is
16 necessary to allow the deficiency to be remedied.

17 (4) This section does not entitle the person to whom the proceedings
18 relate to adduce, or the court to receive, evidence to contradict an
19 allegation that the person has engaged in conduct constituting an
20 extradition offence for which the surrender of the person is sought.

21 *Definition*

22 (5) In this section:

23 *review court* means the court to which the application or appeal
24 was made.

25 **103 At the end of paragraph 22(3)(a)**

26 Add “and”.

27 **104 Paragraph 22(3)(b)**

28 Repeal the paragraph, substitute:

29 (b) the Attorney-General does not have substantial grounds for
30 believing that, if the person were surrendered to the
31 extradition country, the person would be in danger of being
32 subjected to torture; and

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Schedule 2 Amendments relating to extradition

Part 3 Other amendments

1 **105 At the end of paragraphs 22(3)(c) and (d)**

2 Add “and”.

3 **106 At the end of paragraph 22(4)(a)**

4 Add “or”.

5 **107 At the end of subparagraphs 22(4)(d)(i) and (ii)**

6 Add “or”.

7 **108 At the end of section 22**

8 Add:

9 (6) If a determination under subsection (2) is made in writing, the
10 determination is not a legislative instrument.

11 (7) An order made under subsection (5) is not a legislative instrument.

12 **109 At the end of paragraphs 24(1)(a) and (b)**

13 Add “and”.

14 **110 At the end of subparagraph 24(3)(b)(i)**

15 Add “or”.

16 **111 At the end of section 24**

17 Add:

18 (6) If:

19 (a) the Attorney-General informs an extradition country as
20 mentioned in subsection (4); and

21 (b) the Attorney-General does so in writing;
22 the written instrument is not a legislative instrument.

23 **112 At the end of subparagraph 25(2)(a)(i)**

24 Add “or”.

25 **113 Paragraph 26(1)(c)**

26 Omit “a police officer”, substitute “any police officer”.

27 **114 Paragraph 26(1)(d)**

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Amendments relating to extradition **Schedule 2**
Other amendments **Part 3**

1 Omit “the police officer to transport the eligible person in custody, and,
2 if necessary or convenient, to detain the eligible person in custody”,
3 substitute “the eligible person to be transported in custody, and if
4 necessary or convenient, detained in custody, by any police officer”.

5 **115 Paragraph 26(1)(d)**

6 Omit “(in this subsection called the *foreign escort officer*)”, substitute
7 “or a person included in a specified class (in this subsection called the
8 *escort officer*)”.

9 **116 Paragraph 26(1)(e)**

10 Omit “foreign”.

11 **117 After subsection 26(1)**

12 Insert:

13 (1A) To avoid doubt, subject to this section and subsection 33(3) of the
14 *Acts Interpretation Act 1901*, a surrender warrant or a temporary
15 surrender warrant remains in force until the eligible person is
16 surrendered, at a place in the extradition country, to a person
17 appointed by the extradition country to receive the eligible person.

18 **118 Section 27**

19 Before “Where:”, insert “(1)”.

20 **119 At the end of section 27**

21 Add:

22 (2) A notice given under subsection (1) is not a legislative instrument.

23 **120 At the end of section 30**

24 Add:

25 (8) If a direction under subsection (5) is given in writing, the direction
26 is not a legislative instrument.

27 **121 After subsection 31(5)**

28 Insert:

29 (5A) If a direction under subsection (5) is given in writing, the direction
30 is not a legislative instrument.

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Schedule 2 Amendments relating to extradition

Part 3 Other amendments

1 **122 Subsection 32(2)**

2 Omit “34”, substitute “33A or 34, or both,”.

3 **123 Paragraph 33A(1)(b)**

4 Omit “and”.

5 **124 Paragraph 33A(1)(c)**

6 Repeal the paragraph.

7 **125 Paragraph 38(1)(a)**

8 Omit “a police officer to take the eligible person into custody, to
9 transport the eligible person in custody and, if necessary or convenient,
10 to detain the eligible person in custody”, substitute “the eligible person
11 to be taken into custody, transported in custody and, if necessary or
12 convenient, detained in custody, by any police officer”.

13 **126 Paragraph 38(1)(a)**

14 Omit “(in this subsection called the *New Zealand escort officer*)”,
15 substitute “or a person included in a specified class (in this subsection
16 called the *escort officer*)”.

17 **127 Paragraph 38(1)(b)**

18 Omit “New Zealand” (first occurring).

19 **128 After subsection 38(1)**

20 Insert:

21 (1A) To avoid doubt, subject to this section and subsection 33(3) of the
22 *Acts Interpretation Act 1901*, a surrender warrant or a temporary
23 surrender remains in force until the eligible person is surrendered,
24 at a place in the extradition country, to a person appointed by the
25 extradition country to receive the eligible person.

26 **129 Section 39**

27 Before “Where:”, insert “(1)”.

28 **130 At the end of section 39**

29 Add:

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Amendments relating to extradition **Schedule 2**
Other amendments **Part 3**

1 (2) A notice given under subsection (1) is not a legislative instrument.

2 **131 At the end of section 43**

3 Add:

4 (4) A notice given under subsection (1) is not a legislative instrument.

5 **132 At the end of section 44**

6 Add:

7 (3) If the undertaking mentioned in subsection (1) is given in writing,
8 the undertaking is not a legislative instrument.

9 (4) An order made under paragraph (1)(d) is not a legislative
10 instrument.

11 (5) If an order under subsection (2) is made in writing, the order is not
12 a legislative instrument.

13 **133 At the end of section 45**

14 Add:

15 *Consent is not a legislative instrument*

16 (6) A consent given under subsection (3B) is not a legislative
17 instrument.

18 **134 Section 47**

19 Omit “A provisional arrest warrant, within the meaning of Part II or
20 III,” substitute “An extradition arrest warrant, a provisional arrest
21 warrant”.

22 **135 At the end of section 48**

23 Add:

24 (3) An authorisation given under subparagraph (1)(b)(iv) is not a
25 legislative instrument.

26 (4) If a direction under subparagraph (1)(b)(v) is given in writing, the
27 direction is not a legislative instrument.

28 **136 Paragraph 55(d)**

EXPOSURE DRAFT

Schedule 2 Amendments relating to extradition

Part 3 Other amendments

1 Omit “a fine of \$2,000”, substitute “20 penalty units”.

2 **137 Application—section 21A of the *Extradition Act 1988* etc.**

3 Section 21A of the *Extradition Act 1988*, as inserted by this Schedule,
4 applies in relation to an application for review or appeal referred to in
5 subsection 21A(1) that is made on or after the commencement of this
6 item, whether or not the relevant proceedings under section 19 were
7 instituted before or after that commencement.

8 **138 Application of amendments made by items 122, 123 and**
9 **124**

10 The amendments made by items 122, 123 and 124 of this Schedule
11 apply in relation to persons in respect of whom an indorsed New
12 Zealand warrant has been obtained on or after the commencement of
13 this item.

14 **139 Application of amendment made by item 136**

15 The amendment made by item 136 of this Schedule applies to a penalty
16 imposed on or after the commencement of this item, whether or not the
17 relevant proceedings were instituted before, on or after that
18 commencement.
19

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Grounds of refusal **Part 1**

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Schedule 3—Amendments relating to providing mutual assistance in criminal matters

Part 1—Grounds of refusal

Mutual Assistance in Criminal Matters Act 1987

1 Paragraph 8(1)(a)

After “relates to the”, insert “investigation,”.

2 Paragraph 8(1)(b)

After “with a view to”, insert “investigating,”.

3 After paragraph 8(1)(b)

Insert:

- (ba) the request relates to the confiscation, or restraining, of the proceeds or an instrument of an offence that is, or is by reason of the circumstances in which it is alleged to have been committed, or was committed, a political offence; or

4 Paragraph 8(1)(c)

After “for the purpose of”, insert “investigating,”.

5 Paragraph 8(1)(c)

After “sex,”, insert “sexual orientation,”.

6 After paragraph 8(1)(c)

Insert:

- (ca) there are substantial grounds for believing that the granting of the request would result in a person being subjected to torture; or

7 Paragraph 8(1)(d)

After “relates to the”, insert “investigation,”.

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 1 Grounds of refusal

1 **8 After paragraph 8(1)(d)**

2 Insert:

3 (da) both of the following subparagraphs are satisfied:

4 (i) the request relates to the confiscation, or restraining, of
5 the proceeds or an instrument of an offence;

6 (ii) an act or omission constituting the offence, had the act
7 or omission occurred in Australia, would have
8 constituted an offence under the military law of
9 Australia but not also under the ordinary criminal law of
10 Australia; or

11 **9 Paragraph 8(1)(e)**

12 Omit “Territory; or”, substitute “Territory.”.

13 **10 Paragraph 8(1)(f)**

14 Repeal the paragraph.

15 **11 Subsection 8(1A)**

16 Repeal the subsection, substitute:

17 (1A) A request by a foreign country for assistance under this Act must
18 be refused if:

19 (a) the request relates to the investigation, prosecution or
20 punishment of:

21 (i) a person arrested or detained on suspicion of having
22 committed an offence; or

23 (ii) a person charged with, or convicted of, an offence; and

24 (b) the offence is one in respect of which the death penalty may
25 be imposed in the foreign country;

26 unless the Attorney-General is of the opinion, having regard to the
27 special circumstances of the case, that the assistance requested
28 should be granted.

29 **12 Paragraph 8(2)(a)**

30 After “relates to the”, insert “investigation,”.

31 **13 Paragraph 8(2)(a)**

32 After “Australian law”, insert “at the time at which the request was
33 received”.

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Grounds of refusal **Part 1**

14 Paragraphs 8(2)(b) and (c)

Repeal the paragraphs, substitute:

(b) both of the following subparagraphs are satisfied:

(i) the request relates to the confiscation, or restraining, of the proceeds or an instrument of an offence;

(ii) an act or omission constituting the offence, had the act or omission occurred in Australia, would not have constituted an offence against Australian law at the time at which the request was received; or

(c) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where:

(i) the person has been acquitted or pardoned by a competent tribunal or authority in the foreign country, or in Australia or another country; or

(ii) the person has undergone the punishment provided by the law of the foreign country, or of Australia or another country;

in respect of that offence or of another offence constituted by the same act or omission as that offence; or

15 Application of amendments made by this Part

The amendments made by this Part apply in relation to a request by a foreign country that is under consideration on or after the commencement of this item, whether the request was made before or after that commencement.

