

EXPOSURE DRAFT

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

National Security Legislation Amendment Bill 2009

No. , 2009

(Attorney-General)

**A Bill for an Act to amend the law relating to
terrorism and national security, and for other
purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **terrorism and national security, and for other**
3 **purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *National Security Legislation*
7 *Amendment Act 2009*.

8 **2 Commencement**

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

13

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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 on which this Act receives the Royal Assent.	
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	
3. Schedule 1, Part 2	The 28th day after the day on which this Act receives the Royal Assent.	
4. Schedules 2 to 7	The day after this Act receives the Royal Assent.	
5. Schedule 8, items 1 to 95	The 28th day after the day on which this Act receives the Royal Assent.	
6. Schedule 8, item 96	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 on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
7. Schedule 8, items 97 and 98	The 28th day after the day on which this Act receives the Royal Assent.	
8. Schedule 8, item 99	At the same time as the provision(s) covered by table item 6.	
9. Schedule 8, items 100 and 101	The 28th day after the day on which this Act receives the Royal Assent.	
10. Schedule 9	The later of: (a) the day after this Act receives the Royal Assent; and (b) the commencement of the <i>Parliamentary Joint Committee on Law Enforcement Act 2009</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	

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Schedule 1 Treason and urging violence

Part 1 Amendments commencing day after Royal Assent

1 **Schedule 1—Treason and urging violence**

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

4 *Crimes Act 1914*

5 **1 Subparagraph 24F(2)(b)(ii)**

6 Omit “paragraph 80.1(1)(e)”, substitute “paragraph 80.1AA(1)(b)”.

7 **2 Part IIA (heading)**

8 Repeal the heading, substitute:

9 **Part IIA—Protection of public and other services**

10 **3 Sections 30A to 30H and 30R**

11 Repeal the sections.

12 *Criminal Code Act 1995*

13 **4 Part 5.1 of the *Criminal Code* (heading)**

14 Repeal the heading, substitute:

15 **Part 5.1—Treason and urging violence**

16 **5 Division 80 of the *Criminal Code* (heading)**

17 Repeal the heading, substitute:

18 **Division 80—Treason and urging violence**

19 **6 Before section 80.1A of the *Criminal Code***

20 Insert:

21 **Subdivision A—Preliminary**

22 **7 Before section 80.1 of the *Criminal Code***

23 Insert:

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Treason and urging violence **Schedule 1**
Amendments commencing day after Royal Assent **Part 1**

1 **Subdivision B—Treason**

2 **8 Subsection 80.1(1) of the *Criminal Code***

3 Omit “, called treason,”.

4 **9 Paragraphs 80.1(e) and (f) of the *Criminal Code***

5 Repeal the paragraphs.

6 **10 Paragraph 80.1(1)(h) of the *Criminal Code***

7 After “preceding paragraph”, insert “, or in section 80.1AA,”.

8 **11 Subsection 80.1(1A) of the *Criminal Code***

9 Repeal the subsection.

10 **12 Paragraph 80.1(1B)(a) of the *Criminal Code***

11 Omit “paragraph (1)(e) or (f)”, substitute “section 80.1AA”.

12 **13 Subsection 80.1(5) of the *Criminal Code***

13 Omit “, (e), (f) or (g)”, substitute “or (g), or in section 80.1AA,”.

14 **14 At the end of subsection 80.1(5) of the *Criminal Code***

15 Add:

16 Note: There is a defence in section 80.3 for acts done in good faith.

17 **15 After section 80.1 of the *Criminal Code***

18 Insert:

19 **80.1AA Treason—materially assisting enemies etc.**

20 *Assisting enemies at war with the Commonwealth*

21 (1) A person commits an offence if:

22 (a) the Commonwealth is at war with an enemy (whether or not
23 the existence of a state of war has been declared); and

24 (b) the enemy is specified, by Proclamation made for the purpose
25 of this paragraph, to be an enemy at war with the
26 Commonwealth; and

27 (c) the person engages in conduct; and

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Schedule 1 Treason and urging violence

Part 1 Amendments commencing day after Royal Assent

- 1 (d) the person intends that the conduct will materially assist the
2 enemy to engage in war with the Commonwealth; and
3 (e) the conduct assists the enemy to engage in war with the
4 Commonwealth; and
5 (f) when the person engages in the conduct, the person:
6 (i) is an Australian citizen; or
7 (ii) is a resident of Australia; or
8 (iii) has voluntarily put himself or herself under the
9 protection of the Commonwealth; or
10 (iv) is a body corporate incorporated by or under a law of
11 the Commonwealth or of a State or Territory.

12 Penalty: Imprisonment for life.

- 13 (2) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a
14 Proclamation made for the purpose of paragraph (1)(b) of this
15 section may be expressed to take effect from a day:
16 (a) before the day on which the Proclamation is registered under
17 the *Legislative Instruments Act 2003*; but
18 (b) not before the day on which the Proclamation is made.

- 19 (3) The fault element for paragraph (1)(f) is intention.

20 Note: For intention, see subsection 5.2(2).

21 *Assisting countries etc. engaged in armed hostilities against the*
22 *ADF*

- 23 (4) A person commits an offence if:
24 (a) a country or organisation is engaged in armed hostilities
25 against the Australian Defence Force; and
26 (b) the person engages in conduct; and
27 (c) the person intends that the conduct will materially assist the
28 country or organisation to engage in armed hostilities against
29 the Australian Defence Force; and
30 (d) the conduct assists the country or organisation to engage in
31 armed hostilities against the Australian Defence Force; and
32 (e) when the person engages in the conduct, the person:
33 (i) is an Australian citizen; or
34 (ii) is a resident of Australia; or

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Treason and urging violence **Schedule 1**
Amendments commencing day after Royal Assent **Part 1**

- 1 (iii) has voluntarily put himself or herself under the
2 protection of the Commonwealth; or
3 (iv) is a body corporate incorporated by or under a law of
4 the Commonwealth or of a State or Territory.

5 Penalty: Imprisonment for life.

6 (5) The fault element for paragraph (4)(e) is intention.

7 Note: For intention, see subsection 5.2(2).

8 *Humanitarian aid*

9 (6) Subsections (1) and (4) do not apply to engagement in conduct by
10 way of, or for the purposes of, the provision of aid of a
11 humanitarian nature.

12 Note 1: A defendant bears an evidential burden in relation to the matter in
13 subsection (6). See subsection 13.3(3).

14 Note 2: There is a defence in section 80.3 for acts done in good faith.

15 **16 Saving—Proclamations**

16 A Proclamation in force for the purposes of paragraph 80.1(1)(e) of the
17 *Criminal Code* just before the commencement of this item has effect,
18 from that commencement, as if it had been made for the purposes of
19 paragraph 80.1AA(1)(b) of that Code, as inserted by this Schedule.

20 **17 Before section 80.2 of the *Criminal Code***

21 Insert:

22 **Subdivision C—Urging violence**

23 **18 Subsection 80.2(1)**

24 Repeal the subsection, substitute:

25 *Urging the overthrow of the Constitution or Government by force*
26 *or violence*

27 (1) A person commits an offence if:

28 (a) the person intentionally urges another person to overthrow by
29 force or violence:

30 (i) the Constitution; or

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Schedule 1 Treason and urging violence

Part 1 Amendments commencing day after Royal Assent

- 1 (ii) the Government of the Commonwealth, of a State or of
2 a Territory; or
3 (iii) the lawful authority of the Government of the
4 Commonwealth; and
5 (b) the first person does so intending that force or violence will
6 occur.

7 Penalty: Imprisonment for 7 years.

8 Note: For intention, see section 5.2.

9 Note: The heading to section 80.2 of the *Criminal Code* is replaced by the heading “**Urging**
10 **violence against the Constitution etc.**”.

11 **19 Subsection 80.2(2) of the *Criminal Code***

12 Omit “first-mentioned”, substitute “first”.

13 **20 Subsection 80.2(3) of the *Criminal Code***

14 Repeal the subsection, substitute:

15 *Urging interference in Parliamentary elections or constitutional*
16 *referenda by force or violence*

17 (3) A person commits an offence if:

- 18 (a) the person intentionally urges another person to interfere, by
19 force or violence, with lawful processes for:
20 (i) an election of a member or members of a House of the
21 Parliament; or
22 (ii) a referendum; and
23 (b) the first person does so intending that force or violence will
24 occur.

25 Penalty: Imprisonment for 7 years.

26 Note: For intention, see section 5.2.

27 **21 Subsection 80.2(4) of the *Criminal Code***

28 Omit “that the first-mentioned”, substitute “, or a referendum, that the
29 first”.

30 **22 At the end of subsection 80.2(6) of the *Criminal Code***

31 Add:

32 Note: There is a defence in section 80.3 for acts done in good faith.

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Treason and urging violence **Schedule 1**
Amendments commencing day after Royal Assent **Part 1**

1 **23 Subsections 80.2(7) to (9) of the *Criminal Code***

2 Repeal the subsections.

3 **24 Before section 80.3 of the *Criminal Code***

4 Insert:

5 **Subdivision D—Common provisions**

6 **25 Subsection 80.3(1) of the *Criminal Code***

7 Omit “Sections 80.1 and 80.2”, substitute “Subdivisions B and C”.

8 **26 Subparagraph 80.3(2)(b)(ii) of the *Criminal Code***

9 Omit “paragraph 80.1(1)(e)”, substitute “paragraph 80.1AA(1)(b)”.

10 **27 At the end of section 80.3 of the *Criminal Code***

11 Add:

12 (3) Without limiting subsection (2), in considering a defence under
13 subsection (1) in respect of an offence against Subdivision C, the
14 Court may have regard to any relevant matter, including whether
15 the acts were done:

16 (a) in the development, performance, exhibition or distribution
17 of an artistic work; or

18 (b) in the course of any statement, publication, discussion or
19 debate made or held for any genuine academic, artistic or
20 scientific purpose or any other genuine purpose in the public
21 interest; or

22 (c) in the dissemination of news or current affairs.

23 **28 Application**

24 The reference in subsection 80.3(3) of the *Criminal Code*, as added by
25 this Schedule, to an offence against Subdivision C of Division 80 of that
26 Code includes a reference to an offence against section 80.2 of that
27 Code as in force before the commencement of this item.

28 **29 Section 80.5 of the *Criminal Code***

29 Repeal the section.

30 **30 Application**

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Schedule 1 Treason and urging violence

Part 1 Amendments commencing day after Royal Assent

1 The amendment of the *Criminal Code* made by item 29 of this Schedule
2 applies in relation to offences committed after the commencement of
3 this item.

4 **31 Dictionary in the *Criminal Code***

5 Insert:

6 *referendum* has the same meaning as in the *Referendum*
7 *(Machinery Provisions) Act 1984*.

8 **32 Dictionary in the *Criminal Code***

9 Insert:

10 *treason* means an offence against subsection 80.1(1) or
11 section 80.1AA.
12

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Treason and urging violence **Schedule 1**
Amendments commencing 28 days after Royal Assent **Part 2**

1 **Part 2—Amendments commencing 28 days after**
2 **Royal Assent**

3 *Criminal Code Act 1995*

4 **33 Subsection 80.2(5) of the *Criminal Code***

5 Repeal the subsection.

6 **34 Subsection 80.2(6) of the *Criminal Code***

7 Repeal the subsection (not including the note).

8 **35 At the end of Subdivision C of Division 80 of the *Criminal***
9 ***Code***

10 Add:

11 **80.2A Urging violence against groups**

12 *Offences*

13 (1) A person commits an offence if:

- 14 (a) the person intentionally urges another person, or a group, to
15 use force or violence against a group (the *targeted group*);
16 and
17 (b) the first person does so intending that force or violence will
18 occur; and
19 (c) the targeted group is distinguished by race, religion,
20 nationality, national origin or political opinion; and
21 (d) the use of the force or violence would threaten the peace,
22 order and good government of the Commonwealth.

23 Penalty: Imprisonment for 7 years.

24 Note: For intention, see section 5.2.

25 (2) A person commits an offence if:

- 26 (a) the person intentionally urges another person, or a group, to
27 use force or violence against a group (the *targeted group*);
28 and
29 (b) the first person does so intending that force or violence will
30 occur; and

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Schedule 1 Treason and urging violence

Part 2 Amendments commencing 28 days after Royal Assent

1 (c) the targeted group is distinguished by race, religion,
2 nationality, national origin or political opinion.

3 Penalty: Imprisonment for 5 years.

4 Note: For intention, see section 5.2.

5 (3) The fault element for paragraphs (1)(c) and (2)(c) is recklessness.

6 Note: For recklessness, see section 5.4.

7 *Alternative verdict*

8 (4) Subsection (5) applies if, in a prosecution for an offence (the
9 **prosecuted offence**) against subsection (1), the trier of fact:

10 (a) is not satisfied that the defendant is guilty of the offence; but

11 (b) is satisfied beyond reasonable doubt that the defendant is
12 guilty of an offence (the **alternative offence**) against
13 subsection (2).