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 2 Video link evidence

1

2 **Part 2—Video link evidence**

3 *Mutual Assistance in Criminal Matters Act 1987*

4 **16 Subsection 3(1)**

5 Insert:

6 *tape recording* means audio recording, video recording or
7 recording by other electronic means.

8 **17 Before section 12**

9 Insert:

10 **Division 1—Requests by Australia**

11 **18 Subparagraphs 12(1)(a)(i) and (ii)**

12 Omit “in accordance with the law of that country”.

13 **19 After paragraph 12(1)(a)**

14 Insert:

15 (aa) if subparagraph (a)(i) applies—to arrange for a tape
16 recording to be made of the evidence to be taken; and

17 **20 Paragraph 12(1)(b)**

18 After “evidence”, insert “(and if paragraph (aa) applies, the tape
19 recording or a copy of it)”.

20 **21 Subsection 12(3)**

21 After “cross-examined,” insert “in person or”.

22 **22 After section 12**

23 Insert:

24 **Division 2—Requests by foreign countries**

25 **23 Subsection 13(1)**

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Video link evidence **Part 2**

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Repeal the subsection, substitute:

- (1) This section applies if a foreign country (the *requesting country*) requests:
 - (a) any of the following:
 - (i) that evidence be taken in Australia;
 - (ii) that evidence be taken in Australia and a tape recording be made of the evidence taken;
 - (iii) that evidence be taken in Australia for live transmission by means of video link to a courtroom or other place in the requesting country; or
 - (b) that documents or other articles in Australia be produced; for the purposes of a proceeding in relation to a criminal matter in that country or another foreign country (the *foreign proceeding*).
- (1A) The Attorney-General may, by writing in accordance with the approved form, authorise:
 - (a) the taking of the evidence and its transmission to the requesting country; or
 - (b) the production of the documents or other articles and their transmission to the requesting country.

24 Subsection 13(2)

Omit all the words before paragraph (b), substitute:

- (2) If the Attorney-General gives an authorisation under subsection (1A):
 - (a) in the case of the taking of evidence—a Magistrate may do all or any of the following:
 - (i) take evidence on oath or affirmation of the witness appearing before the Magistrate to give evidence in relation to the matter;
 - (ii) direct that all or part of the proceeding be conducted in private;
 - (iii) require a person to leave the place in Australia where the giving of evidence is taking place or going to take place;
 - (iv) prohibit or restrict the publication of evidence given in the proceeding or of the name of a party to, or a witness in, the foreign proceeding;

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 2 Video link evidence

- 1 (v) subject to subsections 13AB(1) and (2) (as the case
2 requires), require the production of documents or other
3 articles;
4 (vi) take such action as the Magistrate considers appropriate
5 to facilitate the foreign proceeding;
6 (vii) perform any other function required by the regulations;
7 or

25 At the end of subsection 13(2)

8 Add:

9 Note 1: Subparagraph (2)(a)(i)—see also subsection (2C).

10 Note 2: Subparagraphs (2)(a)(ii), (iii) and (iv)—see also subsection (2B).

26 Paragraph 13(2)(b)

11 Omit “subsection (6)”, substitute “subsections 13AB(1) and (2) (as the
12 case requires)”.

27 After subsection 13(2)

13 Insert:

14 (2A) However, a Magistrate may not make a ruling about the
15 admissibility of evidence in a foreign proceeding.

16 (2B) If a Magistrate is taking evidence for live transmission by means of
17 video link to a courtroom or other place in the requesting country,
18 the Magistrate:

19 (a) may only exercise the powers mentioned in
20 subparagraphs (2)(a)(ii), (iii) and (iv) at the request of the
21 foreign court; and

22 (b) may, at the request of the foreign court, assist with the
23 administering by the foreign court of an oath or affirmation;
24 and

25 (c) may administer an oath or affirmation.

26 (2C) If a Magistrate takes evidence as mentioned in
27 subparagraph (2)(a)(i) but not for live transmission by means of
28 video link to a courtroom, or other place, in the requesting country,
29 the Magistrate must:

30 (a) if the requesting country requests that a tape recording be
31 made of the evidence taken—cause a tape recording to be
32

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Video link evidence **Part 2**

1 made of the evidence, certify that the evidence on the tape
2 recording was taken by the Magistrate and cause the tape
3 recording, or a copy of it, to be sent to the Attorney-General;
4 and

5 (b) in any other case—cause the evidence to be put in writing,
6 certify that the evidence was taken by the Magistrate and
7 cause the writing so certified to be sent to the
8 Attorney-General.

9 (2D) If, in taking evidence as mentioned in paragraph (2)(a), a
10 Magistrate requires the production of documents or other articles
11 under subparagraph (2)(a)(v), the Magistrate must send the
12 documents, or copies of the documents certified by the Magistrate
13 to be true copies, or the other articles, to the Attorney-General.

14 **28 Subsection 13(4A)**

15 Omit “, through a video link, from the requesting country”, substitute
16 “in person, or through a video link from the requesting country”.

17 **29 After subsection 13(4A)**

18 Insert:

19 (4B) For the purposes of Part III of the *Crimes Act 1914*:

20 (a) the proceeding before the Magistrate is a judicial proceeding;
21 and

22 (b) evidence taken from a witness on oath or affirmation is
23 testimony given in a judicial proceeding.

24 **30 Subsections 13(6) to (10)**

25 Repeal the subsections.

26 **31 After section 13**

27 Insert:

28 **13AA Enforcement of orders**

29 (1) If a Magistrate is conducting a proceeding under subsection 13(2)
30 and makes an order relating to the conduct of the proceeding, the
31 order must be complied with.

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 2 Video link evidence

- 1 (2) If the Magistrate is a Federal Magistrate, subject to the Rules of
2 Court made under the *Federal Magistrates Act 1999*, the order may
3 be enforced as if the order were an order of the Federal Magistrates
4 Court.
- 5 (3) In any other case, subject to the rules of the court of which the
6 Magistrate is a member, the order may be enforced as if the order
7 were an order of that court.

8 **13AB Commonwealth and State and Territory laws apply in** 9 **relation to taking evidence and producing documents etc.**

- 10 (1) Subject to subsection (3), the following laws of the Commonwealth
11 apply, so far as they are capable of application, for the purposes of
12 section 13:
- 13 (a) laws with respect to the compelling of persons to attend
14 before a Federal Magistrate;
- 15 (b) upon the hearing of a charge against a person for an offence
16 against the law of the Commonwealth—laws with respect to
17 giving evidence, answering questions and producing
18 documents or other articles.
- 19 (2) Subject to subsection (3), the laws of each State or Territory with
20 respect to:
- 21 (a) the compelling of persons to attend before a Magistrate (other
22 than a Federal Magistrate); and
- 23 (b) giving evidence, answering questions and producing
24 documents or other articles;
- 25 upon the hearing of a charge against a person for an offence against
26 the law of that State or Territory apply, so far as they are capable
27 of application, for the purposes of section 13.
- 28 (3) For the purposes of section 13:
- 29 (a) the person to whom the proceeding in the requesting country
30 relates is competent but not compellable to give evidence;
31 and
- 32 (b) a person who is required to give evidence, or produce
33 documents or other articles, for the purposes of a proceeding
34 in relation to a criminal matter in the requesting country or
35 another foreign country, is not compellable to answer a
36 question, or produce a document or article, that the person is

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Video link evidence **Part 2**

1 not compellable to answer or produce, as the case may be, in
2 the proceeding in that country.

3 (4) Paragraph (3)(b) does not apply if its application would be
4 inconsistent with a provision of a mutual assistance treaty between
5 Australia and the requesting country concerned.

6 (5) A duly authenticated foreign law immunity certificate is admissible
7 in proceedings under section 13 as prima facie evidence of the
8 matters stated in the certificate.

9 **32 Application of amendments made by this Part**

10 The amendments made by this Part apply:

- 11 (a) if an authorisation has not been given, before the
12 commencement of this item, by the Attorney-General under
13 subsection 13(1) of the *Mutual Assistance in Criminal*
14 *Matters Act 1987* in relation to a request made by a foreign
15 country—in relation to that request; and
16 (b) in relation to a request made by a foreign country on or after
17 the commencement of this item.
18

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 3 Telecommunications and surveillance devices

1

2

Part 3—Telecommunications and surveillance devices

3

4

Division 1—Provision of certain lawfully obtained material

5

6

Mutual Assistance in Criminal Matters Act 1987

7

33 Subsection 3(1)

8

Insert:

9

interception warrant information has the same meaning as in the
Telecommunications (Interception and Access) Act 1979.

10

11

34 Subsection 3(1)

12

Insert:

13

lawfully accessed information has the same meaning as in the
Telecommunications (Interception and Access) Act 1979.

14

15

35 Subsection 3(1)

16

Insert:

17

lawfully intercepted information has the same meaning as in the
Telecommunications (Interception and Access) Act 1979.

18

19

36 Subsection 3(1)

20

Insert:

21

protected information means information that is protected
information within the meaning of paragraph 44(1)(a), (b) or (c) of
the *Surveillance Devices Act 2004*.

22

23

24

37 Subsection 3(1)

25

Insert:

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Telecommunications and surveillance devices **Part 3**

1 *stored communications warrant information* has the same
2 meaning as in the *Telecommunications (Interception and Access)*
3 *Act 1979*.

4 **38 Subsection 13A(2)**

5 Repeal the subsection, substitute:

6 (2) The Attorney-General may only authorise the provision to the
7 requesting country of material specified in column 1 of the
8 following table if the request relates to a serious offence against the
9 laws of that country specified in column 2 of the table:
10

Offences for which provision of particular material may be authorised

Item	Column 1	Column 2
1	material that is or includes protected information	a serious offence punishable by a maximum penalty of imprisonment for 3 years or more, imprisonment for life or the death penalty
2	material that is or includes lawfully accessed information or stored communications warrant information	a serious offence punishable by a maximum penalty of: (a) imprisonment for 3 years or more, imprisonment for life or the death penalty; or (b) a fine of an amount that is at least equivalent to 900 penalty units
3	material that is or includes lawfully intercepted information or interception warrant information	(a) a serious offence punishable by a maximum penalty of imprisonment for 7 years or more, imprisonment for life or the death penalty; or (b) a cartel offence punishable by a maximum penalty of a fine of an amount that is at least equivalent to \$10,000,000

11 **39 Subsection 13A(6) (paragraph (b) of the definition of** 12 ***material lawfully obtained by an enforcement agency in*** 13 ***Australia*)**

14 Omit “prosecution;”, substitute “prosecution.”.

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters
Part 3 Telecommunications and surveillance devices

1 **40 Subsection 13A(6) (definition of *material lawfully obtained***
2 ***by an enforcement agency in Australia*)**

3 Omit all the words after paragraph (b).

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

5 **41 At the end of section 68**

6 Add:

7 ; and (l) if the Attorney-General has authorised the provision of the
8 information to a foreign country under subsection 13A(1) of
9 the *Mutual Assistance in Criminal Matters Act 1987*—to that
10 foreign country, or to the Secretary of the Department for the
11 purpose of providing the information to that foreign country.

12 **42 After section 68**

13 Insert:

14 **68A Communicating information obtained by Secretary**

15 (1) The Secretary of the Department may, personally, or by a person
16 authorised by him or her, communicate to another person
17 (including a foreign country) lawfully intercepted information or
18 interception warrant information if:

- 19 (a) the information was communicated to the Secretary under
20 paragraph 68(1) for the purpose of providing the information
21 to a foreign country; and
22 (b) the communication of the information is for purposes
23 connected with providing the information to the foreign
24 country.

25 (2) A person to whom lawfully intercepted information or interception
26 warrant information has been communicated under subsection (1)
27 or this subsection may communicate that information to another
28 person (including a foreign country) for purposes connected with
29 providing the information to the foreign country.

30 **43 Paragraph 94(3)(a)**

31 After “Division 2”, insert “(other than section 102B)”.

32 **44 After section 102A**

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 3 Telecommunications and surveillance devices

1 **Division 2—Requests for covert access to stored**
2 **communications and use of surveillance**
3 **devices**

4 *Mutual Assistance in Criminal Matters Act 1987*

5 **49 Subsection 3(1)**

6 Insert:

7 *carrier* has the same meaning as in the *Telecommunications*
8 *(Interception and Access) Act 1979*.

9 **50 Subsection 3(1)**

10 Insert:

11 *stored communication* has the same meaning as in the
12 *Telecommunications (Interception and Access) Act 1979*.

13 **51 After Part III**

14 Insert:

15 **Part IIIA—Assistance in relation to covert access to**
16 **stored communications and use of**
17 **surveillance devices**

18 **Division 1—Requests by Australia**

19 **15A Requests by Australia for surveillance devices**

20 (1) This section applies if:

- 21 (a) an investigation in relation to an offence punishable by a
22 maximum penalty of imprisonment for 3 years or more has
23 commenced in Australia; and
24 (b) the use of a surveillance device (however described) is
25 reasonably necessary for the purpose of obtaining
26 information relevant to:
27 (i) the commission of the offence; or
28 (ii) the identity or location of the offenders.

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Telecommunications and surveillance devices **Part 3**

- 1 (2) Australia may request an appropriate authority of a foreign
2 country:
3 (a) to authorise the use of a surveillance device (however
4 described), in accordance with the law of that country, to
5 obtain the information referred to in paragraph (1)(b); and
6 (b) to arrange for any such information that has been obtained to
7 be sent to Australia.
- 8 (3) Subsection (4) applies if:
9 (a) Australia makes a request under this section; and
10 (b) the foreign country obtains any information referred to in
11 paragraph (1)(b) by means of a process authorised by the law
12 of that country other than the use (as requested by Australia)
13 of a surveillance device.
- 14 (4) The information obtained by the foreign country:
15 (a) is not inadmissible in evidence in the proceeding; or
16 (b) is not precluded from being used for the purposes of the
17 investigation;
18 on the ground alone that it was obtained otherwise than in
19 accordance with the request.

20 **Division 2—Requests by foreign countries**

21 **15B Requests by foreign countries for stored communications**

- 22 The Attorney-General may, in his or her discretion, authorise the
23 Australian Federal Police or a police force or police service of a
24 State, in writing, to apply for a stored communications warrant
25 under section 110 of the *Telecommunications (Interception and*
26 *Access) Act 1979* if the Attorney-General is satisfied that:
27 (a) an investigation, or investigative proceeding, relating to a
28 criminal matter involving an offence against the law of a
29 foreign country (the *requesting country*) has commenced in
30 the requesting country; and
31 (b) the offence to which the investigation, or investigative
32 proceeding, relates is punishable by a maximum penalty of:
33 (i) imprisonment for 3 years or more, imprisonment for life
34 or the death penalty; or

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 3 Telecommunications and surveillance devices

- 1 (ii) a fine of an amount that is at least equivalent to 900
2 penalty units; and
3 (c) there are reasonable grounds to believe that stored
4 communications relevant to the investigation, or investigative
5 proceeding, are held by a carrier; and
6 (d) the requesting country has requested the Attorney-General to
7 arrange for access to the stored communications.

8 Note: Information obtained under the warrant may only be communicated to
9 the requesting country on certain conditions: see subsection 142A(1)
10 of the *Telecommunications (Interception and Access) Act 1979*.

11 **15C Requests by foreign countries for surveillance devices**

- 12 (1) The Attorney-General may, in his or her discretion, authorise an
13 eligible law enforcement officer, in writing, to apply for a
14 surveillance device warrant under section 14 of the *Surveillance*
15 *Devices Act 2004* if the Attorney-General is satisfied that:
16 (a) an investigation, or investigative proceeding, relating to a
17 criminal matter involving an offence against the law of a
18 foreign country (the *requesting country*) that is punishable
19 by a maximum penalty of imprisonment for 3 years or more,
20 imprisonment for life or the death penalty has commenced in
21 the requesting country; and
22 (b) the requesting country requests the Attorney-General to
23 arrange for the use of a surveillance device; and
24 (c) the requesting country has given appropriate undertakings in
25 relation to:
26 (i) ensuring that the information obtained as a result of the
27 use of the surveillance device will only be used for the
28 purpose for which it is communicated to the requesting
29 country; and
30 (ii) the destruction of a document or other thing containing
31 information obtained as a result of the use of the
32 surveillance device; and
33 (iii) any other matter the Attorney-General considers
34 appropriate.

- 35 (2) In this section:

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters
Part 3 Telecommunications and surveillance devices

- 1 (b) suspects on reasonable grounds that the use of a surveillance
2 device is necessary, in the course of the investigation or
3 investigative proceeding to which the authorisation relates,
4 for the purpose of enabling evidence to be obtained of:
5 (i) the commission of the offence to which the
6 authorisation relates; or
7 (ii) the identity or location of the persons suspected of
8 committing the offence.

9 **56 Subsection 14(4)**

10 Omit “(1) or (3)”, substitute “(1), (3) or (3A)”.

11 **57 After paragraph 16(1)(b)**

12 Insert:

- 13 (ba) in the case of a warrant sought in relation to a mutual
14 assistance authorisation—that such an authorisation is in
15 force and that there are reasonable grounds for the suspicion
16 founding the application for the warrant; and

17 **58 Paragraph 16(2)(a)**

18 After “relevant offence”, insert “or a mutual assistance authorisation”.

19 **59 Paragraph 16(2)(e)**

20 Before “the likely”, insert “in the case of a warrant sought in relation to
21 a relevant offence or a recovery order—”.

22 **60 After paragraph 16(2)(e)**

23 Insert:

- 24 (ea) in the case of a warrant sought in relation to a mutual
25 assistance authorisation—the likely evidentiary or
26 intelligence value of any evidence or information sought to
27 be obtained, to the extent that this is possible to determine
28 from information obtained from the foreign country to which
29 the authorisation relates; and

30 **61 After subparagraph 17(1)(b)(iii)**

31 Insert:

- 32 (iiia) if the warrant relates to a mutual assistance
33 authorisation—the offence or offences against the law

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Telecommunications and surveillance devices **Part 3**

1 of a foreign country to which the authorisation relates;
2 and

3 **62 Subsection 20(2)**

4 Omit “or 21(3)(a) and (b)”, substitute “, 21(3)(a) and (b) or 21(3A)(a)
5 and (b)”.

6 **63 After subsection 21(3)**

7 Insert:

8 (3A) If:

- 9 (a) a surveillance device warrant has been sought by or on behalf
10 of a law enforcement officer as authorised under a mutual
11 assistance authorisation; and
12 (b) the chief officer of the law enforcement agency to which the
13 law enforcement officer belongs or is seconded is satisfied
14 that the use of a surveillance device is no longer required for
15 the purpose of enabling evidence to be obtained of:
16 (i) the commission of the offence against a law of a foreign
17 country to which the authorisation relates; or
18 (ii) the identity or location of the persons suspected of
19 committing the offence;
20 the chief officer must, in addition to revoking the warrant under
21 section 20, take the steps necessary to ensure that use of the
22 surveillance device authorised by the warrant is discontinued.

23 **64 After paragraph 21(5)(b)**

24 Insert:

- 25 or (c) if the warrant was issued in relation to a mutual assistance
26 authorisation—of enabling evidence to be obtained of:
27 (i) the commission of the offence against a law of a foreign
28 country to which the authorisation relates; or
29 (ii) the identity or location of the persons suspected of
30 committing the offence;

31 **65 Paragraph 45(4)(f)**

32 Repeal the paragraph, substitute:

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters Part 3 Telecommunications and surveillance devices

- 1 (f) the communication of information for the purpose of
2 providing the information to a foreign country, or an
3 appropriate authority of a foreign country, if:
4 (i) the provision of the information has been authorised
5 under subsection 13A(1) of the *Mutual Assistance in*
6 *Criminal Matters Act 1987*; or
7 (ii) the information was obtained under, or relates to, a
8 surveillance device warrant issued in relation to a
9 mutual assistance authorisation.