14 (5) The trier of fact may find the defendant not guilty of the prosecuted
15 offence but guilty of the alternative offence, so long as the
16 defendant has been accorded procedural fairness in relation to that
17 finding of guilt.

18 Note: There is a defence in section 80.3 for acts done in good faith.

19 **80.2B Urging violence against members of groups**

20 *Offences*

21 (1) A person commits an offence if:

22 (a) the person intentionally urges another person, or a group, to
23 use force or violence against a person (the **targeted person**);
24 and

25 (b) the first person does so intending that force or violence will
26 occur; and

27 (c) the first person does so by reason of his or her belief that the
28 targeted person is a member of a group (the **targeted group**);
29 and

30 (d) the targeted group is distinguished by race, religion,
31 nationality, national origin or political opinion; and

32 (e) the use of the force or violence would threaten the peace,
33 order and good government of the Commonwealth.

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Treason and urging violence **Schedule 1**
Amendments commencing 28 days after Royal Assent **Part 2**

1 Penalty: Imprisonment for 7 years.

2 Note: For intention, see section 5.2.

3 (2) A person commits an offence if:

4 (a) the person intentionally urges another person, or a group, to
5 use force or violence against a person (the *targeted person*);
6 and

7 (b) the first person does so intending that force or violence will
8 occur; and

9 (c) the first person does so by reason of his or her belief that the
10 targeted person is a member of a group (the *targeted group*);
11 and

12 (d) the targeted group is distinguished by race, religion,
13 nationality, national origin or political opinion.

14 Penalty: Imprisonment for 5 years.

15 Note: For intention, see section 5.2.

16 (3) For the purposes of paragraphs (1)(c) and (2)(c), it is immaterial
17 whether the targeted person actually is a member of the targeted
18 group.

19 (4) The fault element for paragraphs (1)(d) and (2)(d) is recklessness.

20 Note: For recklessness, see section 5.4.

21 *Alternative verdict*

22 (5) Subsection (6) applies if, in a prosecution for an offence (the
23 *prosecuted offence*) against subsection (1), the trier of fact:

24 (a) is not satisfied that the defendant is guilty of the offence; but

25 (b) is satisfied beyond reasonable doubt that the defendant is
26 guilty of an offence (the *alternative offence*) against
27 subsection (2).

28 (6) The trier of fact may find the defendant not guilty of the prosecuted
29 offence but guilty of the alternative offence, so long as the
30 defendant has been accorded procedural fairness in relation to that
31 finding of guilt.

32 Note: There is a defence in section 80.3 for acts done in good faith.

33

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Schedule 2 Terrorism

Part 1 Terrorism

1 **Schedule 2—Terrorism**

2 **Part 1—Terrorism**

3 *Classification (Publications, Films and Computer Games)*
4 *Act 1995*

5 **1 Paragraph 9A(2)(c)**

6 Before “risk”, insert “substantial”.

7 *Criminal Code Act 1995*

8 **2 Subsection 100.1(1) of the *Criminal Code* (before**
9 **subparagraph (c)(ii) of the definition of *terrorist act*)**

10 Insert:

11 (ia) coercing, or influencing by intimidation, the United
12 Nations, a body of the United Nations or a specialised
13 agency of the United Nations; or

14 **3 Paragraph 100.1(2)(a) of the *Criminal Code***

15 After “causes”, insert “, or is likely to cause,”.

16 **4 Paragraph 100.1(2)(a) of the *Criminal Code***

17 Omit “that is physical harm”.

18 **5 Paragraph 100.1(2)(b) of the *Criminal Code***

19 After “causes”, insert “, or is likely to cause,”.

20 **6 Paragraph 100.1(2)(c) of the *Criminal Code***

21 After “causes”, insert “, or is likely to cause,”.

22 **7 Paragraph 100.1(2)(d) of the *Criminal Code***

23 After “endangers”, insert “, or is likely to endanger,”.

24 **8 Paragraph 100.1(2)(e) of the *Criminal Code***

25 After “creates”, insert “, or is likely to create,”.

26 **9 At the end of subsection 100.1(2) of the *Criminal Code***

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Terrorism **Schedule 2**
Terrorism **Part 1**

1 Add:
2 ; or (g) is likely to seriously interfere with, seriously disrupt or
3 destroy an electronic system including, but not limited to, an
4 electronic system mentioned in a subparagraph of
5 paragraph (f).

6 **10 Subparagraph 100.1(3)(b)(i) of the *Criminal Code***

7 Omit “that is physical harm”.

8 **11 At the end of Division 101 of the *Criminal Code***

9 Add:

10 **101.7 Terrorism hoaxes**

11 A person commits an offence if:

- 12 (a) the person engages in conduct; and
13 (b) the person does so with the intention of inducing a false
14 belief that a terrorist act has occurred, is occurring or is likely
15 to occur.

16 Penalty: Imprisonment for 10 years.

17 **12 Paragraph 102.1(1A)(c) of the *Criminal Code***

18 Before “risk”, insert “substantial”.

19 **13 Subsection 102.1(3) of the *Criminal Code***

20 Omit “second anniversary”, substitute “third anniversary”.

21 **14 Transitional—existing regulations specifying
22 organisations**

23 The amendment of subsection 102.1(3) of the *Criminal Code* made by
24 this Schedule:

- 25 (a) applies to any regulation for the purposes of paragraph (b) of
26 the definition of *terrorist organisation* in section 102.1 of the
27 *Criminal Code* that was in force immediately before the
28 commencement of this item; and
29 (b) does not apply to such a regulation that had ceased to have
30 effect before that commencement.

31 **15 Subsection 102.1A(1) of the *Criminal Code***

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Schedule 2 Terrorism

Part 1 Terrorism

1 Omit “Committee on ASIO, ASIS and DSD”, substitute “Committee on
2 Intelligence and Security”.

3 Note: The heading to section 102.1A of the *Criminal Code* is altered by omitting “**Committee**
4 **on ASIO, ASIS and DSD**” and substituting “**Committee on Intelligence and**
5 **Security**”.

6 **16 Subsection 102.1A(2) of the *Criminal Code***

7 Repeal the subsection.

8 **17 Paragraph 102.7(1)(a) of the *Criminal Code***

9 Repeal the paragraph, substitute:

10 (a) the person provides to an organisation resources or material
11 support; and

12 (aa) the person does so with the intention of helping the
13 organisation engage in an activity described in paragraph (a)
14 of the definition of *terrorist organisation* in this Division;
15 and

16 Note: The heading to section 102.7 of the *Criminal Code* is altered by inserting “**resources or**
17 **material**” after “**Providing**”.

18 **18 Paragraph 102.7(2)(a) of the *Criminal Code***

19 Repeal the paragraph, substitute:

20 (a) the person provides to an organisation resources or material
21 support; and

22 (aa) the person does so with the intention of helping the
23 organisation engage in an activity described in paragraph (a)
24 of the definition of *terrorist organisation* in this Division;
25 and
26

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Terrorism Schedule 2

Declared aid organisations and declared regional aid organisations **Part 2**

1 **Part 2—Declared aid organisations and declared**
2 **regional aid organisations**

3 *Criminal Code Act 1995*

4 **19 Subsection 102.1(1) of the *Criminal Code***

5 Insert:

6 *declared aid organisation* means an organisation declared by the
7 Minister to be a declared aid organisation under paragraph
8 102.8A(1)(a).

9 **20 Subsection 102.1(1) of the *Criminal Code***

10 Insert:

11 *declared regional aid organisation* means an organisation declared
12 by the Minister to be a declared regional aid organisation under
13 paragraph 102.8A(1)(b).

14 **21 At the end of section 102.5 of the *Criminal Code***

15 Add:

16 (5) Subsections (1) and (2) do not apply if the training was provided
17 by:

18 (a) an organisation that, at the time the training was provided,
19 was a declared aid organisation; or

20 (b) an organisation that, at the time the training was provided,
21 was a declared regional aid organisation in respect of the
22 geographical area in which the training was provided.

23 Note: A defendant bears an evidential burden in relation to the matters in
24 subsection (5) (see subsection 13.3(3)).

25 **22 After Subdivision B of Division 102 of Part 5.3 of the**
26 ***Criminal Code***

27 Insert:

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Schedule 2 Terrorism

Part 2 Declared aid organisations and declared regional aid organisations

1 **Subdivision BA—Declared aid organisations and declared**
2 **regional aid organisations**

3 **102.8A Declared aid organisations and declared regional aid**
4 **organisations**

- 5 (1) The Minister may declare, in writing, that:
- 6 (a) an organisation is a *declared aid organisation*; or
- 7 (b) an organisation is a *declared regional aid organisation* in
8 respect of one or more particular geographical areas.
- 9 (2) The Minister must not make a declaration under subsection (1) in
10 relation to an organisation unless the Minister is satisfied on
11 reasonable grounds that:
- 12 (a) the organisation is, or will be, providing aid of a
13 humanitarian nature to a community; and
- 14 (b) any benefit to the community from providing the aid
15 outweighs, or will outweigh, any benefit that could be
16 received, directly or indirectly, by a terrorist organisation.
- 17 (3) A declaration under subsection (1) in relation to an organisation
18 may be made:
- 19 (a) on written application by the organisation; or
20 (b) on the Minister's own initiative.
- 21 (4) If an application for a declaration is made and the Minister does
22 not make the declaration, the Minister must refuse to make the
23 declaration.
- 24 (5) A declaration made under subsection (1) remains in force for the
25 shorter of the following periods, unless earlier revoked:
- 26 (a) the period specified in the declaration;
27 (b) 3 years.
- 28 (6) The Minister must cause a notice of a declaration made under
29 subsection (1) to be published in the *Gazette*.
- 30 (7) A declaration made under subsection (1) is not a legislative
31 instrument.

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Terrorism **Schedule 2**

Declared aid organisations and declared regional aid organisations **Part 2**

1 **102.8B Revocation of declaration**

2 (1) The Minister may, in writing, revoke a declaration in relation to an
3 organisation if the Minister is no longer satisfied of the matters in
4 paragraphs 102.8A(2)(a) and (b) in relation to the organisation.

5 (2) If the Minister revokes a declaration under subsection (1), the
6 Minister must cause a notice of the revocation to be published in
7 the *Gazette*.
8

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Schedule 2 Terrorism

Part 3 Miscellaneous

1 **Part 3—Miscellaneous**

2 ***Criminal Code Act 1995***

3 **23 At the end of section 100.5 of the *Criminal Code***

4 Add:

5 (3) Despite subsections (1) and (2), sections 22A, 22B and 22C of the
6 *Acts Interpretation Act 1901* apply to this Part.

7 **24 Subsection 102.1(1) of the *Criminal Code* (paragraph (a) of
8 the definition of *close family member*)**

9 Omit “, de facto spouse or same-sex partner”, substitute “or de facto
10 partner”.

11 **25 Subsection 102.1(1) of the *Criminal Code* (at the end of the
12 definition of *close family member*)**

13 Add:

14 Note: See also subsection (19).

15 **26 At the end of section 102.1 of the *Criminal Code***

16 Add:

17 (19) For the purposes of this Division, the close family members of a
18 person are taken to include the following (without limitation):

19 (a) a de facto partner of the person;

20 (b) someone who is the child of the person, or of whom the
21 person is the child, because of the definition of *child* in the
22 Dictionary;

23 (c) anyone else who would be a member of the person’s family if
24 someone mentioned in paragraph (a) or (b) is taken to be a
25 close family member of the person.

26 **27 Subsection 105.35(3) of the *Criminal Code* (paragraph (a)
27 of the definition of *family member*)**

28 Omit “, de facto spouse or same-sex partner”, substitute “or de facto
29 partner”.

30 **28 At the end of section 105.35 of the *Criminal Code***

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Terrorism **Schedule 2**
Miscellaneous **Part 3**

1 Add:

- 2 (4) For the purposes of this section, the family members of a person
3 are taken to include the following (without limitation):
4 (a) a de facto partner of the person;
5 (b) someone who is the child of the person, or of whom the
6 person is the child, because of the definition of *child* in the
7 Dictionary;
8 (c) anyone else who would be a member of the person's family if
9 someone mentioned in paragraph (a) or (b) is taken to be a
10 family member of the person.

11 **29 Dictionary in the *Criminal Code***

12 Insert:

13 *child*: without limiting who is a child of a person for the purposes
14 of this Act, someone is the *child* of a person if he or she is a child
15 of the person within the meaning of the *Family Law Act 1975*.

16 **30 Dictionary in the *Criminal Code***

17 Insert:

18 *parent*: without limiting who is a parent of a person for the
19 purposes of this Act, someone is the *parent* of a person if the
20 person is his or her child because of the definition of *child* in this
21 Dictionary.

22 **31 Dictionary in the *Criminal Code***

23 Insert:

24 *step-child*: without limiting who is a step-child of a person for the
25 purposes of this Act, someone who is a child of a de facto partner
26 of the person is the *step-child* of the person, if he or she would be
27 the person's step-child except that the person is not legally married
28 to the partner.