10 **66 After paragraph 50(1)(a)**

11 Insert:

- 12 (aa) the number of mutual assistance applications made by or on
13 behalf of, and the number of warrants issued as a result of
14 such applications to, law enforcement officers of the agency
15 during that year; and

16 **67 After paragraph 50(1)(e)**

17 Insert:

- 18 (ea) the number of mutual assistance applications made by or on
19 behalf of law enforcement officers of the agency that were
20 refused during that year, and the reasons for refusal; and

21 **68 After paragraph 50(1)(i)**

22 Insert:

- 23 (ia) for each offence (the *foreign offence*) against a law of a
24 foreign country in respect of which a warrant was issued as a
25 result of a mutual assistance application made by or on behalf
26 of law enforcement officers of the agency during the year—
27 the offence (if any), under a law of the Commonwealth, or of
28 a State or a Territory, that is of the same nature as, or a
29 substantially similar nature to, the foreign offence; and

30 **69 After subparagraph 53(2)(c)(iii)**

31 Insert:

- 32 (iiia) if the warrant was issued in relation to a mutual
33 assistance authorisation—the offence against the law of
34 the foreign country to which the authorisation relates;
35 and

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Telecommunications and surveillance devices **Part 3**

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

2 **70 Subsection 5(1)**

3 Insert:

4 *investigative proceeding* has the meaning given by section 15D of
5 the *Mutual Assistance in Criminal Matters Act 1987*.

6 **71 Subsection 5(1)**

7 Insert:

8 *mutual assistance application* means an application for a stored
9 communications warrant made as a result of an authorisation under
10 section 15B of the *Mutual Assistance in Criminal Matters Act*
11 *1987*.

12 **72 After section 5E**

13 Insert:

14 **5EA Serious foreign contraventions**

15 For the purposes of this Act, a *serious foreign contravention* is a
16 contravention of a law of a foreign country that is punishable by a
17 maximum penalty of:

- 18 (a) imprisonment for 3 years or more, imprisonment for life or
19 the death penalty; or
20 (b) a fine of an amount that is at least equivalent to 900 penalty
21 units.

22 **73 Paragraph 6H(c)**

23 Omit “paragraph 116(1)(d)”, substitute “subparagraph 116(1)(d)(i) or
24 (ii), as the case requires”.

25 **74 Paragraph 116(1)(d)**

26 Omit all the words after “with”, substitute:

- 27 : (i) in the case of an application other than a mutual
28 assistance application—the investigation by the agency
29 of a serious contravention in which the person is
30 involved; or

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 3 Telecommunications and surveillance devices

- 1 (ii) in the case of a mutual assistance application—the
2 investigation or investigative proceeding, by the foreign
3 country to which the application relates, of a serious
4 foreign contravention to which the application relates
5 and in which the person is involved; and

6 **75 Paragraph 116(1)(e)**

7 After “subsection (2)”, insert “or (2A) (as the case requires)”.

8 **76 Subsection 116(2)**

9 Omit “The matters”, substitute “In the case of an application other than
10 a mutual assistance application, the matters”.

11 **77 Paragraph 116(2)(c)**

12 Omit “paragraph (1)(d)”, substitute “subparagraph (1)(d)(i)”.

13 **78 After subsection 116(2)**

14 Insert:

- 15 (2A) In the case of a mutual assistance application, the matters to which
16 the issuing authority must have regard are:
- 17 (a) how much the privacy of any person or persons would be
18 likely to be interfered with by accessing those stored
19 communications under a stored communications warrant; and
 - 20 (b) the gravity of the conduct constituting the serious foreign
21 contravention; and
 - 22 (c) how much the information referred to in
23 subparagraph (1)(d)(ii) would be likely to assist in
24 connection with the investigation, to the extent that this is
25 possible to determine from information obtained from the
26 foreign country to which the application relates.

27 **79 Subsection 116(3)**

28 After “contravention”, insert “or serious foreign contravention, but
29 cannot relate to both a serious contravention and a serious foreign
30 contravention”.

31 **80 Subsection 118(3)**

32 After “contravention”, insert “or serious foreign contravention”.

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Telecommunications and surveillance devices **Part 3**

1 **81 Subsection 118(3)**

2 Omit “paragraph 116(1)(d)”, substitute “subparagraph 116(1)(d)(i) or
3 (ii), as the case may be”.

4 **82 Subsection 139(1)**

5 After “(2)”, insert “or (4A)”.

6 **83 Subsection 139(2)**

7 Omit “The”, substitute “In the case of information obtained by the
8 agency other than through the execution of a warrant issued as a result
9 of a mutual assistance application, the”.

10 **84 After subsection 139(4)**

11 Insert:

12 (4A) In the case of information obtained by the agency through the
13 execution of a warrant issued as a result of a mutual assistance
14 application, the purposes are purposes connected with:

- 15 (a) providing the information to the foreign country, or an
16 appropriate authority of the foreign country, to which the
17 application relates; or
18 (b) the keeping of records by the agency under Part 3-5.

19 **85 After section 142**

20 Insert:

21 **142A Communicating information obtained as a result of a mutual**
22 **assistance application to foreign country**

23 (1) Despite subsection 139(4A) and section 142, a person may only
24 communicate information, obtained through the execution of a
25 warrant issued as a result of a mutual assistance application, to the
26 foreign country to which the application relates, subject to the
27 following conditions:

- 28 (a) that the information will only be used for the purposes for
29 which the foreign country requested the information;
30 (b) that any document or other thing containing the information
31 will be destroyed when it is no longer required for those
32 purposes;

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 3 Telecommunications and surveillance devices

1 (c) any other condition determined, in writing, by the
2 Attorney-General.

3 (2) A determination made under paragraph (1)(c) is not a legislative
4 instrument.

86 At the end of subsection 162(1)

5 Add:

6 ; and (c) the relevant statistics about mutual assistance applications
7 that the agency made during that year; and

8 (d) for each offence (the *foreign offence*) against a law of a
9 foreign country in respect of which a stored communications
10 warrant was issued as a result of a mutual assistance
11 application made by the agency during the year—the offence
12 (if any), under a law of the Commonwealth, or of a State or a
13 Territory, that is of the same nature as, or a substantially
14 similar nature to, the foreign offence.
15

87 After paragraph 162(2)(b)

16 Insert:

17 (ba) the relevant statistics about mutual assistance applications
18 that were made during that year; and
19

88 At the end of subsection 162(2)

20 Add:

21 ; and (e) for each offence (the *foreign offence*) against a law of a
22 foreign country in respect of which a stored communications
23 warrant was issued as a result of a mutual assistance
24 application made during the year—the offence (if any), under
25 a law of the Commonwealth, or of a State or a Territory, that
26 is of the same nature as, or a substantially similar nature to,
27 the foreign offence.
28

89 Application of amendments made by this Division

29 The amendments made by this Division apply in relation to a request by
30 a foreign country that is under consideration on or after the
31 commencement of this item, whether the request was made before or
32 after that commencement.
33

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Telecommunications and surveillance devices **Part 3**

1 **Division 3—Amendments relating to telecommunications**
2 **data**

3 *Mutual Assistance in Criminal Matters Act 1987*

4 **90 Subsection 3(1)**

5 Insert:

6 *communication* has the same meaning as in the
7 *Telecommunications (Interception and Access) Act 1979*.

8 **91 Subsection 3(1)**

9 Insert:

10 *telecommunications system* has the same meaning as in the
11 *Telecommunications (Interception and Access) Act 1979*.

12 **92 Before Part IV**

13 Insert:

14 **Part IIIB—Assistance in relation to**
15 **telecommunications data**
16

17 **15E Requests by foreign countries for telecommunications data**

18 (1) This section applies if:

- 19 (a) a foreign country requests the disclosure of specified
20 information or specified documents that come into existence
21 during a specified period; and
22 (b) the information or documents relate to the fact of a
23 communication passing over a telecommunications system.

24 (2) To avoid doubt, information or documents do not relate to the fact
25 of a communication passing over a telecommunications system:

- 26 (a) if the information is the contents or substance of a
27 communication; or
28 (b) to the extent that the documents contain the contents or
29 substance of a communication.

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 3 Telecommunications and surveillance devices

- 1 (3) The Attorney-General may authorise the making of an
2 authorisation under section 180B of the *Telecommunications*
3 *(Interception and Access) Act 1979*, of a disclosure of information
4 or documents to which this section applies, if he or she is satisfied
5 that:
6 (a) an investigation relating to a criminal matter involving an
7 offence against the law of the foreign country has
8 commenced in that country; and
9 (b) the offence is punishable by imprisonment for 3 years or
10 more, imprisonment for life or the death penalty.

11 *Telecommunications Act 1997*

12 **93 Subparagraph 306(1)(b)(ii)**

13 Omit “or subsection 180(3)”, substitute “, subsection 180(3), or
14 section 180A or 180B”.

15 *Telecommunications (Interception and Access) Act 1979*

16 **94 Subsection 5(1) (definition of *authorised officer*)**

17 Repeal the definition, substitute:

18 *authorised officer*:

- 19 (a) in sections 180A, 180B and 180C, subsections 184(5) and
20 185(2) and paragraph 186(1)(ca), means:
21 (i) the Commissioner of Police; or
22 (ii) a Deputy Commissioner of Police; or
23 (iii) a member of the Australian Federal Police who is
24 covered by an authorisation in force under subsection
25 5AB(1A); and
26 (b) in any other case, means:
27 (i) the head (however described) of the enforcement agency
28 or a person acting as that head; or
29 (ii) a deputy head (however described) of the enforcement
30 agency or a person acting as that deputy head; or
31 (iii) a person who holds, or is acting in, an office or position
32 in the enforcement agency that is covered by an
33 authorisation in force under subsection 5AB(1).

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Telecommunications and surveillance devices **Part 3**

1 **95 Subsection 5(1)**

2 Insert:

3 *foreign law enforcement agency* means:

- 4 (a) a police force (however described) of a foreign country; or
5 (b) any other authority or person responsible for the enforcement
6 of the laws of the foreign country.

7 **96 Subsection 5AB(1)**

8 Omit “paragraph (c)”, substitute “subparagraph (b)(iii)”.

9 Note: The following heading to subsection 5AB(1) is inserted “*Authorised officers of an*
10 *enforcement agency*”.

11 **97 Subsection 5AB(2)**

12 Repeal the subsection, substitute:

13 *Authorised officers of the Australian Federal Police*

14 (1A) The Commissioner of Police may authorise, in writing, a senior
15 executive AFP employee who is a member of the Australian
16 Federal Police to be an authorised officer.

17 (2) A copy of an authorisation must be given to the Communications
18 Access Coordinator:

- 19 (a) in the case of an authorisation made under subsection (1)—
20 by the head of the enforcement agency; and
21 (b) in the case of an authorisation made under subsection (1A)—
22 by the Commissioner of Police.