29 **32 Dictionary in the *Criminal Code***

30 Insert:

31 *step-parent*: without limiting who is a step-parent of a person for
32 the purposes of this Act, someone who is a de facto partner of a
33 parent of the person is the *step-parent* of the person, if he or she

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Schedule 2 Terrorism

Part 3 Miscellaneous

1
2
3

would be the person's step-parent except that he or she is not
legally married to the person's parent.

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Investigation of Commonwealth offences **Schedule 3**

1 **Schedule 3—Investigation of Commonwealth**
2 **offences**
3

4 ***Crimes Act 1914***

5 **1 Subsection 23B(1) (definition of *arrested*)**

6 Repeal the definition, substitute:

7 ***arrested***: a person is arrested if:

- 8 (a) the person is arrested for a Commonwealth offence; and
9 (b) the person's arrest has not ceased under subsection (3) or (4);
10 and
11 (c) the person has not been released.

12 **2 Subsection 23B(1)**

13 Insert:

14 ***authorising officer***, in relation to an investigating official, means:

- 15 (a) if the investigating official is a member or special member of
16 the Australian Federal Police—a person for the time being
17 holding office or acting as:
18 (i) the Commissioner; or
19 (ii) a Deputy Commissioner; or
20 (iii) a member or special member of the Australian Federal
21 Police who is of the rank of superintendent or higher; or
22 (b) if the investigating official is a member of the police force of
23 a State or Territory—a person for the time being holding
24 office or acting as:
25 (i) the Commissioner or the person holding equivalent
26 rank; or
27 (ii) an Assistant Commissioner or a person holding
28 equivalent rank; or
29 (iii) a superintendent or a person holding equivalent rank;
30 of the police force of that State or Territory.

31 **3 Subsection 23B(1) (definition of *investigation period*)**

32 Omit “or 23CA”, substitute “or 23DB”.

EXPOSURE DRAFT

Schedule 3 Investigation of Commonwealth offences

1 **4 Subsection 23B(1)**

2 Insert:

3 *judicial officer*, in relation to a person who is arrested, means:

- 4 (a) a magistrate; or
5 (b) a justice of the peace; or
6 (c) a person authorised to grant bail under the law of the State or
7 Territory in which the person was arrested.

8 **5 Subsection 23B(1)**

9 Insert:

10 *serious Commonwealth offence* means a Commonwealth offence
11 that is punishable by imprisonment for a period exceeding 12
12 months.

13 **6 Subsection 23B(1) (definition of *under arrest*)**

14 Repeal the definition, substitute:

15 *under arrest*: a person is under arrest if:

- 16 (a) the person is arrested for a Commonwealth offence; and
17 (b) the person's arrest has not ceased under subsection (3) or (4);
18 and
19 (c) the person has not been released.

20 **7 Subsection 23B(3)**

21 Omit all the words after "in respect of that offence by", substitute:

22 a judicial officer otherwise than under any of the following
23 provisions of the *Service and Execution of Process Act 1992*:

- 24 (a) paragraph 83(3)(b), (4)(b), (8)(a) or (8)(b);
25 (b) subsection 83(12);
26 (c) paragraph 83(14)(a);
27 (d) subparagraph 84(4)(a)(ii) or (6)(a)(i).

28 **8 Before section 23C**

29 Insert:

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Investigation of Commonwealth offences **Schedule 3**

1 **Subdivision A—Non-terrorism offences**

2 Note: The heading to section 23C is replaced by the heading “**Period of investigation if**
3 **arrested for a non-terrorism offence**”.

4 **9 At the end of subsection 23C(1)**

5 Add:

6 Note: A person would not be arrested for a Commonwealth offence if, for
7 example, the person has been released under subsection 3W(2)—see
8 the definition of *arrested* in subsection 23B(1).

9 **10 Subsections 23C(2) and (3)**

10 Repeal the subsections, substitute:

11 (2) The person may be detained for the purpose of investigating either
12 or both of the following:

13 (a) whether the person committed the offence;

14 (b) whether the person committed another Commonwealth
15 offence that an investigating official reasonably suspects
16 [*reasonably believes*] that the person has committed.

17 (2A) Subsection (2) ceases to apply at the end of the investigation
18 period, but that cessation does not affect any other power to detain
19 the person in relation to the arrest.

20 (3) If the person is not released within the investigation period, the
21 person must be brought before a judicial officer within the
22 investigation period or, if it is not practicable to do so within the
23 investigation period, as soon as practicable after the end of the
24 investigation period.

25 **11 Subsection 23C(4)**

26 Omit “section 23D”, substitute “section 23DA”.

27 **12 Paragraph 23C(6)(b)**

28 Omit “section 23CA”, substitute “section 23DB”.

29 **13 Subsection 23C(7)**

30 Repeal the subsection, substitute:

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Schedule 3 Investigation of Commonwealth offences

- 1 (7) In ascertaining any period of time for the purposes of
2 subsection (4) or (6), disregard any reasonable time during which
3 the questioning of the person is suspended or delayed:
4 (a) to allow the person to be conveyed from the place at which
5 the person is arrested to the nearest premises at which the
6 investigating official has access to facilities for complying
7 with this Part; or
8 (b) to allow the person, or someone else on the person's behalf,
9 to communicate with a legal practitioner, friend, relative,
10 parent, guardian, interpreter or other person as provided by
11 this Part; or
12 (c) to allow such a legal practitioner, friend, relative, parent,
13 guardian, interpreter or other person to arrive at the place
14 where the questioning is to take place; or
15 (d) to allow the person to receive medical attention; or
16 (e) because of the person's intoxication; or
17 (f) to allow for an identification parade to be arranged and
18 conducted; or
19 (g) to allow the making of an application under section 3ZQB or
20 the carrying out of a prescribed procedure within the meaning
21 of Division 4A of Part IAA; or
22 (h) in connection with the making and disposing of an
23 application under section 23D, 23WU or 23XB; or
24 (i) to allow a constable to inform the person of matters specified
25 in section 23WJ; or
26 (j) to allow the person to rest or recuperate; or
27 (k) to allow a forensic procedure to be carried out on the person
28 by order of a magistrate under Division 5 of Part ID; or
29 (l) where section 23XGD applies and that time is to be
30 disregarded in working out a period of time for the purposes
31 of that section.
- 32 (7A) To avoid doubt:
33 (a) a time that is disregarded under subsection (7) may be
34 covered by the application of more than one paragraph of that
35 subsection; and
36 (b) subsection (7) does not prevent the person being questioned
37 during a time covered by a paragraph of subsection (7), but if
38 the person is questioned during such a time, the time is not to
39 be disregarded.
-

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Investigation of Commonwealth offences **Schedule 3**

1 Note: The following heading to subsection 23C(8) is inserted “*Evidentiary provision*”.

2 **14 Subsection 23C(9)**

3 Repeal the subsection.

4 **15 Sections 23CA to 23E**

5 Repeal the sections, substitute:

6 **23D Application may be made for extension of investigation period**

- 7 (1) If a person is under arrest for a serious Commonwealth offence
8 (other than a terrorism offence), an investigating official may, at or
9 before the end of the investigation period, apply, in writing, to a
10 magistrate for an extension of the investigation period.
- 11 (2) Subject to subsection (3), the application must include statements
12 of all of the following:
- 13 (a) whether it appears to the investigating official that the person
14 is under 18;
 - 15 (b) whether it appears to the investigating official that the person
16 is an Aboriginal person or a Torres Strait Islander;
 - 17 (c) the outcome of any previous application under this section in
18 relation to the person and the investigation period;
 - 19 (d) the period (if any) by which the investigation period has been
20 reduced under subsection 23C(6);
 - 21 (e) the total amount of time (if any) that has been disregarded
22 under subsection 23C(7) in ascertaining the investigation
23 period under subsection 23C(4);
 - 24 (f) the maximum amount of time by which the investigation
25 period could be extended;
 - 26 (g) the reasons why the investigating official believes the
27 investigation period should be extended;
 - 28 (h) the period by which the investigating official believes the
29 investigation period should be extended.
- 30 (3) Subsection (2) does not require any information to be included in
31 the application if disclosure of that information is likely:
- 32 (a) to prejudice national security (within the meaning of the
33 *National Security Information (Criminal and Civil*
34 *Proceedings) Act 2004); or*
 - 35 (b) to be protected by public interest immunity; or
-

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- 1 (c) to put at risk ongoing operations by law enforcement
2 agencies or intelligence agencies; or
3 (d) to put at risk the safety of the community, law enforcement
4 officers or intelligence officers.
- 5 (4) Before the application is considered by the magistrate, the
6 investigating official must:
- 7 (a) provide a copy of the application to the person, or to his or
8 her legal representative; and
9 (b) inform the person that he or she, or his or her legal
10 representative, may make representations to the magistrate
11 about the application.
- 12 (5) If the application contains any information of a kind mentioned in
13 subsection (3), the investigating official may remove it from the
14 copy of the application that is provided to the person or to his or
15 her legal representative.
- 16 (6) The person, or his or her legal representative, may make
17 representations to the magistrate about the application.

23DA Magistrate may extend investigation period

- 18
- 19 (1) This section applies if:
- 20 (a) a person is arrested for a serious Commonwealth offence
21 (other than a terrorism offence); and
22 (b) an application has been made under subsection 23D(1) to a
23 magistrate in respect of the person.
- 24 *Extension of investigation period*
- 25 (2) Subject to subsection (3), the magistrate may extend the
26 investigation period, by signed written instrument, if satisfied that:
- 27 (a) the offence is a serious Commonwealth offence (other than a
28 terrorism offence); and
29 (b) further detention of the person is necessary to preserve or
30 obtain evidence or to complete the investigation into the
31 offence or into another serious Commonwealth offence; and
32 (c) the investigation into the offence is being conducted properly
33 and without delay; and

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- 1 (d) the person, or his or her legal representative, has been given
2 the opportunity to make representations about the
3 application.
- 4 (3) Subject to subsection (4), the instrument must set out:
5 (a) the day and time when the extension was granted; and
6 (b) the reasons for granting the extension; and
7 (c) the terms of the extension.
- 8 (4) Subsection (3) does not require any information to be included in
9 the instrument if disclosure of that information is likely:
10 (a) to prejudice national security (within the meaning of the
11 *National Security Information (Criminal and Civil*
12 *Proceedings) Act 2004); or*
13 (b) to be protected by public interest immunity; or
14 (c) to put at risk ongoing operations by law enforcement
15 agencies or intelligence agencies; or
16 (d) to put at risk the safety of the community, law enforcement
17 officers or intelligence officers.
- 18 (5) The magistrate must:
19 (a) give the investigating official a copy of the instrument as
20 soon as practicable after signing it; and
21 (b) if the instrument was made as a result of an application made
22 by telex, fax or other electronic means—inform the
23 investigating official of the matters included in the
24 instrument.
- 25 Note: See section 23E.
- 26 (6) The investigating official must:
27 (a) as soon as practicable after receiving a copy of the instrument
28 under paragraph (5)(a), give the person, or his or her legal
29 representative, a copy of it; and
30 (b) if the instrument was made as a result of an application made
31 by telex, fax or other electronic means—inform the person,
32 or his or her legal representative, of the matters included in
33 the instrument as soon as practicable after being informed of
34 them under paragraph (5)(b).
- 35 (7) The investigation period may be extended for a period not
36 exceeding 8 hours, and must not be extended more than once.
-

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Schedule 3 Investigation of Commonwealth offences

1 **16 At the end of Division 2 of Part IC**

2 Add:

3 **Subdivision B—Terrorism offences**

4 **23DB Period of investigation if arrested for a terrorism offence**

5 (1) If a person is arrested for a terrorism offence, the following
6 provisions apply.

7 Note: A person would not be arrested for a Commonwealth offence if, for
8 example, the person has been released under subsection 3W(2)—see
9 the definition of *arrested* in subsection 23B(1).

10 (2) The person may be detained for the purpose of investigating either
11 or both of the following:

12 (a) whether the person committed the offence;

13 (b) whether the person committed another terrorism offence that
14 an investigating official reasonably suspects [*reasonably*
15 *believes*] that the person has committed.

16 (3) Subsection (2) ceases to apply at the end of the investigation
17 period, but that cessation does not affect any other power to detain
18 the person in relation to the arrest.

19 (4) If the person is not released within the investigation period, the
20 person must be brought before a judicial officer within the
21 investigation period or, if it is not practicable to do so within the
22 investigation period, as soon as practicable after the end of the
23 investigation period.

24 (5) For the purposes of this section, but subject to subsections (7) and
25 (9), the investigation period begins when the person is arrested, and
26 ends at a later time that is reasonable, having regard to all the
27 circumstances, but does not extend beyond:

28 (a) if the person is or appears to be under 18, an Aboriginal
29 person or a Torres Strait Islander—2 hours; or

30 (b) in any other case—4 hours;

31 after the arrest, unless the period is extended under section 23DF.

32 (6) In ascertaining any period of time for the purposes of this section,
33 regard shall be had to the number and complexity of matters being
34 investigated.

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Investigation of Commonwealth offences **Schedule 3**

- 1 (7) If the person has been arrested more than once within any period of
2 48 hours, the investigation period for each arrest other than the first
3 is reduced by so much of any of the following periods as occurred
4 within that 48 hours:
5 (a) any earlier investigation period or periods under this section;
6 (b) any earlier investigation period or periods under section 23C.
- 7 (8) However, in relation to each first arrest, disregard subsection (7)
8 for any later arrest if:
9 (a) the later arrest is for a Commonwealth offence:
10 (i) that was committed after the end of the person's period
11 of detention under this Part for the first arrest; or
12 (ii) that arose in different circumstances to those in which
13 any Commonwealth offence to which the first arrest
14 relates arose, and for which new evidence has been
15 found since the first arrest; and
16 (b) the person's questioning associated with the later arrest does
17 not relate to:
18 (i) a Commonwealth offence to which the first arrest
19 relates; or
20 (ii) the circumstances in which such an offence was
21 committed.
- 22 (9) In ascertaining any period of time for the purposes of
23 subsection (5) or (7), disregard any reasonable time during which
24 the questioning of the person is suspended or delayed:
25 (a) to allow the person to be conveyed from the place at which
26 the person is arrested to the nearest premises at which the
27 investigating official has access to facilities for complying
28 with this Part; or
29 (b) to allow the person, or someone else on the person's behalf,
30 to communicate with a legal practitioner, friend, relative,
31 parent, guardian, interpreter or other person as provided by
32 this Part; or
33 (c) to allow such a legal practitioner, friend, relative, parent,
34 guardian, interpreter or other person to arrive at the place
35 where the questioning is to take place; or
36 (d) to allow the person to receive medical attention; or
37 (e) because of the person's intoxication; or

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- 1 (f) to allow for an identification parade to be arranged and
2 conducted; or
3 (g) to allow the making of an application under section 3ZQB or
4 the carrying out of a prescribed procedure within the meaning
5 of Division 4A of Part IAA; or
6 (h) in connection with the making and disposing of an
7 application under section 23DC, 23DE, 23WU or 23XB; or
8 (i) to allow a constable to inform the person of matters specified
9 in section 23WJ; or
10 (j) to allow the person to rest or recuperate; or
11 (k) to allow a forensic procedure to be carried out on the person
12 by order of a magistrate under Division 5 of Part ID; or
13 (l) where section 23XGD applies and that time is to be
14 disregarded in working out a period of time for the purposes
15 of that section; or
16 (m) subject to subsection (11), where the time is within a period
17 specified under section 23DD, so long as the suspension or
18 delay in the questioning of the person is reasonable.

19 (10) To avoid doubt:

- 20 (a) a time that is disregarded under subsection (9) may be
21 covered by the application of more than one paragraph of that
22 subsection; and
23 (b) subsection (9) does not prevent the person being questioned
24 during a time covered by a paragraph of subsection (9), but if
25 the person is questioned during such a time, the time is not to
26 be disregarded; and
27 (c) a period specified under section 23DD is not extended by any
28 time covered by a paragraph of subsection (9).

29 *Limit on time that may be disregarded under paragraph (9)(m)*

30 (11) No more than 7 days may be disregarded under paragraph (9)(m)
31 in relation to an arrest. However:

- 32 (a) if the person has been arrested more than once within any
33 period of 48 hours, the 7 day period for each arrest other than
34 the first arrest is reduced by any period or periods specified
35 under section 23DD in relation to any earlier arrest; and
36 (b) subsection (8) applies as if the reference in that subsection to
37 subsection (7) were a reference to this subsection.

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Investigation of Commonwealth offences **Schedule 3**

1 *Evidentiary provision*

- 2 (12) In any proceedings, the burden lies on the prosecution to prove
3 that:
4 (a) the person was brought before a judicial officer as soon as
5 practicable; or
6 (b) any particular time was covered by a provision of
7 subsection (9).

8 **23DC Time during which suspension or delay of questioning may be**
9 **disregarded—application**

- 10 (1) This section applies if:
11 (a) a person is arrested for a terrorism offence; and
12 (b) an investigation is being conducted into whether the person
13 committed that terrorism offence or another terrorism
14 offence.

15 *Application for specification of period*

- 16 (2) At or before the end of the investigation period, an investigating
17 official (within the meaning of paragraph (a) or (b) of the
18 definition of that expression) may apply, in writing, to a magistrate
19 for a period to be specified for the purpose of paragraph
20 23DB(9)(m).
- 21 (3) The application must not be made unless the application is
22 authorised, in writing, by an authorising officer.
- 23 (4) Subject to subsection (5), the application must include statements
24 of all of the following:
25 (a) whether it appears to the investigating official that the person
26 is under 18;
27 (b) whether it appears to the investigating official that the person
28 is an Aboriginal person or a Torres Strait Islander;
29 (c) the outcome of any previous application under this section in
30 relation to:
31 (i) the person and the arrest; and
32 (ii) if the person was arrested at any time during the period
33 of 48 hours before the arrest—the person and the earlier
34 arrest or arrests;
-

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Schedule 3 Investigation of Commonwealth offences

- 1 (d) the total amount of time that has been disregarded under
2 subsection 23DB(9) in ascertaining the investigation period
3 in relation to:
4 (i) the person and the arrest; and
5 (ii) if the person was arrested at any time during the period
6 of 48 hours before the arrest—the person and the earlier
7 arrest or arrests;
- 8 (e) the reasons why the investigating official believes the period
9 should be specified, which may, for example, be or include
10 one or more of the following:
11 (i) the need to collate and analyse information relevant to
12 the investigation from sources other than the
13 questioning of the person (including, for example,
14 information obtained from a place outside Australia);
15 (ii) the need to allow authorities in or outside Australia
16 (other than authorities in an organisation of which the
17 investigating official is part) time to collect information
18 relevant to the investigation on the request of the
19 investigating official;
20 (iii) the fact that the investigating official has requested the
21 collection of information relevant to the investigation
22 from a place outside Australia that is in a time zone
23 different from the investigating official's time zone;
24 (iv) the fact that translation is necessary to allow the
25 investigating official to seek information from a place
26 outside Australia and/or be provided with such
27 information in a language that the official can readily
28 understand;
- 29 (f) the period that the investigating official believes should be
30 specified.
- 31 (5) Subsection (4) does not require any information to be included in
32 the application if disclosure of that information is likely:
33 (a) to prejudice national security (within the meaning of the
34 *National Security Information (Criminal and Civil*
35 *Proceedings) Act 2004); or*
36 (b) to be protected by public interest immunity; or
37 (c) to put at risk ongoing operations by law enforcement
38 agencies or intelligence agencies; or

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- 1 (d) to put at risk the safety of the community, law enforcement
2 officers or intelligence officers.
- 3 (6) Before the application is considered by the magistrate, the
4 investigating official must:
- 5 (a) provide a copy of the application to the person or to his or her
6 legal representative; and
- 7 (b) inform the person that he or she, or his or her legal
8 representative, may make representations to the magistrate
9 about the application.
- 10 (7) If the application contains any information of a kind mentioned in
11 subsection (5), the investigating official may remove it from the
12 copy of the application that is provided to the person or to his or
13 her legal representative.
- 14 (8) The person, or his or her legal representative, may make
15 representations to the magistrate about the application.

16 **23DD Time during which suspension or delay of questioning may be** 17 **disregarded—time specified by magistrate**

- 18 (1) This section applies if:
- 19 (a) a person is arrested for a terrorism offence; and
- 20 (b) an application has been made under subsection 23DC(2) to a
21 magistrate in respect of the person.
- 22 *Specification of period*
- 23 (2) The magistrate may, by signed instrument, specify a period starting
24 at the time the instrument is signed, if satisfied that:
- 25 (a) it is appropriate to do so, having regard to:
- 26 (i) the application; and
- 27 (ii) the representations (if any) made by the person, or his or
28 her legal representative, about the application; and
- 29 (iii) any other relevant matters; and
- 30 (b) the offence is a terrorism offence; and
- 31 (c) detention of the person is necessary to preserve or obtain
32 evidence or to complete the investigation into the offence or
33 into another terrorism offence; and

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- 1 (d) the investigation into the offence is being conducted properly
2 and without delay; and
3 (e) the application has been authorised by an authorising officer;
4 and
5 (f) the person, or his or her legal representative, has been given
6 the opportunity to make representations about the
7 application.

8 *Instrument specifying period*

- 9 (3) Subject to subsection (4), the instrument must:
10 (a) specify the period as a number (which may be less than one)
11 of hours; and
12 (b) set out the day and time when it was signed; and
13 (c) set out the reasons for specifying the period.
- 14 (4) Subsection (3) does not require any information to be included in
15 the instrument if disclosure of that information is likely:
16 (a) to prejudice national security (within the meaning of the
17 *National Security Information (Criminal and Civil*
18 *Proceedings) Act 2004); or*
19 (b) to be protected by public interest immunity; or
20 (c) to put at risk ongoing operations by law enforcement
21 agencies or intelligence agencies; or
22 (d) to put at risk the safety of the community, law enforcement
23 officers or intelligence officers.
- 24 (5) The magistrate must:
25 (a) give the investigating official a copy of the instrument as
26 soon as practicable after signing it; and
27 (b) if the instrument was made as a result of an application made
28 by telex, fax or other electronic means—inform the
29 investigating official of the matters included in the
30 instrument.

31 Note: See section 23E.

- 32 (6) The investigating official must:
33 (a) as soon as practicable after receiving a copy of the instrument
34 under paragraph (5)(a), give the person, or his or her legal
35 representative, a copy of it; and

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- 1 (b) if the instrument was made as a result of an application made
2 by telex, fax or other electronic means—inform the person,
3 or his or her legal representative, of the matters included in
4 the instrument as soon as practicable after being informed of
5 them under paragraph (5)(b).

6 **23DE Application may be made for extension of investigation period**

- 7 (1) If a person is arrested for a terrorism offence, an investigating
8 official (within the meaning of paragraph (a) or (b) of the
9 definition of that expression) may, at or before the end of the
10 investigation period, apply, in writing, to a magistrate for an
11 extension of the investigation period.
- 12 (2) The application must not be made unless the application is
13 authorised, in writing, by an authorising officer.
- 14 (3) Subject to subsection (4), the application must include statements
15 of all of the following:
16 (a) whether it appears to the investigating official that the person
17 is under 18;
18 (b) whether it appears to the investigating official that the person
19 is an Aboriginal person or a Torres Strait Islander;
20 (c) the outcome of any previous application under this section in
21 relation to the person and the investigation period;
22 (d) the period (if any) by which the investigation period has been
23 reduced under subsection 23DB(7);
24 (e) the total amount of time (if any) that has been disregarded
25 under subsection 23DB(9) in ascertaining the investigation
26 period;
27 (f) the maximum amount of time by which the investigation
28 period could be extended;
29 (g) the reasons why the investigating official believes the
30 investigation period should be extended;
31 (h) the period by which the investigating official believes the
32 investigation period should be extended.
- 33 (4) Subsection (3) does not require any information to be included in
34 the application if disclosure of that information is likely:

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Schedule 3 Investigation of Commonwealth offences

- 1 (a) to prejudice national security (within the meaning of the
2 *National Security Information (Criminal and Civil*
3 *Proceedings) Act 2004); or*
4 (b) to be protected by public interest immunity; or
5 (c) to put at risk ongoing operations by law enforcement
6 agencies or intelligence agencies; or
7 (d) to put at risk the safety of the community, law enforcement
8 officers or intelligence officers.
- 9 (5) Before the application is considered by the magistrate, the
10 investigating official must:
11 (a) provide a copy of the application to the person or to his or her
12 legal representative; and
13 (b) inform the person that he or she, or his or her legal
14 representative, may make representations to the magistrate
15 about the application.
- 16 (6) If the application contains any information of a kind mentioned in
17 subsection (4), the investigating official may remove it from the
18 copy of the application that is provided to the person or to his or
19 her legal representative.
- 20 (7) The person, or his or her legal representative, may make
21 representations to the magistrate about the application.

22 **23DF Magistrate may extend investigation period**

- 23 (1) This section applies if:
24 (a) a person is arrested for a terrorism offence; and
25 (b) an application has been made under subsection 23DE(1) to a
26 magistrate in respect of the person.

27 *Extension of investigation period*

- 28 (2) Subject to subsection (3), the magistrate may extend the
29 investigation period, by signed written instrument, if satisfied that:
30 (a) the offence is a terrorism offence; and
31 (b) further detention of the person is necessary to preserve or
32 obtain evidence or to complete the investigation into the
33 offence or into another terrorism offence; and
34 (c) the investigation into the offence is being conducted properly
35 and without delay; and
-

EXPOSURE DRAFT

Investigation of Commonwealth offences **Schedule 3**

- 1 (d) the application has been authorised by an authorising officer;
2 and
3 (e) the person, or his or her legal representative, has been given
4 the opportunity to make representations about the
5 application.

- 6 (3) Subject to subsection (4), the instrument must set out:
7 (a) the day and time when the extension was granted; and
8 (b) the reasons for granting the extension; and
9 (c) the terms of the extension.