23 **98 Subsection 171(1)**

24 Omit “and 4”, substitute “, 4 and 4A”.

25 **99 Subsection 171(1) (note 1)**

26 Repeal the note, substitute:

27 Note 1: Division 3 covers the Organisation. Division 4 covers disclosures for
28 the purposes of Australian law enforcement. Division 4A covers
29 disclosures for the purposes of foreign law enforcement.

30 **100 At the end of subsection 171(3)**

31 Add “or 4A”.

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 3 Telecommunications and surveillance devices

1 **101 Section 172**

2 Omit “and 4”, substitute “, 4 and 4A”.

3 **102 After Division 4 of Part 4-1 of Chapter 4**

4 Insert:

5 **Division 4A—Foreign law enforcement**

6 **Subdivision A—Primary disclosures**

7 **180A Authorisations for access to existing information or**
8 **documents—enforcement of the criminal law of a foreign**
9 **country**

10 *Disclosure to the Australian Federal Police*

11 (1) Sections 276, 277 and 278 of the *Telecommunications Act 1997* do
12 not prevent a disclosure of information or a document if the
13 information or document is covered by an authorisation in force
14 under subsection (2).

15 (2) An authorised officer of the Australian Federal Police may
16 authorise the disclosure of specified information or specified
17 documents that came into existence before the time the person
18 from whom the disclosure is sought receives notification of the
19 authorisation.

20 Note: Section 184 deals with notification of authorisations.

21 (3) The authorised officer must not make the authorisation unless he or
22 she is satisfied that the disclosure is reasonably necessary for the
23 enforcement of the criminal law of a foreign country.

24 *Disclosure to a foreign law enforcement agency*

25 (4) If specified information or specified documents are disclosed
26 because of an authorisation given under subsection (2), an
27 authorised officer of the Australian Federal Police may authorise
28 the disclosure of the information or documents so disclosed to a
29 foreign law enforcement agency.

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Telecommunications and surveillance devices **Part 3**

- 1 (5) The authorised officer must not make the authorisation unless he or
2 she is satisfied that:
3 (a) the disclosure is reasonably necessary for the enforcement of
4 the criminal law of a foreign country; and
5 (b) the disclosure is appropriate in all the circumstances.

6 **180B Authorisations for access to prospective information or**
7 **documents—enforcement of the criminal law of a foreign**
8 **country**

9 *Disclosure to the Australian Federal Police*

- 10 (1) Sections 276, 277 and 278 of the *Telecommunications Act 1997* do
11 not prevent a disclosure of information or a document if the
12 information or document is covered by an authorisation in force
13 under subsection (2).

14 *Prospective authorisation*

- 15 (2) An authorised officer of the Australian Federal Police may
16 authorise the disclosure of specified information or specified
17 documents that come into existence during the period for which the
18 authorisation is in force.

19 Note: See also subsection (8).

- 20 (3) The authorised officer must not make the authorisation unless:
21 (a) the Attorney-General has authorised the making of the
22 authorisation under the *Mutual Assistance in Criminal*
23 *Matters Act 1987*; and
24 (b) the authorised officer is satisfied that the disclosure is:
25 (i) reasonably necessary for the investigation of an offence
26 against a law of a foreign country that is punishable by
27 imprisonment for 3 years or more, imprisonment for life
28 or the death penalty; and
29 (ii) appropriate in all the circumstances.
- 30 (4) Before making the authorisation, the authorised officer must have
31 regard to how much the privacy of any person or persons would be
32 likely to be interfered with by the disclosure.
- 33 (5) An authorisation under subsection (2):

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 3 Telecommunications and surveillance devices

- 1 (a) comes into force at the time the person from whom the
2 disclosure is sought receives notification of the authorisation;
3 and
4 (b) ends at the time specified in the authorisation (which must be
5 a time that is no longer than the end of the period of 21 days
6 beginning on the day the authorisation is made), unless it is
7 extended or revoked earlier.

8 Note: Section 184 deals with notification of authorisations.

- 9 (6) An authorised officer of the Australian Federal Police must revoke
10 the authorisation if he or she is satisfied that the disclosure is no
11 longer required.

12 Note: Section 184 deals with notification of revocations.

13 *Extension of prospective authorisation*

- 14 (7) An authorisation under subsection (2) may be extended for another
15 period of 21 days, but may only be extended once.

- 16 (8) Subsections (2) and (3) apply to extending an authorisation in the
17 same way as it applies to making an authorisation.

- 18 (9) If an authorisation under subsection (2) is extended, the
19 authorisation ends at the time specified in the authorisation (which
20 must be a time that is no longer than the end of the period of 42
21 days beginning on the day the authorisation is made), unless it is
22 revoked earlier.

23 *Disclosure to a foreign law enforcement agency*

- 24 (10) If specified information or specified documents are disclosed
25 because of an authorisation given under subsection (2), an
26 authorised officer of the Australian Federal Police may authorise
27 the disclosure of the information or documents so disclosed to a
28 foreign law enforcement agency if the authorised officer is
29 satisfied that the disclosure is:

- 30 (a) reasonably necessary for the investigation of an offence
31 against a law of a foreign country that is punishable by
32 imprisonment for 3 years or more, imprisonment for life or
33 the death penalty; and
34 (b) appropriate in all the circumstances.
-

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Telecommunications and surveillance devices **Part 3**

- 1 (11) The authorised officer must not make more than one authorisation
2 a day.
- 3 (12) If an authorisation is made under subsection (10), the information
4 or documents must be disclosed to a foreign law enforcement
5 agency before the end of 5 days after an authorisation under
6 subsection (2) ends.

7 **Subdivision B—Secondary disclosures**

8 **180C Authorisations to disclose information or documents—** 9 **enforcement of the criminal law of a foreign country**

- 10 (1) If specified information or specified documents are disclosed
11 because of an authorisation given under Division 4, an authorised
12 officer of the Australian Federal Police may authorise the
13 disclosure of the information or documents so disclosed to a
14 foreign law enforcement agency.
- 15 (2) The authorised officer must not make the authorisation unless he or
16 she is satisfied that:
- 17 (a) the disclosure is reasonably necessary for the enforcement of
18 the criminal law of a foreign country; and
19 (b) the disclosure is appropriate in all the circumstances.

20 **103 Paragraph 182(1)(a)**

21 After “Division 4”, insert “or 4A”.

22 **104 Subsection 182(2)**

23 Repeal the subsection, substitute:

24 *Exempt disclosures*

- 25 (2) Paragraph (1)(b) does not apply to a disclosure of information or a
26 document if the disclosure is reasonably necessary:
- 27 (a) for the performance by the Organisation of its functions; or
28 (b) for the enforcement of the criminal law; or
29 (c) for the enforcement of a law imposing a pecuniary penalty;
30 or
31 (d) for the protection of the public revenue.

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters Part 3 Telecommunications and surveillance devices

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

3 **105 Paragraph 183(1)(a)**

4 Omit “or 4”, substitute “, 4 or 4A”.

5 **106 At the end of section 184**

6 Add:

7 *Authorised officers of the Australian Federal Police*

8 (5) If an authorised officer of the Australian Federal Police makes an
9 authorisation under subsection 180A(2) or 180B(2), a relevant staff
10 member of the Australian Federal Police must notify the person
11 from whom the disclosure is sought.

12 (6) If, under subsection 180B(6), an authorised officer of the
13 Australian Federal Police revokes an authorisation, a relevant staff
14 member of the Australian Federal Police must notify the person
15 who was notified of the authorisation.

16 **107 Section 185**

17 Before “The”, insert “(1)”.

18 **108 At the end of section 185**

19 Add:

20 (2) The Commissioner of Police must retain an authorisation made
21 under Division 4A of Part 4-1 by an authorised officer of the
22 Australian Federal Police for the period of 3 years beginning on the
23 day the authorisation is made.

24 **109 After paragraph 186(1)(c)**

25 Insert:

26 (ca) if the enforcement agency is the Australian Federal Police—
27 the number of authorisations made under sections 180A,
28 180B and 180C by an authorised officer of the Australian
29 Federal Police during that year; and

30 **110 Application of amendments made by this Division**

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Telecommunications and surveillance devices **Part 3**

- 1 (1) The amendments made by this Division apply in relation to an
2 authorisation made on or after the commencement of this item.
- 3 (2) To avoid doubt, an authorisation may be made under section 180C of
4 the *Telecommunications (Interception and Access) Act 1979* even if an
5 authorisation given under Division 4 (as mentioned in that section) was
6 given before the commencement of this item.

7 **111 Saving of existing authorisations**

- 8 (1) Despite the amendment of subsection 5AB(1) of the
9 *Telecommunications (Interception and Access) Act 1979* by this
10 Division, any authorisation by the head of an enforcement agency that
11 was in force under that subsection immediately before the
12 commencement of this item continues in force on and after
13 commencement as if it were an authorisation made under that
14 subsection as in force after that commencement.
- 15 (2) In this item:
16 *enforcement agency* has the same meaning as in the
17 *Telecommunications (Interception and Access) Act 1979*.

18 **Division 4—Recovery of costs by carriage service** 19 **providers etc. for providing assistance to** 20 **Australian law enforcement authorities**

21 *Telecommunications Act 1997*

22 **112 After paragraph 313(3)(c)**

- 23 Insert:
24 (ca) assisting the enforcement of the criminal laws in force in a
25 foreign country;

26 **113 After paragraph 313(4)(c)**

- 27 Insert:
28 (ca) assisting the enforcement of the criminal laws in force in a
29 foreign country;

30 **114 Application of amendments made by items 112 and 113**

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 3 Telecommunications and surveillance devices

- 1 (1) The amendment made by item 112 of this Schedule applies to help
2 given by a carrier or carriage service provider on or after the
3 commencement of this item.
- 4 (2) The amendment made by item 113 of this Schedule applies to help
5 given by a carriage service intermediary on or after the commencement
6 of this item.
7

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Carrying out forensic procedures at the request of a foreign country etc. **Part 4**

1

2

Part 4—Carrying out forensic procedures at the request of a foreign country etc.

3

4

Crimes Act 1914

5

115 Simplified outline of Part 4D (after the paragraph relating to Division 7)

6

7

Insert:

8

9

10

11

12

However, certain rules are modified or do not apply if the forensic procedure is carried out in response to a request by a foreign country (as contemplated by the *Mutual Assistance in Criminal Matters Act 1987*) or a request by a foreign law enforcement agency (Division 9A).