- 10 (4) Subsection (3) does not require any information to be included in
11 the instrument if disclosure of that information is likely:
12 (a) to prejudice national security (within the meaning of the
13 *National Security Information (Criminal and Civil*
14 *Proceedings) Act 2004); or*
15 (b) to be protected by public interest immunity; or
16 (c) to put at risk ongoing operations by law enforcement
17 agencies or intelligence agencies; or
18 (d) to put at risk the safety of the community, law enforcement
19 officers or intelligence officers.

- 20 (5) The magistrate must:
21 (a) give the investigating official a copy of the instrument as
22 soon as practicable after signing it; and
23 (b) if the instrument was made as a result of an application made
24 by telex, fax or other electronic means—inform the
25 investigating official of the matters included in the
26 instrument.

27 Note: See section 23E.

- 28 (6) The investigating official must:
29 (a) as soon as practicable after receiving a copy of the instrument
30 under paragraph (5)(a), give the person, or his or her legal
31 representative, a copy of it; and
32 (b) if the instrument was made as a result of an application made
33 by telex, fax or other electronic means—inform the person,
34 or his or her legal representative, of the matters included in
35 the instrument as soon as practicable after being informed of
36 them under paragraph (5)(b).

EXPOSURE DRAFT

Schedule 3 Investigation of Commonwealth offences

- 1 (7) The investigation period may be extended any number of times,
2 but the total of the periods of extension cannot be more than 20
3 hours.

4 **Subdivision C—Miscellaneous**

5 **23E Evidentiary provisions if application made by electronic means**

- 6 (1) This section applies if a magistrate has, under paragraph
7 23DA(4)(b), 23DD(4)(b) or 23DF(4)(b), informed an investigating
8 official of matters included in an instrument.
- 9 (2) As soon as practicable after being informed of those matters, the
10 investigating official must:
- 11 (a) complete a form of the instrument and write on it the name of
12 the magistrate and the particulars given by him or her; and
13 (b) forward it to the magistrate.
- 14 (3) If the form of the instrument completed by the investigating
15 official does not, in all material respects, accord with the terms of
16 the instrument signed by the magistrate, the instrument is taken to
17 have had no effect.
- 18 (4) In any proceedings, if the instrument signed by the magistrate is
19 not produced in evidence, the burden lies on the prosecution to
20 prove that the instrument was made.

21 **17 Paragraph 23XGD(2)(h)**

22 Omit “or 23CA(8)”, substitute “or 23DB(9)”.

23 **18 Application**

- 24 (1) Subject to subitem (2), the amendments made by this Schedule apply in
25 relation to a person who is arrested after the commencement of this
26 item.
- 27 (2) If:
- 28 (a) a person has been arrested more than once within any period
29 of 48 hours; and
30 (b) the first of those arrests was made before the commencement
31 of this item;

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Investigation of Commonwealth offences **Schedule 3**

1 the amendments made by this Schedule do not apply in relation to the
2 person for any later arrest that is made within that 48 hour period.

3 (3) However, in relation to a first arrest, disregard subitem (2) for a later
4 arrest if:

5 (a) the later arrest is for a Commonwealth offence:

6 (i) that was committed after the end of the person's period
7 of detention under Part IC of the *Crimes Act 1914* for
8 the first arrest; or

9 (ii) that arose in different circumstances to those in which
10 any Commonwealth offence to which the first arrest
11 relates arose, and for which new evidence has been
12 found since the first arrest; and

13 (b) the person's questioning associated with the later arrest does
14 not relate to:

15 (i) a Commonwealth offence to which the first arrest
16 relates; or

17 (ii) the circumstances in which such an offence was
18 committed.

19 (4) In this item:

20 ***Commonwealth offence*** has the same meaning as in Part IC of the
21 *Crimes Act 1914*.
22

EXPOSURE DRAFT

Schedule 4 Powers to search premises in relation to terrorism offences

1 **Schedule 4—Powers to search premises in**
2 **relation to terrorism offences**
3

4 *Crimes Act 1914*

5 **1 Division 3A of Part IAA (heading)**

6 Repeal the heading, substitute:

7 **Division 3A—Powers in relation to terrorist acts and**
8 **terrorism offences**

9 **2 Section 3UB**

10 Before “A police officer”, insert “(1)”.

11 **3 At the end of section 3UB**

12 Add:

13 (2) This section does not limit the operation of section 3UEA.

14 **4 After section 3UE**

15 Insert:

16 **3UEA Searching premises**

17 (1) A police officer may enter premises in accordance with this section
18 if the police officer suspects, on reasonable grounds, that:

- 19 (a) a thing is on the premises that is relevant to a terrorism
20 offence, whether or not the offence has occurred; and
21 (b) it is necessary to exercise a power under subsection (2) in
22 order to prevent the thing from being used in connection with
23 a terrorism offence; and
24 (c) it is necessary to exercise the power without the authority of
25 a search warrant because there is a serious and imminent
26 threat to a person’s life, health or safety.

27 (2) The police officer may:

- 28 (a) search the premises for the thing; and
29 (b) seize the thing if he or she finds it there.

EXPOSURE DRAFT

- 1 (3) If, in the course of searching for the thing, the police officer finds
2 another thing that the police officer suspects, on reasonable
3 grounds, to be relevant to an indictable offence or a summary
4 offence, the police officer may secure the premises pending the
5 obtaining of a warrant under Part IAA in relation to the premises.
- 6 (4) Premises must not be secured under subsection (3) for longer than
7 is reasonably necessary to obtain the warrant.
- 8 (5) In the course of searching for the thing, the police officer may also
9 seize any other thing if the police officer suspects, on reasonable
10 grounds, that it is necessary to seize it:
11 (a) in order to protect a person's life, health or safety; and
12 (b) without the authority of a search warrant because the
13 circumstances are serious and urgent.
- 14 (6) In exercising powers under this section:
15 (a) the police officer may use such assistance; and
16 (b) the police officer, or a person who is also a police officer and
17 who is assisting the police officer, may use such force against
18 persons and things; and
19 (c) a person who is not a police officer and who is assisting the
20 police officer may use such force against things;
21 as is necessary and reasonable in the circumstances.

5 Subsections 3UF(1), (4) and (5)

22 After "section 3UE", insert "or 3UEA".
23
24

EXPOSURE DRAFT

Schedule 5 Re-entry of premises in emergency situation

1 **Schedule 5—Re-entry of premises in**
2 **emergency situation**
3

4 ***Crimes Act 1914***

5 **1 Subsection 3C(1)**

6 Insert:

7 *emergency situation*, in relation to the execution of a warrant in
8 relation to premises, means a situation that the executing officer or
9 a constable assisting believes, on reasonable grounds, involves a
10 serious and imminent threat to a person's life, health or safety that
11 requires the executing officer and constables assisting to leave the
12 premises.

13 **2 Subsections 3E(1) and (2)**

14 Omit "by information on oath", insert ", by information on oath or
15 affirmation,".

16 **3 After paragraph 3J(2)(a)**

17 Insert:

18 (aa) if there is an emergency situation, for not more than 12 hours
19 or such longer period as allowed by an issuing officer under
20 section 3JA; or

21 **4 After section 3J**

22 Insert:

23 **3JA Extension of time to re-enter premises in emergency situations**

24 (1) If:

- 25 (a) a warrant in relation to premises is being executed; and
26 (b) there is an emergency situation; and
27 (c) the executing officer or a constable assisting believes on
28 reasonable grounds that the executing officer and the
29 constables assisting will not be able to return to the premises
30 within the 12 hour period mentioned in paragraph 3J(2)(aa);

EXPOSURE DRAFT

Re-entry of premises in emergency situation **Schedule 5**

1 he or she may apply to an issuing officer for an extension of that
2 period.

3 (2) Before making the application, the executing officer or a constable
4 assisting must, if it is practicable to do so, give notice to the
5 occupier of the premises of his or her intention to apply for an
6 extension.

7 (3) If an application mentioned in subsection (1) has been made, an
8 issuing officer may extend the time during which the executing
9 officer and constables assisting may be away from the premises if
10 the issuing officer is satisfied, by information on oath or
11 affirmation, that there are exceptional circumstances that justify the
12 extension.

13 **5 Subsection 3L(7)**

14 Omit “the issuing officer”, substitute “an issuing officer”.
15

EXPOSURE DRAFT

Schedule 6 Amendments relating to bail

Schedule 6—Amendments relating to bail

Crimes Act 1914

1 After subsection 15AA(3)

Insert:

(3A) Despite any law of the Commonwealth, the Director of Public Prosecutions or the defendant may appeal against a decision of a bail authority:

- (a) to grant bail to a person charged with or convicted of an offence covered by subsection (2) on the basis that the bail authority is satisfied that exceptional circumstances exist; or
- (b) to refuse to grant bail to a person charged with or convicted of an offence covered by subsection (2) on the basis that the bail authority is not satisfied that exceptional circumstances exist.

(3B) An appeal under subsection (3A):

- (a) may be made to a court that would ordinarily have jurisdiction to hear and determine appeals (however described) from directions, orders or judgments of the bail authority referred to in subsection (3A), whether the jurisdiction is in respect of appeals relating to bail or appeals relating to other matters; and
- (b) is to be made in accordance with the rules or procedures (if any) applicable under a law of the Commonwealth, a State or a Territory in relation to the exercise of such jurisdiction.

(3C) If:

- (a) a bail authority decides to grant bail to a person charged with or convicted of an offence covered by subsection (2); and
- (b) immediately after the decision is made, the Director of Public Prosecutions notifies the bail authority that he or she intends to appeal against the decision under subsection (3A);

the decision to grant bail is stayed with effect from the time of the notification.

(3D) A stay under subsection (3C) ends:

- (a) when a decision on the appeal is made; or

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Amendments relating to bail **Schedule 6**

- 1 (b) when the Director of Public Prosecutions notifies:
2 (i) the bail authority; or
3 (ii) if an appeal has already been instituted in a court—the
4 court;
5 that he or she does not intend to proceed with the appeal; or
6 (c) 72 hours after the stay comes into effect;
7 whichever occurs first.

8 **2 Subsection 15AA(4)**

9 Omit “subsection (1)”, substitute “subsections (1), (3A), (3B), (3C) and
10 (3D)”.

11 **3 Subsection 15AA(4) (note)**

12 Omit “Subsection (1) indirectly affects laws of the States and Territories
13 because it affects”, substitute “These provisions indirectly affect laws of
14 the States and Territories because they affect”.

15 **4 Application**

16 The amendments made by this Schedule apply on and after the
17 commencement of this Schedule to:

- 18 (a) a proceeding relating to bail initiated on or after that
19 commencement; and
20 (b) a proceeding relating to bail initiated before commencement,
21 but only to the parts of the proceeding that occur after that
22 commencement.
23

EXPOSURE DRAFT

Schedule 7 Listings under the Charter of the United Nations Act 1945

1 **Schedule 7—Listings under the Charter of the**
2 **United Nations Act 1945**
3

4 *Charter of the United Nations Act 1945*

5 **1 Subsections 15(1) and (3)**

6 After “satisfied”, insert “on reasonable grounds”.

7 **2 After section 15**

8 Insert:

9 **15A Duration of listing**

10 (1) A listing under section 15 ceases to have effect on:

11 (a) if no declaration under subsection (2) has been made in
12 relation to the listing—the third anniversary of the day on
13 which the listing took effect; or

14 (b) otherwise—the third anniversary of the making of the most
15 recent declaration under subsection (2) in relation to the
16 listing.

17 (2) The Minister may declare, in writing, that a specified listing under
18 section 15 continues to have effect.

19 (3) The Minister must not:

20 (a) make a declaration under subsection (2) specifying the listing
21 of a person or entity unless the Minister is satisfied on
22 reasonable grounds of the matters prescribed for the purposes
23 of subsection 15(2); or

24 (b) make a declaration under subsection (2) specifying the listing
25 of an asset, or class of asset, unless the Minister is satisfied
26 on reasonable grounds of the matters prescribed for the
27 purposes of subsection 15(4).

28 (4) The regulations may prescribe a form for a declaration under
29 subsection (2).

30 (5) A declaration made under subsection (2) is not a legislative
31 instrument.

EXPOSURE DRAFT

Listings under the Charter of the United Nations Act 1945 **Schedule 7**

- 1 (6) To avoid doubt, subsection (1) does not prevent:
2 (a) the revocation, under section 16, of a listing; or
3 (b) the revocation of a listing by operation of section 19; or
4 (c) the making of a new listing that is the same in substance as
5 another listing (whether the new listing is made or takes
6 effect before or after the other listing ceases to have effect
7 because of subsection (1)).

8 **3 Before paragraph 19(3)(a)**

9 Insert:

- 10 (aa) a listing ceasing to have effect under section 15A; or

11 **4 Transitional—listings under section 15 of the *Charter of the*** 12 ***United Nations Act 1945***

13 A listing that was made under subsection 15(1) or (3) of the *Charter of*
14 *the United Nations Act 1945* and that was in force immediately before
15 the commencement of this item has effect, after that commencement, as
16 if:

- 17 (a) it had been made under that subsection as amended by this
18 Act; and
19 (b) for the purposes only of section 15A of that Act, it had been
20 made immediately after that commencement.
21

EXPOSURE DRAFT

Schedule 8 Amendments relating to the disclosure of national security information in criminal and civil proceedings

Part 1 Amendments

1 **Schedule 8—Amendments relating to the**
2 **disclosure of national security**
3 **information in criminal and civil**
4 **proceedings**

5 **Part 1—Amendments**

6 *National Security Information (Criminal and Civil*
7 *Proceedings) Act 2004*

8 **1 Subsection 6(1)**

9 After “defendant”, insert “, the defendant’s legal representative”.

10 **2 Subsection 6(2)**

11 Omit “take place after the notice is given”, substitute “occur after the
12 notice is given (whether or not those parts began before that time)”.

13 **3 Paragraphs 6A(1)(b) and (2)(b)**

14 After “parties to the proceeding”, insert “, the legal representatives of
15 the parties to the proceeding”.

16 **4 Paragraph 6A(2)(d)**

17 After “Divisions”, insert “1A, 1,”.

18 **5 Subparagraph 6A(2)(e)(ii)**

19 After “Divisions”, insert “1A, 1,”.

20 **6 Subsection 6A(5)**

21 Omit “take place after the notice is given”, substitute “occur after the
22 notice is given (whether or not those parts began before that time)”.

23 **7 Section 7**

24 Insert:

25 *court official* means an individual who:

26 (a) is employed or engaged by a court to perform services in the
27 court in relation to a proceeding in the court; or

EXPOSURE DRAFT

Amendments relating to the disclosure of national security information in criminal and
civil proceedings **Schedule 8**
Amendments **Part 1**

1 (b) in relation to a federal criminal proceeding in a court—
2 supervises the defendant in the court.

3 **8 Section 7**

4 Insert:

5 *national security information* means information:

- 6 (a) that relates to national security; or
7 (b) the disclosure of which may affect national security.

8 **9 Paragraph 13(2)(c)**

9 Omit “of persons intended to be called by a party to give evidence”.

10 **10 At the end of section 13**

11 Add:

- 12 (3) To avoid doubt, a re-trial, and proceedings relating to the re-trial
13 (including those mentioned in subsection (2)), are part of the same
14 criminal proceeding as the trial.

15 **11 Section 14**

16 Repeal the section, substitute:

17 **14 Meaning of *federal criminal proceeding***

18 In this Act, *federal criminal proceeding* means a criminal
19 proceeding in any court exercising federal jurisdiction, where the
20 offence or any of the offences concerned are against a law of the
21 Commonwealth.

22 **12 Subsection 15(1)**

23 Repeal the subsection, substitute:

- 24 (1) In this Act, *defendant*, in relation to a federal criminal proceeding,
25 means a person charged with the offence or offences concerned
26 (even if the proceeding occurs after any conviction of the person).

27 **13 Paragraph 15A(2)(b)**

28 Omit “of persons intended to be called by a party to give evidence”.

29 **14 At the end of section 15A**

EXPOSURE DRAFT

Schedule 8 Amendments relating to the disclosure of national security information in criminal and civil proceedings

Part 1 Amendments

1 Add:

- 2 (3) To avoid doubt, a re-hearing, and proceedings relating to the
3 re-hearing (including those mentioned in subsection (2)), are part
4 of the same civil proceeding as the hearing.

5 **15 Paragraphs 16(aa), (ab), (ac), (ad) and (b)**

6 Repeal the paragraphs, substitute:

- 7 (b) the person discloses the information in circumstances
8 specified by the Attorney-General in a certificate or advice
9 given under section 26, 28, 38F or 38H.

10 **16 Section 17**

11 Omit “national security information”, substitute “information”.

12 **17 After subsection 19(1)**

13 Insert:

- 14 (1A) In addition to the powers of a court under this Act in a federal
15 criminal proceeding, the court may make such orders as the court
16 considers appropriate in relation to the disclosure, protection,
17 storage, handling or destruction, in the proceeding, of national
18 security information if:

- 19 (a) the court is satisfied that it is in the interest of national
20 security to make such orders; and
21 (b) the orders are not inconsistent with this Act or regulations
22 made under this Act.

23 **18 After subsection 19(3)**

24 Insert:

- 25 (3A) In addition to the powers of a court under this Act in a civil
26 proceeding, the court may make such orders as the court considers
27 appropriate in relation to the disclosure, protection, storage,
28 handling or destruction, in the proceeding, of national security
29 information if:

- 30 (a) the court is satisfied that it is in the interest of national
31 security to make such orders; and
32 (b) the orders are not inconsistent with this Act or regulations
33 made under this Act.

EXPOSURE DRAFT

Amendments relating to the disclosure of national security information in criminal and
civil proceedings **Schedule 8**
Amendments **Part 1**

1 **19 Before Division 1 of Part 3**

2 Insert:

3 **Division 1A—Attorney-General etc. may attend and be**
4 **heard at federal criminal proceedings**

5 **20A Attorney-General etc. may attend and be heard at federal**
6 **criminal proceedings**

7 If, in a federal criminal proceeding, an issue arises relating to the
8 disclosure, protection, storage, handling or destruction, in the
9 proceeding, of national security information, then any or all of the
10 following may attend and be heard at the proceeding:

- 11 (a) the Attorney-General;
12 (b) the Attorney-General's legal representative;
13 (c) any other representative of the Attorney-General.

14 **Division 1B—Court to consider hearing in camera etc.**

15 **20B Court to consider hearing in camera etc.**

16 (1) If, during a hearing in a federal criminal proceeding, an issue arises
17 relating to the disclosure, protection, storage, handling or
18 destruction, in the proceeding, of national security information,
19 then before hearing the issue, the court must consider making an
20 order under either or both of the following:

- 21 (a) subsection 19(1A);
22 (b) section 93.2 of the *Criminal Code*.

23 (2) Subsection (1) does not apply if the issue is the subject of an order
24 that is in force under section 22.

25 **20 Subsection 21(1)**

26 Repeal the subsection, substitute:

27 (1) At any time during a federal criminal proceeding, the
28 Attorney-General, the Attorney-General's legal representative, the
29 prosecutor, the defendant or the defendant's legal representative
30 may apply to the court for the court to hold a hearing to consider
31 issues relating to the disclosure, protection, storage, handling or

EXPOSURE DRAFT

Schedule 8 Amendments relating to the disclosure of national security information in criminal and civil proceedings

Part 1 Amendments

1 destruction, in the proceeding, of national security information,
2 including:

- 3 (a) the making of an arrangement of the kind mentioned in
4 section 22; and
5 (b) the giving of a notice under section 24.

6 (1A) As soon as possible after making the application, the applicant
7 must notify each of the following that the application has been
8 made:

- 9 (a) if the applicant is the Attorney-General or the
10 Attorney-General's legal representative—the prosecutor, the
11 defendant and the defendant's legal representative;
12 (b) if the applicant is the prosecutor—the Attorney-General, the
13 defendant and the defendant's legal representative;
14 (c) if the applicant is the defendant or the defendant's legal
15 representative—the Attorney-General and the prosecutor.

16 Note: The heading to section 21 is replaced by the heading "**National security information**
17 **hearings**".

18 **21 Subsection 21(2)**

19 Omit "conference", substitute "hearing".

20 **22 Subsection 22(1)**

21 Repeal the subsection, substitute:

- 22 (1) At any time during a federal criminal proceeding:
23 (a) the Attorney-General, on the Commonwealth's behalf; and
24 (b) the prosecutor; and
25 (c) the defendant, or the defendant's legal representative on the
26 defendant's behalf;
27 may agree to an arrangement about the disclosure, protection,
28 storage, handling or destruction, in the proceeding, of national
29 security information.

30 Note: The heading to section 22 is altered by omitting "**relating to or affecting national**
31 **security**" and substituting "**etc. of national security information**".

32 **23 Paragraph 23(1)(a)**

33 Omit "information that is disclosed, or to be disclosed, to the court",
34 substitute "national security information that is disclosed, or to be
35 disclosed,".

EXPOSURE DRAFT

Amendments relating to the disclosure of national security information in criminal and
civil proceedings **Schedule 8**
Amendments **Part 1**

1 Note: The heading to section 23 is altered by omitting “**certain**” and substituting “**national**
2 **security**”.

3 **24 Subsections 23(2) and (3)**

4 Repeal the subsections, substitute:

- 5 (2) This section does not apply to information that is the subject of an
6 order that is in force under section 22.

7 **25 Subsection 24(1)**

8 Repeal the subsection, substitute:

- 9 (1) If the prosecutor, the defendant or the defendant’s legal
10 representative knows or believes that:
11 (a) he or she will disclose national security information in a
12 federal criminal proceeding; or
13 (b) a person whom he or she intends to call as a witness in a
14 federal criminal proceeding will disclose national security
15 information in giving evidence or by the person’s mere
16 presence; or
17 (c) on his or her application, the court has issued a subpoena to,
18 or made another order in relation to, another person who,
19 because of that subpoena or order, is required (other than as a
20 witness) to disclose national security information in a federal
21 criminal proceeding;

22 then he or she must, as soon as practicable, give the
23 Attorney-General notice in writing of that knowledge or belief.

24 Note 1: Failure to give notice as required by this subsection is an offence in
25 certain circumstances: see section 42.

26 Note 2: Section 25 deals with the situation where the prosecutor, the defendant
27 or the defendant’s legal representative knows or believes that
28 information that will be disclosed in a witness’s answer is national
29 security information.

30 *When not required to give notice*

- 31 (1A) However, a person need not give notice about the disclosure of
32 information under subsection (1) if:
33 (a) another person has already given notice about the disclosure
34 of the information under that subsection; or
35 (b) the disclosure of the information:

EXPOSURE DRAFT

Schedule 8 Amendments relating to the disclosure of national security information in criminal and civil proceedings

Part 1 Amendments

- 1 (i) is the subject of a certificate given to the person under
2 section 26 and the certificate still has effect; or
3 (ii) is the subject of an order that is in force under
4 section 22 or 31; or
5 (c) the disclosure of the information by the witness to be called:
6 (i) is the subject of a certificate given to the person under
7 section 28 and the certificate still has effect; or
8 (ii) is the subject of an order that is in force under
9 section 22 or 31; or
10 (d) the Attorney-General has given the person advice about the
11 disclosure of the information under subsection 26(7) or
12 28(10).

13 Note: The heading to section 24 is replaced by the heading “**Notification of expected**
14 **disclosure of national security information**”.

15 **26 Subsections 24(3) and (4)**

16 Repeal the subsections, substitute:

17 *Informing the court etc. of an expected disclosure*

- 18 (3) A person who gives notice under subsection (1) must also advise
19 the following, in writing, that notice has been given to the
20 Attorney-General:
21 (a) if the person is the prosecutor:
22 (i) the court; and
23 (ii) the defendant; and
24 (iii) the defendant’s legal representative; and
25 (iv) any other person mentioned in paragraph (1)(b) or (c);
26 and
27 (b) if the person is the defendant or the defendant’s legal
28 representative:
29 (i) the court; and
30 (ii) the prosecutor; and
31 (iii) any other person mentioned in paragraph (1)(b) or (c).

32 Note: Failure to give advice as required by this subsection is an offence in
33 certain circumstances: see section 42.

- 34 (4) The advice must include a description of the information, unless
35 the advice is being given by the defendant or the defendant’s legal
36 representative to the prosecutor.
-

EXPOSURE DRAFT

Amendments relating to the disclosure of national security information in criminal and
civil proceedings **Schedule 8**
Amendments **Part 1**

1 Note: A contravention of this subsection is an offence in certain
2 circumstances: see section 42.

3 *Adjournment to allow sufficient time for Attorney-General to act*
4 *on the notice*

- 5 (5) On receiving the advice, the court must adjourn so much of the
6 proceeding as is necessary to ensure that the information is not
7 disclosed. The court must continue the adjournment until the
8 Attorney-General:
9 (a) gives a copy of a certificate to the court under subsection
10 26(4) or 28(3); or
11 (b) gives advice to the court under subsection 26(7) or 28(10)
12 (which applies if a decision is made not to give a certificate).

13 **27 Paragraph 25(1)(b)**

14 Repeal the paragraph, substitute:

- 15 (b) the prosecutor, the defendant or the defendant's legal
16 representative knows or believes that information that will be
17 disclosed in the witness's answer is national security
18 information.

19 **28 Subsection 25(2)**

20 Omit "or defendant", substitute " , the defendant or the defendant's legal
21 representative".

22 **29 After subsection 25(2)**

23 Insert:

- 24 (2A) However, a person need not advise the court under subsection (2)
25 about the disclosure of information if:
26 (a) another person has already advised the court about the
27 disclosure of the information under that subsection; or
28 (b) a notice has been given to the Attorney-General under
29 subsection 24(1) about the disclosure of the information; or
30 (c) the disclosure of the information:
31 (i) is the subject of a certificate given to the person under
32 section 26 and the certificate still has effect; or
33 (ii) is the subject of an order that is in force under
34 section 22 or 31; or

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Schedule 8 Amendments relating to the disclosure of national security information in criminal and civil proceedings

Part 1 Amendments

- 1 (d) the Attorney-General has given the person advice about the
2 disclosure of the information under subsection 26(7).