13

116 Subsection 23WA(1)

14

Insert:

15

foreign law enforcement agency means:

16

(a) a police force (however described) of a foreign country; or

17

(b) any other authority or person responsible for the enforcement of the laws of the foreign country.

18

19

117 Subsection 23WA(1)

20

Insert:

21

foreign serious offence has the same meaning as in the *Mutual Assistance in Criminal Matters Act 1987*.

22

23

118 Subsection 23WA(1)

24

Insert:

25

forensic evidence means one or more of the following:

26

(a) evidence of forensic material, or evidence consisting of forensic material, taken from a suspect or a volunteer by a forensic procedure;

27

28

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 4 Carrying out forensic procedures at the request of a foreign country etc.

- 1 (b) evidence of any results of the analysis of the forensic
2 material;
3 (c) any other evidence obtained as a result of or in connection
4 with the carrying out of the forensic procedure.

5 **119 Subsection 23WA(1) (definition of *investigating***
6 ***constable*)**

7 Repeal the definition, substitute:

8 *investigating constable* means:

- 9 (a) in the case of a request by a foreign country (as contemplated
10 by the *Mutual Assistance in Criminal Matters Act 1987*) or a
11 foreign law enforcement agency—the constable in charge of
12 coordinating the response to the request; and
13 (b) in any other case—the constable in charge of the
14 investigation of the commission of an offence in relation to
15 which a forensic procedure is carried out or proposed to be
16 carried out.

17 **120 Subsection 23WA(1) (at the end of the definition of**
18 ***suspect*)**

19 Add:

- 20 ; or (d) a person in respect of whom a forensic procedure has been
21 requested by a foreign country (as contemplated by the
22 *Mutual Assistance in Criminal Matters Act 1987*) or a foreign
23 law enforcement agency because the foreign country has:
24 (i) started investigating whether the person has committed
25 an indictable offence; or
26 (ii) started proceedings against the person for an indictable
27 offence.

28 **121 At the end of section 23WA**

29 Add:

30 *Requests by a foreign country and the police force of a foreign*
31 *country*

- 32 (9) The provisions of this Part apply in relation to a forensic procedure
33 carried out because of:

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Carrying out forensic procedures at the request of a foreign country etc. **Part 4**

- 1 (a) a request by a foreign country (as contemplated by the
2 *Mutual Assistance in Criminal Matters Act 1987*); or
3 (b) a request by a foreign law enforcement agency;
4 as if a reference to an indictable offence were a reference to a
5 foreign serious offence.

6 **122 Subparagraph 23WF(2)(b)(i)**

7 After “(h), (i)”, insert “, (ib)”.

8 **123 Subsection 23WI(2)**

9 Repeal the subsection, substitute:

- 10 (2) In determining whether a request is justified in all the
11 circumstances, the constable must:
12 (a) if the forensic procedure has been requested by a foreign law
13 enforcement agency—balance the public interest in Australia
14 providing and receiving international assistance in criminal
15 matters against the public interest in upholding the physical
16 integrity of the suspect; and
17 (b) in any other case—balance the public interest in obtaining
18 evidence tending to confirm or disprove that the suspect
19 committed the offence concerned against the public interest
20 in upholding the physical integrity of the suspect.

21 **124 After paragraph 23WJ(1)(ia)**

22 Insert:

- 23 (ib) if the suspect is being asked to undergo a forensic procedure
24 because of a request by a foreign law enforcement agency—
25 the following:
26 (i) the name of the foreign law enforcement agency that has
27 made the request;
28 (ii) that forensic evidence resulting from the forensic
29 procedure will be provided to the foreign law
30 enforcement agency;
31 (iii) that the forensic evidence may be used in proceedings
32 against the suspect in the foreign country;
33 (iv) that the retention of the forensic evidence will be
34 governed by the laws of the foreign country;

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 4 Carrying out forensic procedures at the request of a foreign country etc.

1 (v) that the retention of the forensic evidence will be subject
2 to undertakings given by the foreign law enforcement
3 agency;

4 (vi) the content of those undertakings;

5 **125 After subsection 23WJ(4)**

6 Insert:

7 *Exception—requests by foreign law enforcement agency*

8 (4A) Subsections (3) and (4) do not apply if the suspect is being asked to
9 undergo a forensic procedure because of a request by a foreign law
10 enforcement agency.

11 **126 Subsection 23WJ(5)**

12 After “not in custody”, insert “and is not being asked to undergo a
13 forensic procedure because of a request by a foreign law enforcement
14 agency”.

15 **127 At the end of section 23WJ**

16 Add:

17 *Failure to consent to forensic procedure—procedure requested by*
18 *foreign law enforcement agency*

19 (6) If the suspect is being asked to undergo a forensic procedure
20 because of a request by a foreign law enforcement agency, the
21 constable must inform the suspect (whether or not the suspect is in
22 custody) that, if the suspect does not consent:

23 (a) the foreign country may request that the forensic procedure
24 be carried out; and

25 (b) the Attorney-General may authorise, under the *Mutual*
26 *Assistance in Criminal Matters Act 1987*, a constable to
27 apply to a magistrate for an order for the carrying out of the
28 forensic procedure.

29 Note: Under the *Mutual Assistance in Criminal Matters Act 1987*, the
30 Attorney-General may only authorise a constable who is an authorised
31 applicant.

32 **128 Subsection 23WL(2) (note)**

33 Omit “Note”, substitute “Note 1”.

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Carrying out forensic procedures at the request of a foreign country etc. **Part 4**

1 **129 At the end of section 23WL**

2 Add:

3 Note 2: If a foreign law enforcement agency requests that a forensic procedure
4 be carried out on a suspect, a copy of the tape recording or the written
5 record must also be provided to the foreign law enforcement agency:
6 see subsection 23YQD(2).

7 **130 After subsection 23WM(2)**

8 Insert:

9 (2A) This Division does not authorise the carrying out of a forensic
10 procedure on a suspect if the procedure has been requested by:
11 (a) a foreign country (as contemplated by the *Mutual Assistance*
12 *in Criminal Matters Act 1987*); or
13 (b) a foreign law enforcement agency.

14 **131 Section 23WR**

15 Before “A”, insert “(1)”.

16 **132 At the end of section 23WR**

17 Add:

18 ; or (d) the forensic procedure has been requested by a foreign
19 country (as contemplated by the *Mutual Assistance in*
20 *Criminal Matters Act 1987*).

21 (2) However, a magistrate is not authorised to order the carrying out of
22 a forensic procedure on a suspect if the procedure has been
23 requested by a foreign law enforcement agency.

24 **133 Paragraph 23WS(a)**

25 Omit “section 23WR”, substitute “subsection 23WR(1)”.

26 **134 After paragraph 23WT(1)(c)**

27 Insert:

28 (ca) if the forensic procedure has been requested by a foreign
29 country—the constable has been authorised by the
30 Attorney-General under the *Mutual Assistance in Criminal*
31 *Matters Act 1987* to make the application for an order under
32 this Part; and

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Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 4 Carrying out forensic procedures at the request of a foreign country etc.

1 **135 Subsection 23WT(2)**

2 Repeal the subsection, substitute:

3 (2) In determining whether the carrying out of the forensic procedure
4 is justified in all the circumstances, the magistrate must:

5 (a) if the forensic procedure has been requested by a foreign
6 country (as contemplated by the *Mutual Assistance in*
7 *Criminal Matters Act 1987*)—balance the public interest in
8 Australia providing and receiving international assistance in
9 criminal matters against the public interest in upholding the
10 physical integrity of the suspect; and

11 (b) in any other case—balance the public interest in obtaining
12 evidence tending to confirm or disprove that the suspect
13 committed the offence concerned against the public interest
14 in upholding the physical integrity of the suspect.

15 **136 Paragraph 23WU(2)(b)**

16 After “(c)”, insert “, (ca)”.

17 **137 Paragraph 23XA(1)(a)**

18 Omit “section 23WR”, substitute “subsection 23WR(1)”.

19 **138 After paragraph 23XWR(2)(d)**

20 Insert:

21 (da) if the volunteer undergoes a forensic procedure because of a
22 request by a foreign law enforcement agency—the following:

23 (i) the name of the foreign law enforcement agency that has
24 made the request;

25 (ii) that forensic evidence resulting from the forensic
26 procedure will be provided to the foreign law
27 enforcement agency;

28 (iii) that the forensic evidence may be used in proceedings in
29 the foreign country;

30 (iv) that the retention of the forensic evidence will be
31 governed by the laws of the foreign country;

32 (v) that the retention of the forensic evidence will be subject
33 to undertakings given by the foreign law enforcement
34 agency;

35 (vi) the content of those undertakings;

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Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Carrying out forensic procedures at the request of a foreign country etc. **Part 4**

1 **139 At the end of subsection 23XWU(1)**

2 Add:

3 ; or (d) in the case of a forensic procedure that has been requested by
4 a foreign country—a constable has been authorised by the
5 Attorney-General under the *Mutual Assistance in Criminal*
6 *Matters Act 1987* to make the application for an order under
7 this Part.

8 **140 After subsection 23XWU(1)**

9 Insert:

10 (1A) However, a magistrate is not authorised to order the carrying out of
11 a forensic procedure on a child or incapable person if the procedure
12 has been requested by a foreign law enforcement agency.

13 **141 Subsection 23XWV(2)**

14 Omit “A magistrate”, substitute “Subject to subsection (2A), a
15 magistrate”.

16 **142 After subsection 23XWV(2)**

17 Insert:

18 (2A) Despite subsection (2), a magistrate may not make an order if:
19 (a) the volunteer was asked to undergo a forensic procedure
20 because of a request by a foreign law enforcement agency;
21 and
22 (b) the forensic evidence has already been provided to the
23 foreign law enforcement agency.

24 **143 At the end of Division 7 of Part ID**

25 Add:

26 **Subdivision C—Application**

27 **23YBA Division does not apply to a proceeding in a foreign country**

28 To avoid doubt, this Division does not apply in relation to a
29 proceeding in a foreign country in which forensic evidence is
30 provided in response to a request by:

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Schedule 3 Amendments relating to providing mutual assistance in criminal matters
Part 4 Carrying out forensic procedures at the request of a foreign country etc.

- 1 (a) a foreign country (as contemplated by the *Mutual Assistance*
2 *in Criminal Matters Act 1987*); or
3 (b) a foreign law enforcement agency.