3 **30 Subsections 25(3), (4), (5), (6) and (7)**

4 Repeal the subsections, substitute:

5 *Witness to give written answer*

6 (3) If the court is advised under subsection (2) and the witness would,
7 apart from this section, be required to answer the question, the
8 court must order that the witness give the court a written answer to
9 the question.

10 (4) The court must show the written answer to the prosecutor and, if
11 present, the Attorney-General, the Attorney-General's legal
12 representative and any other representative of the
13 Attorney-General.

14 (5) If:

15 (a) under subsection (4), the Attorney-General's representative
16 (other than the Attorney-General's legal representative) is
17 shown the written answer; and

18 (b) he or she knows or believes that, if the written answer were
19 to be given in evidence in the proceeding, the information
20 that would be disclosed in the witness's answer is national
21 security information;

22 then he or she must advise the prosecutor of that knowledge or
23 belief.

24 *Prosecutor must give notice to Attorney-General etc.*

25 (6) If the prosecutor knows, believes, or is advised under
26 subsection (5), that, if the written answer were to be given in
27 evidence in the proceeding, the information that would be
28 disclosed in the witness's answer is national security information,
29 then the prosecutor must:

30 (a) advise the court of that knowledge, belief or advice; and

31 (b) as soon as practicable, give the Attorney-General notice in
32 writing of that knowledge, belief or advice.

33 Note: Failure to advise the court or to notify the Attorney-General is an
34 offence in certain circumstances: see section 42.

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Amendments relating to the disclosure of national security information in criminal and
civil proceedings **Schedule 8**
Amendments **Part 1**

- 1 (7) However, the prosecutor need not advise the court or give the
2 Attorney-General notice about the written answer under
3 subsection (6) if the information disclosed by the written answer:
4 (a) is the subject of a certificate or advice given to the prosecutor
5 under section 26 and the certificate still has effect; or
6 (b) is the subject of an order that is in force under section 22 or
7 31.

8 *Adjournment to allow sufficient time for Attorney-General to act*
9 *on the notice*

- 10 (8) If the court is advised under subsection (6), it must adjourn so
11 much of the proceeding as is necessary to ensure that the
12 information is not disclosed. The court must continue the
13 adjournment until the Attorney-General:
14 (a) gives a copy of a certificate to the court under subsection
15 26(4); or
16 (b) gives advice to the court under subsection 26(7) (which
17 applies if a decision is made not to give a certificate).

18 **31 Subparagraph 26(1)(a)(i)**

19 Omit “or defendant knows or believes that the prosecutor or defendant
20 or another person”, substitute “, the defendant or the defendant’s legal
21 representative knows or believes that he or she, or another person,”.

22 **32 Subparagraph 26(1)(a)(ii)**

23 Omit “or defendant”, substitute “, the defendant, the defendant’s legal
24 representative”.

25 **33 Subparagraph 26(1)(a)(iii)**

26 Omit “considers”, substitute “knows, believes or is advised”.

27 **34 Subsection 26(8)**

28 Repeal the subsection, substitute:

29 *Definition of potential discloser*

- 30 (8) Each of the following persons is a *potential discloser* of the
31 information in the proceeding:
32 (a) in all cases—the prosecutor, the defendant and the
33 defendant’s legal representative;
-

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Schedule 8 Amendments relating to the disclosure of national security information in criminal and civil proceedings

Part 1 Amendments

- 1 (b) if subparagraph (1)(a)(i) or (ii) applies and the disclosure is
2 by a person other than the prosecutor, the defendant or the
3 defendant’s legal representative—the other person;
4 (c) if subparagraph (1)(a)(iii) applies—the witness mentioned in
5 that subparagraph.

35 Subsections 27(1) and (2)

6 Repeal the subsections, substitute:

7
8 *Consequences of certificate for pre-trial proceedings*

- 9 (1) If, in a federal criminal proceeding, the Attorney-General gives a
10 potential discloser a certificate under section 26 at any time during
11 a part of the proceeding that occurs before the trial begins, then the
12 certificate is conclusive evidence, during that part of the
13 proceeding and any later part that occurs before the hearing
14 mentioned in paragraph (3)(a) begins, that disclosure of the
15 information in the proceeding is likely to prejudice national
16 security.

36 Subsection 27(3)

17 Omit “If a proceeding is covered by paragraph 14(a) (about a
18 proceeding involving a trial) and, under section 26, the
19 Attorney-General gives a potential discloser a certificate”, substitute “If,
20 in a federal criminal proceeding, the Attorney-General gives a potential
21 discloser a certificate under section 26”.

37 Paragraph 27(3)(b)

22 Omit “24(4) or 25(7)”, substitute “24(5) or 25(8)”.

38 Subparagraph 28(1)(a)(i)

23 Repeal the subparagraph, substitute:

- 24 (i) the Attorney-General is notified under section 24 that
25 the prosecutor, the defendant or the defendant’s legal
26 representative knows or believes that a person whom he
27 or she intends to call as a witness in a federal criminal
28 proceeding will disclose information by the person’s
29 mere presence; or
30
31
32

39 Subparagraph 28(1)(a)(ii)

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Amendments relating to the disclosure of national security information in criminal and
civil proceedings **Schedule 8**
Amendments **Part 1**

1 Omit “or defendant”, substitute “, the defendant or the defendant’s legal
2 representative”.

3 **40 Subsection 28(2)**

4 Omit “or defendant” (wherever occurring), substitute “, the defendant or
5 the defendant’s legal representative”.

6 **41 Subsection 28(5)**

7 Omit “If the proceeding is covered by paragraph 14(a) (about a
8 proceeding involving a trial), the”, substitute “The”.

9 **42 Subsection 28(6)**

10 Repeal the subsection.

11 **43 Subsections 28(9) and (10)**

12 Omit “or defendant”, substitute “, the defendant or the defendant’s legal
13 representative”.

14 **44 Subsection 29(1)**

15 Omit “25(3),”.

16 **45 Paragraph 29(2)(f)**

17 Repeal the paragraph, substitute:

18 (f) the Attorney-General, the Attorney-General’s legal
19 representative and any other representative of the
20 Attorney-General; and

21 **46 Subparagraph 29(5)(c)(iii)**

22 Omit “if section 30 applies—”.

23 **47 Subsection 29(6)**

24 Omit “, if section 30 applies,”.

25 **48 Subsection 29(7)**

26 Omit “national security information”, substitute “information”.

27 **49 Section 30**

28 Repeal the section.

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Schedule 8 Amendments relating to the disclosure of national security information in criminal and civil proceedings

Part 1 Amendments

1 **50 Paragraphs 31(6)(a) and (b)**

2 Omit “or defendant”, substitute “, the defendant or the defendant’s legal
3 representative”.

4 **51 Paragraph 32(1)(e)**

5 Omit “if section 30 applies—”.

6 **52 Subsection 32(2)**

7 Omit “, if section 30 applies,”.

8 **53 Subsection 32(3)**

9 Omit “national security information”, substitute “information”.

10 **54 Subsection 37(1)**

11 Omit “, if the Attorney-General is an intervener under section 30,”.

12 **55 Before Division 1 of Part 3A**

13 Insert:

14 **Division 1A—Attorney-General etc. may attend and be**
15 **heard at civil proceedings**

16 **38AA Attorney-General etc. may attend and be heard at civil**
17 **proceedings**

18 If, in a civil proceeding, an issue arises relating to the disclosure,
19 protection, storage, handling or destruction, in the proceeding, of
20 national security information, then any or all of the following may
21 attend and be heard at the proceeding:

- 22 (a) the Attorney-General;
23 (b) the Attorney-General’s legal representative;
24 (c) any other representative of the Attorney-General.

25 **Division 1B—Court to consider hearing in camera etc.**

26 **38AB Court to consider hearing in camera etc.**

27 (1) If, during a hearing in a civil proceeding, an issue arises relating to
28 the disclosure, protection, storage, handling or destruction, in the

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1 proceeding, of national security information, then before hearing
2 the issue, the court must consider making an order under either or
3 both of the following:

- 4 (a) subsection 19(3A);
- 5 (b) section 93.2 of the *Criminal Code*.

6 (2) Subsection (1) does not apply if the issue is the subject of an order
7 that is in force under section 38B.

8 **56 Subsections 38A(1), (2) and (3)**

9 Repeal the subsections, substitute:

10 (1) At any time during a civil proceeding, the Attorney General, the
11 Attorney-General's legal representative, a party to the proceeding
12 or a party's legal representative may apply to the court for the court
13 to hold a hearing to consider issues relating to the disclosure,
14 protection, storage, handling or destruction, in the proceeding, of
15 national security information, including:

- 16 (a) the making of an arrangement of the kind mentioned in
17 section 38B; and
- 18 (b) the giving of a notice under section 38D.

19 (2) As soon as possible after making the application, the applicant
20 must notify each of the following that the application has been
21 made:

- 22 (a) if the applicant is the Attorney-General or the
23 Attorney-General's legal representative—the parties and the
24 parties' legal representatives;
- 25 (b) if the applicant is a party or a party's legal representative—
26 the Attorney-General, the other parties and the other parties'
27 legal representatives.

28 Note: The heading to section 38A is replaced by the heading "**National security information**
29 **hearings**".

30 **57 Subsection 38A(4)**

31 Omit "conference", substitute "hearing".

32 **58 Subsection 38B(1)**

33 Repeal the subsection, substitute:

34 (1) At any time during a civil proceeding:

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Schedule 8 Amendments relating to the disclosure of national security information in criminal and civil proceedings

Part 1 Amendments

- 1 (a) the Attorney-General, on the Commonwealth's behalf; and
2 (b) the parties to the proceeding, or their legal representatives on
3 their behalf;
4 may agree to an arrangement about the disclosure, protection,
5 storage, handling or destruction, in the proceeding, of national
6 security information.

7 Note: The heading to section 38B is altered by omitting "**relating to or affecting national**
8 **security**" and substituting "**etc. of national security information**".

9 **59 Paragraph 38C(1)(a)**

10 Omit "information that is disclosed, or to be disclosed, to the court",
11 substitute "national security information that is disclosed, or to be
12 disclosed,".

13 Note: The heading to section 38C is altered by omitting "**certain**" and substituting "**national**
14 **security**".

15 **60 Subsections 38C(2) and (3)**

16 Repeal the subsections, substitute:

- 17 (2) This section does not apply to information that is the subject of an
18 order that is in force under section 38B.

19 **61 Subsection 38D(1)**

20 Repeal the subsection, substitute:

- 21 (1) If a party, or the legal representative of a party, to a civil
22 proceeding knows or believes that:
23 (a) he or she will disclose national security information in the
24 proceeding; or
25 (b) a person whom he or she intends to call as a witness in the
26 proceeding will disclose national security information in
27 giving evidence or by the person's mere presence; or
28 (c) on his or her application, the court has issued a subpoena to,
29 or made another order in relation to, another person who,
30 because of that subpoena or order, is required (other than as a
31 witness) to disclose national security information in the
32 proceeding;
33 then he or she must, as soon as practicable, give the
34 Attorney-General notice in writing of that knowledge or belief.

35 Note 1: Failure to give notice as required by this section is an offence in
36 certain circumstances: see section 46C.

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Amendments relating to the disclosure of national security information in criminal and
civil proceedings **Schedule 8**
Amendments **Part 1**

1 Note 2: Section 38E deals with the situation where a party, or a party's legal
2 representative, knows or believes that information that will be
3 disclosed in a witness's answer is national security information.

4 Note: The heading to section 38D is replaced by the heading "**Notification of expected**
5 **disclosure of national security information**".

6 **62 Subsection 38D(2)**

7 Omit "Despite subsection (1), a party need not give the
8 Attorney-General notice", substitute "However, a party or a party's
9 legal representative need not give the Attorney-General notice about the
10 disclosure of the information under subsection (1)".

11 **63 Before paragraph 38D(2)(a)**

12 Insert:
13 (aa) another person has already given notice about the disclosure
14 of the information under that subsection; or

15 **64 Subparagraphs 38D(2)(a)(i) and (b)(i)**

16 After "party", insert "or the legal representative".

17 **65 At the end of subsection 38D(2)**

18 Add:
19 ; or (c) the Attorney-General has given the party or the legal
20 representative advice about the disclosure of the information
21 under subsection 38F(7) or 38H(9).

22 **66 Subsections 38D(4) and (5)**

23 Repeal the subsections, substitute:

24 *Informing the court etc. of an expected disclosure*

25 (4) A person who gives notice under subsection (1) must also advise,
26 in writing:
27 (a) the court; and
28 (b) the other parties; and
29 (c) the other parties' legal representatives; and
30 (d) any other person mentioned in paragraph (1)(b) or (c);
31 that notice has been given to the Attorney-General. The advice
32 must include a description of the information.