4 **144 Before section 23YC**

5 Insert:

6 **23YBB Application**

7 This Division does not apply to forensic evidence provided in
8 response to a request by:

- 9 (a) a foreign country (as contemplated by the *Mutual Assistance*
10 *in Criminal Matters Act 1987*); or
11 (b) a foreign law enforcement agency.

12 **145 At the end of subsection 23YF(1)**

13 Add:

14 Note 1: If a forensic procedure is carried out as a result of a request by a
15 foreign country (as contemplated by the *Mutual Assistance in*
16 *Criminal Matters Act 1987*), a copy of anything made may also be
17 provided to the foreign country: see subsections 23YQB(2) and (3).

18 Note 2: If a forensic procedure is carried out as a result of a request by a
19 foreign law enforcement agency, a copy of anything made may also be
20 provided to the foreign law enforcement agency: see subsections
21 23YQD(3) and (4).

22 **146 After section 23YK**

23 Insert:

24 **23YKA Application of sections 23YI to 23YK**

25 To avoid doubt, sections 23YI to 23YK do not apply in relation to
26 a proceeding in a foreign country in which forensic evidence is
27 provided in response to a request by:

- 28 (a) a foreign country (as contemplated by the *Mutual Assistance*
29 *in Criminal Matters Act 1987*); or
30 (b) a foreign law enforcement agency.

31 **147 After Division 9 of Part ID**

32 Insert:

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Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Carrying out forensic procedures at the request of a foreign country etc. **Part 4**

1 **Division 9A—Carrying out forensic procedures at the**
2 **request of a foreign jurisdiction**

3 **Subdivision A—Requests by foreign countries**

4 **23YQA Application of Subdivision**

5 This Subdivision applies if:

- 6 (a) a request is made by a foreign country that a forensic
7 procedure be carried out on a suspect in relation to a foreign
8 serious offence; and
9 (b) the Attorney-General authorises, under the *Mutual Assistance*
10 *in Criminal Matters Act 1987*, a constable to apply to a
11 magistrate for the carrying out of the forensic procedure on
12 the suspect.

13 Note: Under the *Mutual Assistance in Criminal Matters Act 1987*, the
14 Attorney-General may only authorise a constable who is an authorised
15 applicant.

16 **23YQB Providing forensic evidence resulting from a forensic**
17 **procedure**

- 18 (1) If a forensic procedure is carried out on a suspect in relation to a
19 foreign serious offence, the forensic evidence resulting from the
20 procedure is to be provided to the foreign country concerned in
21 accordance with a direction given by the Attorney-General under
22 section 28C of the *Mutual Assistance in Criminal Matters Act*
23 *1987*.
- 24 (2) If an audio recording, a copy of it, or a copy of a transcript of a
25 tape recording is made available to a suspect (as required by
26 subsection 23YF(1)), a copy of the audio recording or the
27 transcript, or both, as the case may be, may also be provided to the
28 foreign country concerned, but only in accordance with a direction
29 given by the Attorney-General under section 28C of the *Mutual*
30 *Assistance in Criminal Matters Act 1987*.
- 31 (3) If:
32 (a) a video recording or a copy of it is made available to a
33 suspect (as required by subsection 23YF(1)); or

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Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 4 Carrying out forensic procedures at the request of a foreign country etc.

- 1 (b) both an audio recording and a video recording are made and
2 the suspect is given an opportunity to view the video
3 recording (as required by subsection 23YF(1));
4 a copy of the video recording may also be provided to the foreign
5 country concerned, but only in accordance with a direction given
6 by the Attorney-General under section 28C of the *Mutual*
7 *Assistance in Criminal Matters Act 1987*.

8 **Subdivision B—Requests by a foreign law enforcement agency**

9 **23YQC Application of Subdivision**

- 10 This Subdivision applies if a request is made by a foreign law
11 enforcement agency that a forensic procedure be carried out on:
12 (a) a suspect in relation to a foreign serious offence who has
13 given informed consent to the forensic procedure; or
14 (b) a volunteer.

15 **23YQD Providing forensic material etc. to a foreign law** 16 **enforcement agency**

- 17 (1) The Commissioner may provide forensic evidence to a foreign law
18 enforcement agency if the Commissioner is satisfied that:
19 (a) the foreign law enforcement agency has given appropriate
20 undertakings in relation to the retention, use and destruction
21 of the forensic evidence; and
22 (b) it is appropriate, in all the circumstances of the case, to do so.
- 23 (2) If forensic evidence is to be provided to the foreign law
24 enforcement agency, a copy of the tape recording or the written
25 record mentioned in section 23WL may also be provided to the
26 foreign law enforcement agency.
- 27 (3) If an audio recording, a copy of it, or a copy of a transcript of a
28 tape recording is made available to a suspect or volunteer (as
29 required by subsection 23YF(1)), a copy of the audio recording or
30 the transcript, or both, as the case may be, may also be provided to
31 the foreign law enforcement agency.
- 32 (4) If:

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Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Carrying out forensic procedures at the request of a foreign country etc. **Part 4**

- 1 (a) a video recording or a copy of it is made available to a
2 suspect or volunteer (as required by subsection 23YF(1)); or
3 (b) both an audio recording and a video recording are made and
4 the suspect or volunteer is given an opportunity to view the
5 video recording (as required by subsection 23YF(1));
6 a copy of the video recording may also be provided to the foreign
7 law enforcement agency.

8 **148 Section 23YQA**

9 Renumber as section 23YQE.

10 **149 After subsection 23YUB(1)**

11 Insert:

- 12 (1A) The orders mentioned in subsection (1) do not include an order for
13 the carrying out of a forensic procedure on a suspect that is made
14 under this Part in response to a request by a foreign country (as
15 contemplated by the *Mutual Assistance in Criminal Matters Act*
16 *1987*).

17 ***Mutual Assistance in Criminal Matters Act 1987***

18 **150 Subsection 3(1)**

19 Insert:

20 *child* has the same meaning as in Part ID of the *Crimes Act 1914*.

21 **151 Subsection 3(1)**

22 Insert:

23 *forensic evidence* has the same meaning as in Part ID of the
24 *Crimes Act 1914*.

25 **152 Subsection 3(1)**

26 Insert:

27 *forensic material* has the same meaning as in Part ID of the *Crimes*
28 *Act 1914*.

29 **153 Subsection 3(1)**

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Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 4 Carrying out forensic procedures at the request of a foreign country etc.

1 Insert:

2 *forensic procedure* has the same meaning as in Part ID of the
3 *Crimes Act 1914*.

4 **154 Subsection 3(1)**

5 Insert:

6 *incapable person* has the same meaning as in Part ID of the *Crimes*
7 *Act 1914*.

8 **155 Subsection 3(1)**

9 Insert:

10 *parent* has the same meaning as in the *Crimes Act 1914*.

11 **156 After Part IV**

12 Insert:

13 **Part IVA—Forensic procedures**

14 **Division 1—Requests by Australia**

15 **28A Requests by Australia for forensic procedures**

16 (1) If:

17 (a) a proceeding relating to a criminal matter has commenced in
18 Australia; and

19 (b) a person in a foreign country is capable of giving assistance
20 that may result in evidence relevant to the proceeding;

21 Australia may request the foreign country to authorise the carrying
22 out of a forensic procedure on the person for the purpose of giving
23 assistance in connection with the proceeding.

24 (2) If:

25 (a) an investigation relating to a criminal matter has commenced
26 in Australia; and

27 (b) a person in a foreign country is capable of giving assistance
28 in relation to the investigation;

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 4 Carrying out forensic procedures at the request of a foreign country etc.

- 1 (b) unless the person is a child or an incapable person—the
2 foreign country has:
- 3 (i) started investigating whether the person has committed
4 a foreign serious offence against its laws; or
5 (ii) started proceedings against the person for a foreign
6 serious offence;
- 7 (c) the person is, or is believed to be, in Australia;
- 8 (d) the foreign country has given:
- 9 (i) appropriate undertakings in relation to the retention, use
10 and destruction of forensic material, or of information
11 obtained from analysis of that forensic material; and
12 (ii) any other undertakings that the Attorney-General
13 considers necessary;
- 14 (e) unless the person is a child or an incapable person—the
15 person has been given an opportunity to consent to the
16 forensic procedure and has not consented to it;
- 17 (f) if the person is a child or an incapable person, the matters
18 specified in subsection (3).
- 19 (3) If the person is a child or an incapable person, the
20 Attorney-General must:
- 21 (a) be satisfied that either of the following applies:
- 22 (i) the consent of the parent or guardian cannot reasonably
23 be obtained or has been withdrawn;
- 24 (ii) the parent or guardian is a suspect in relation to the
25 foreign serious offence; and
- 26 (b) believe that, having regard to the best interests of the child or
27 incapable person, it is appropriate to make the authorisation.

28C Providing forensic evidence to foreign countries

- 29 (1) If:
- 30 (a) a foreign country requests that a forensic procedure be
31 carried out on a person; and
32 (b) the Attorney-General authorises a constable to make an
33 application of the kind mentioned in subsection 28B(1); and
34 (c) a forensic procedure is carried out on the person;
- 35 the Attorney-General may direct the constable as to how the
36 forensic evidence is to be provided to the foreign country.

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 5 Proceeds of crime

1

2 **Part 5—Proceeds of crime**

3 ***Mutual Assistance in Criminal Matters Act 1987***

4 **158 Subsection 3(1)**

5 Insert:

6 *cartel offence* means an offence by a corporation involving cartel
7 conduct.

8 **159 Subsection 34(1)**

9 Omit “in a specified court”.

10 **160 Subsection 34(2)**

11 Omit “that is specified in regulations made for the purposes of this
12 subsection”.

13 **161 Subsection 34(2)**

14 Omit “in a specified court”.

15 **162 Paragraphs 34(3)(a) and (b)**

16 Repeal the paragraphs, substitute:

17 (a) made in respect of a foreign serious offence for which a
18 person has been convicted or charged; or

19 (b) made in respect of the alleged commission of a foreign
20 serious offence (whether or not the identity of the person who
21 committed the offence is known);

22 **163 Subsection 34(3)**

23 Omit “in a specified court”.

24 **164 Subsection 34(4)**

25 Repeal the subsection.

26 **165 Before subsection 34A(1)**

27 Insert:

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Proceeds of crime **Part 5**

1 (1A) If the DPP wishes to apply to a court for registration of a foreign
2 order in accordance with an authorisation under this Subdivision,
3 the DPP's application must be to a court with proceeds jurisdiction.

4 **166 Subsection 34A(1)**

5 After "a court", insert "with proceeds jurisdiction".

6 **167 Subsection 34F(1)**

7 Repeal the subsection, substitute:

8 (1) If a copy of a sealed or authenticated copy of:

9 (a) a foreign order; or

10 (b) an amendment of a foreign order;

11 is sent by fax, email or other electronic means, the copy is to be
12 regarded, for the purposes of this Act, as the same as the sealed or
13 authenticated copy.

14 Note: The heading to section 34F is replaced by the heading "**Copies of foreign orders sent**
15 **by fax, email or other electronic means**".

16 **168 Subsection 34F(2)**

17 Omit "faxed".

18 **169 Subsection 34F(2)**

19 Omit "21", substitute "45".

20 **170 Subsection 34J(1)**

21 Omit "(1)".

22 **171 Subparagraph 34J(1)(a)(ii)**

23 Repeal the subparagraph, substitute:

24 (ii) foreign confiscation proceedings have commenced, or
25 there are reasonable grounds to suspect that such
26 proceedings are about to commence, in a foreign
27 country; and

28 **172 Subsection 34J(1)**

29 Omit "to a specified court".

30 **173 Subsection 34J(2)**

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters
Part 5 Proceeds of crime

1 Repeal the subsection.

2 **174 Paragraph 34K(3)(b)**

3 Repeal the paragraph.

4 **175 Paragraph 34K(3)(c)**

5 Omit “subparagraph 34J(1)(a)(i)”, substitute “subparagraph 34J(a)(i)”.

6 **176 Paragraph 34K(3)(d)**

7 Omit “subparagraph 34J(1)(a)(ii)”, substitute “subparagraph 34J(a)(ii)”.

8 **177 Subparagraph 34K(3)(d)(i)**

9 Omit “such proceedings”, substitute “foreign confiscation proceedings”.

10 **178 Section 34N**

11 Repeal the section.

12 **179 Subsection 34P(1)**

13 Repeal the subsection, substitute:

14 (1) If an authorised officer has been authorised under section 34ZG of
15 this Act in relation to a request by a foreign country, the authorised
16 officer may apply for a production order under the Proceeds of
17 Crime Act in relation to the foreign serious offence that is the
18 subject of the request.

19 **180 Paragraph 34P(3)(b)**

20 Repeal the paragraph.

21 **181 Subsection 34Q(2)**

22 Omit “the obtaining of the production order”, substitute “assistance in
23 respect of the foreign serious offence”.

24 **182 Subsection 34R(1)**

25 Omit “The Attorney-General or a senior Departmental officer”,
26 substitute “An officer mentioned in paragraph 213(3)(a), (b) or (c) of
27 the Proceeds of Crime Act”.

28 **183 Subsection 34R(2)**

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Proceeds of crime **Part 5**

1 Omit “Attorney-General or the senior Departmental”.

2 **184 Subsection 34R(3)**

3 Repeal the subsection.

4 **185 Section 34X**

5 Repeal the section.

6 **186 Subsection 34Y(1)**

7 Repeal the subsection, substitute:

8 (1) If an authorised officer has been authorised under section 34ZG of
9 this Act in relation to a request by a foreign country, the authorised
10 officer may apply for a monitoring order under the Proceeds of
11 Crime Act in relation to the foreign serious offence that is the
12 subject of the request, so long as the foreign serious offence is:

13 (a) an offence punishable by imprisonment for 3 or more years
14 that:

15 (i) involves unlawful conduct relating to a narcotic
16 substance; or

17 (ii) is a money laundering offence; or

18 (iii) involves unlawful conduct by a person that causes, or is
19 intended to cause, a benefit to the value of at least
20 \$10,000 for that person or another person; or

21 (iv) involves unlawful conduct by a person that causes, or is
22 intended to cause, a loss to the foreign country in
23 question or another person of at least \$10,000; or

24 (b) an offence involving the smuggling of migrants; or

25 (c) an offence involving failure to report financial transactions;
26 or

27 (d) a cartel offence; or

28 (e) an offence involving terrorism; or

29 (f) an ancillary offence in respect of an offence referred to in
30 paragraph (a), (b), (c), (d) or (e).

31 **187 Paragraph 34Y(3)(a)**

32 Omit “paragraph 34X(1)(a)”, substitute “paragraph (1)(a), (b), (c), (d),
33 (e) or (f)”.

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters
Part 5 Proceeds of crime

1 **188 Section 34ZA**

2 Repeal the section.

3 **189 Subsection 34ZB(1)**

4 Repeal the subsection, substitute:

5 (1) If an authorised officer has been authorised under section 34ZG of
6 this Act in relation to a request by a foreign country, the authorised
7 officer may apply for a search warrant under the Proceeds of Crime
8 Act in relation to the foreign serious offence that is the subject of
9 the request.

10 **190 Paragraph 34ZB(3)(b)**

11 Repeal the paragraph.

12 **191 At the end of Division 2 of Part VI**

13 Add:

14 **Subdivision G—Authorisation of authorised officers**

15 **34ZG Attorney-General may authorise authorised officers**

16 If:

- 17 (a) a proceeding or investigation relating to a criminal matter
18 involving a foreign serious offence has commenced in a
19 foreign country; and
20 (b) the foreign country requests assistance in relation to the
21 proceeding or investigation; and
22 (c) such assistance may be obtained under the Proceeds of Crime
23 Act in the form of a production order, search warrant or
24 monitoring order;

25 then, the Attorney-General may authorise an authorised officer of
26 an enforcement agency to make any applications under that Act
27 that are necessary to respond to the request by the foreign country.

28 **192 Application of amendments made by items 159 to 191**

29 (1) The amendments made by items 159 to 177 (other than item 169) and
30 items 182 to 184 of this Schedule apply in relation to a request by a
31 foreign country that is under consideration on or after the

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Proceeds of crime **Part 5**

- 1 commencement of this item, whether the request was made before, on
2 or after that commencement.
- 3 (2) The amendment made by item 169 of this Schedule applies in relation
4 to the registration of an order that has effect under Subdivision A of
5 Division 2 of Part VI of the *Mutual Assistance in Criminal Matters Act*
6 *1987* on or after the commencement of this item.
- 7 (3) The amendments made by items 158 and 178 to 191 (other than
8 items 182 to 184) of this Schedule apply in respect of an authorisation
9 given on or after the commencement of this item.
10

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters
Part 6 Other amendments

1

2 Part 6—Other amendments

3 *Mutual Assistance in Criminal Matters Act 1987*

4 **193 Subsection 3(1) (definition of *serious offence*)**

5 Repeal the definition, substitute:

6 *serious offence* means an offence the maximum penalty for which
7 is:

- 8 (a) death; or
9 (b) imprisonment for a period exceeding 12 months; or
10 (c) a fine exceeding 300 penalty units.

11 Note 1: See section 4AA of the *Crimes Act 1914* for the current value of a
12 penalty unit.

13 Note 2: Paragraph (c)—see also subsection (1A) of this section.

14 **194 After subsection 3(1)**

15 Insert:

16 (1A) In determining, for the purpose of a request by a foreign country,
17 the Australian dollar equivalent of a fine (whether expressed as an
18 amount or by way of penalty units) or pecuniary penalty (however
19 described) that may be imposed on a person for an offence to
20 which the request relates, the fine or penalty is to be translated to
21 Australian currency:

- 22 (a) in relation to a country for which the Australian Tax Office
23 publishes exchange rates—at the daily exchange rate listed
24 on the Australian Tax Office website that applies on the day
25 on which the request is received; and
26 (b) in relation to any other country—at the exchange rate that
27 applies at the time when the request is received.

28 **195 Paragraphs 5(a) and (b)**

29 Repeal the paragraphs, substitute:

- 30 (a) to regulate the provision by Australia of international
31 assistance in criminal matters when a request is made by a
32 foreign country in respect of which powers may be exercised

EXPOSURE DRAFT

Amendments relating to providing mutual assistance in criminal matters **Schedule 3**
Other amendments **Part 6**

1 under this Act (whether or not in conjunction with other
2 Australian laws); and

3 **196 Subsection 15(1)**

4 Omit “(1)”.

5 **197 Subsection 15(1)**

6 Omit all the words after “Magistrate”, substitute “for one or more
7 search warrants in respect of the evidential material”.

8 **198 Paragraph 16(1)(b)**

9 Omit “the Attorney-General is of the opinion that”.

10 **199 Paragraph 16(2)(b)**

11 Omit “the Attorney-General is of the opinion that”.

12 **200 At the end of subsection 34A(1)**

13 Add “, unless the court is satisfied that it would be contrary to the
14 interests of justice to do so”.

15 **201 Subsection 34A(3)**

16 Omit “must”, substitute “may”.

17 **202 Paragraph 35B(c)**

18 Omit “by the oath of”, substitute “on oath or affirmation by”.

19 **203 Subsection 38B(1)**

20 Omit “subsection 15(1)”, substitute “section 15”.

21 **204 Subsections 38B(2) and (3)**

22 After “oath”, insert “or affirmation”.

23 **205 Subsection 39A(1)**

24 Omit “(*original proceeding*)”.

25 **206 Paragraphs 39A(2)(a) and (3)(c)**

26 Omit “original”.

27 **207 Subsection 43(2)**

EXPOSURE DRAFT

Schedule 3 Amendments relating to providing mutual assistance in criminal matters

Part 6 Other amendments

1 Repeal the subsection, substitute:

2 (2) A document is duly authenticated for the purposes of
3 subsection (1) if it purports to be signed or certified by a Judge,
4 Magistrate or officer in or of a foreign country.

5 **208 Paragraph 44(c)**

6 Omit “oath, the administering of oaths”, substitute “oath or affirmation,
7 the administering of oaths or affirmations”.

8 **209 Paragraph 44(d)**

9 Omit “a fine of \$1,000”, substitute “10 penalty units”.

10 **210 Application of amendments made by items 197 and 207**

11 (1) The amendment made by item 197 of this Part applies in relation to an
12 authorisation given to a police officer by the Attorney-General under
13 section 15 of the *Mutual Assistance in Criminal Matters Act 1987* on or
14 after the commencement of this item.

15 (2) The amendment made by item 207 of this Part applies in relation to a
16 proceeding of a kind mentioned in subsection 43(1) of the *Mutual*
17 *Assistance in Criminal Matters Act 1987* that begins on or after
18 commencement of this item.