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Schedule 8 Amendments relating to the disclosure of national security information in criminal and civil proceedings

Part 1 Amendments

1 Note: Failure to give advice as required by this section is an offence in
2 certain circumstances: see section 46C.

3 *Adjournment to allow sufficient time for Attorney-General to act*
4 *on the notice*

5 (5) On receiving the advice, the court must adjourn so much of the
6 proceeding as is necessary to ensure that the information is not
7 disclosed. The court must continue the adjournment until the
8 Attorney-General:

9 (a) gives a copy of a certificate to the court under subsection
10 38F(5) or 38H(4); or

11 (b) gives advice to the court under subsection 38F(7) or 38H(9)
12 (which applies if a decision is made not to give a certificate).

13 **67 Paragraph 38E(1)(b)**

14 Repeal the paragraph, substitute:

15 (b) a party, or the legal representative of a party, to the
16 proceeding knows or believes that information that will be
17 disclosed in the witness's answer is national security
18 information.

19 **68 Subsection 38E(2)**

20 After "party", insert "or legal representative".

21 **69 After subsection 38E(2)**

22 Insert:

23 (2A) However, a person need not advise the court under subsection (2)
24 about the disclosure of information if:

25 (a) another person has already advised the court about the
26 disclosure of the information under that subsection; or

27 (b) a notice has been given to the Attorney-General under
28 subsection 38D(1) about the disclosure of the information; or

29 (c) the disclosure of the information:

30 (i) is the subject of a certificate given to the person under
31 section 38F and the certificate still has effect; or

32 (ii) is the subject of an order that is in force under
33 section 38B or 38L; or

34 (d) the Attorney-General has given the person advice about the
35 disclosure of the information under subsection 38F(7).

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Amendments relating to the disclosure of national security information in criminal and
civil proceedings **Schedule 8**
Amendments **Part 1**

1 **70 Subsection 38E(4)**

2 Omit “The court must adjourn the proceeding on receiving the written
3 answer. However, the court need not adjourn the proceeding”, substitute
4 “On receiving the written answer, the court must adjourn so much of the
5 proceeding as is necessary to ensure that the information is not
6 disclosed. However, the court need not do so”.

7 **71 Subsection 38E(5)**

8 Omit “adjourns the proceeding”, substitute “adjourns a part of the
9 proceeding under subsection (4)”.

10 **72 Subsection 38E(6)**

11 Omit “of the proceeding”.

12 **73 Subparagraph 38F(1)(a)(i)**

13 After “a party”, insert “, or the legal representative of a party,”.

14 **74 Subparagraph 38F(1)(a)(ii)**

15 After “a party”, insert “, the legal representative of a party”.

16 **75 Subsection 38F(9)**

17 Repeal the subsection, substitute:

18 *Definition of potential discloser*

- 19 (9) Each of the following persons is a *potential discloser* of the
20 information in the proceeding:
- 21 (a) in all cases—the parties and the parties’ legal representatives;
 - 22 (b) if subparagraph (1)(a)(i) or (ii) applies and the disclosure is
23 by a person other than a party or a party’s legal
24 representative—the other person;
 - 25 (c) if subparagraph (1)(a)(iii) applies—the witness mentioned in
26 that subparagraph.

27 **76 Subparagraph 38H(1)(a)(i)**

28 Omit “to a civil proceeding knows or believes that a person whom the
29 party”, substitute “, or the legal representative of a party, to a civil
30 proceeding knows or believes that a person whom the party or legal
31 representative”.

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Schedule 8 Amendments relating to the disclosure of national security information in criminal and civil proceedings

Part 1 Amendments

1 **77 Subparagraph 38H(1)(a)(ii)**

2 After “party”, insert “, or the legal representative of a party,”.

3 **78 Subsection 38H(2)**

4 Repeal the subsection, substitute:

5 *Attorney-General may give a certificate*

6 (2) The Attorney-General may give a certificate to the relevant party
7 or legal representative that states that he or she must not call the
8 person as a witness in the proceeding.

9 **79 Subsection 38H(9)**

10 Omit all the words after “writing,”, substitute:

11 advise:

12 (a) the relevant party or legal representative; and

13 (b) the court;

14 of his or her decision.

15 **80 Paragraph 38I(2)(e)**

16 Repeal the paragraph, substitute:

17 (e) the Attorney-General, the Attorney-General’s legal
18 representative and any other representative of the
19 Attorney-General; and

20 **81 Subsection 38I(7)**

21 Omit “national security information”, substitute “information”.

22 **82 Section 38K**

23 Repeal the section.

24 **83 Paragraphs 38L(6)(a) and (b)**

25 After “party”, insert “or legal representative”.

26 **84 Paragraph 38M(1)(d)**

27 Omit “if section 38K applies—”.

28 **85 Subsection 38M(2)**

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Amendments relating to the disclosure of national security information in criminal and
civil proceedings **Schedule 8**
Amendments **Part 1**

1 Omit “If section 38K applies, before”, substitute “Before”.

2 **86 Subsection 38M(3)**

3 Omit “national security information”, substitute “information”.

4 **87 Subsection 38R(1)**

5 Omit “, or if the Attorney-General is an intervener under section 38K,”,
6 substitute “or”.

7 **88 After subsection 39(1)**

8 Insert:

9 (1A) When considering, for the purposes of subsection (1), whether a
10 disclosure of the information would be likely to prejudice national
11 security, the Secretary is to consider the nature of the information
12 itself, and not the character of the person to whom it is to be
13 disclosed.

14 **89 Subsection 39(3)**

15 After “defendant”, insert “, or the defendant’s legal representative (on
16 the defendant’s behalf),”.

17 **90 After subsection 39A(1)**

18 Insert:

19 (1A) When considering, for the purposes of subsection (1), whether a
20 disclosure of the information would be likely to prejudice national
21 security, the Secretary is to consider the nature of the information
22 itself, and not the character of the person to whom it is to be
23 disclosed.

24 **91 Subsection 39A(3)**

25 After “to the proceeding”, insert “, or the party’s legal representative
26 (on the party’s behalf),”.

27 **92 Subsection 40(1)**

28 Repeal the subsection, substitute:

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Amendments relating to the disclosure of national security information in criminal and
civil proceedings **Schedule 8**
Amendments **Part 1**

1 Omit “or believes”, substitute “, believes or is advised”.

2 **94 Section 41**

3 Repeal the section, substitute:

4 **41 Offence to disclose information before Attorney-General gives** 5 **criminal witness exclusion certificate etc. under section 28**

6 A person commits an offence if:

- 7 (a) the person is the prosecutor, the defendant or the defendant’s
8 legal representative in a federal criminal proceeding; and
9 (b) the person notifies the Attorney-General under subsection
10 24(1) that he or she knows or believes that a person (the
11 *second person*) whom he or she intends to call as a witness in
12 a federal criminal proceeding will disclose information by the
13 second person’s mere presence; and
14 (c) after giving the notice, the person calls the second person as a
15 witness in the proceeding at any time before the
16 Attorney-General gives the person a certificate under
17 subsection 28(2) or advice under subsection 28(10) in
18 relation to the calling of the second person as a witness; and
19 (d) the disclosure of the information by the mere presence of the
20 second person is likely to prejudice national security.

21 Penalty: Imprisonment for 2 years.

22 **95 Paragraph 42(a)**

23 Omit “or (3)”, substitute “, (3) or (4)”.

24 **96 After section 45**

25 Insert:

26 **45A Offence to contravene regulations**

- 27 (1) A person commits an offence if:
28 (a) regulations made under section 23 require the person to
29 comply with a requirement relating to the storage, handling
30 or destruction of national security information; and
31 (b) the person engages in conduct; and
32 (c) the conduct results in the requirement being contravened.

EXPOSURE DRAFT

Schedule 8 Amendments relating to the disclosure of national security information in criminal and civil proceedings

Part 1 Amendments

1 Penalty: 6 months imprisonment.

2 (2) In this section:

3 *engage in conduct* means:

4 (a) do an act; or

5 (b) omit to perform an act.

6 **97 Subsection 46A(1)**

7 Repeal the subsection, substitute:

8 *Disclosure where notice given to Attorney-General under*
9 *subsection 38D(1)*

10 (1) A person commits an offence if:

11 (a) the person is a party, or a legal representative of a party, to a
12 civil proceeding; and

13 (b) the person gives notice to the Attorney-General under
14 subsection 38D(1) about the disclosure of information in the
15 proceeding; and

16 (c) section 46B does not apply; and

17 (d) after giving the notice, the person discloses the information
18 (whether in the proceeding or otherwise) at any time before
19 the Attorney-General gives the person a certificate under
20 subsection 38F(2) or (3) or advice under subsection 38F(7) in
21 relation to the disclosure of the information; and

22 (e) the disclosure does not take place in permitted circumstances;
23 and

24 (f) the disclosure is likely to prejudice national security.

25 Penalty: Imprisonment for 2 years.

26 *Disclosure where advice given under subsection 38D(4)*

27 (1A) A person commits an offence if:

28 (a) the person is advised under subsection 38D(4) that a notice
29 about the disclosure of information in a civil proceeding has
30 been given to the Attorney-General; and

31 (b) the advice includes a description of the information; and

32 (c) section 46B does not apply; and

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Amendments relating to the disclosure of national security information in criminal and
civil proceedings **Schedule 8**
Amendments **Part 1**

- 1 (d) after being advised, the person discloses the information
2 (whether in the proceeding or otherwise) at any time before
3 the Attorney-General gives the person a certificate under
4 subsection 38F(2) or (3) or advice under subsection 38F(7) in
5 relation to the disclosure of the information; and
6 (e) the disclosure does not take place in permitted circumstances;
7 and
8 (f) the disclosure is likely to prejudice national security.

9 Penalty: Imprisonment for 2 years.

10 **98 Sections 46B and 46C**

11 Repeal the sections, substitute:

12 **46B Offence to disclose information before Attorney-General gives** 13 **civil witness exclusion certificate etc. under section 38H**

14 A person commits an offence if:

- 15 (a) the person is a party, or the legal representative of a party, to
16 a civil proceeding; and
17 (b) the person notifies the Attorney-General under subsection
18 38D(1) that he or she knows or believes that a person (the
19 *second person*) whom he or she intends to call as a witness in
20 the proceeding will disclose information by the second
21 person's mere presence; and
22 (c) after giving the notice, the person calls the second person as a
23 witness in the proceeding at any time before the
24 Attorney-General gives the person a certificate under
25 subsection 38H(2) or advice under subsection 38H(9) in
26 relation to the calling of the second person as a witness; and
27 (d) the disclosure of the information by the mere presence of the
28 second person is likely to prejudice national security.

29 Penalty: Imprisonment for 2 years.

30 **46C Offence to contravene requirement to notify Attorney-General** 31 **etc. under sections 38D and 38E**

32 A person commits an offence if:

- 33 (a) the person is a party, or the legal representative of a party, to
34 a civil proceeding; and

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Schedule 8 Amendments relating to the disclosure of national security information in criminal and civil proceedings

Part 1 Amendments

- 1 (b) the person contravenes subsection 38D(1), (3) or (4) or
2 38E(2); and
3 (c) the disclosure of information mentioned in that subsection is
4 likely to prejudice national security.

5 Penalty: Imprisonment for 2 years.

6 **99 After section 46F**

7 Insert:

8 **46FA Offence to contravene regulations**

- 9 (1) A person commits an offence if:
10 (a) regulations made under section 38C require the person to
11 comply with a requirement relating to the storage, handling
12 or destruction of national security information; and
13 (b) the person engages in conduct; and
14 (c) the conduct results in the requirement being contravened.

15 Penalty: 6 months imprisonment.

16 (2) In this section:

17 ***engage in conduct*** means:

- 18 (a) do an act; or
19 (b) omit to perform an act.
20

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Amendments relating to the disclosure of national security information in criminal and
civil proceedings **Schedule 8**
Application of amendments and saving **Part 2**

1 **Part 2—Application of amendments and saving**

2 **100 Application of amendments**

3 *Notice given after commencement*

4 (1) The amendments made by this Schedule (other than items 96 and 99)
5 apply on and after the commencement of this item to:

6 (a) a federal criminal proceeding in relation to which a notice is
7 given under section 6 of the *National Security Information*
8 *(Criminal and Civil Proceedings) Act 2004* on or after that
9 commencement; and

10 (b) a civil proceeding in relation to which a notice is given under
11 section 6A of that Act on or after that commencement;

12 whether or not the proceeding begins before or after that
13 commencement.

14 (2) The amendments made by items 96 and 99 of this Schedule apply on
15 and after the commencement of those items to:

16 (a) a federal criminal proceeding in relation to which a notice is
17 given under section 6 of the *National Security Information*
18 *(Criminal and Civil Proceedings) Act 2004* on or after that
19 commencement; and

20 (b) a civil proceeding in relation to which a notice is given under
21 section 6A of that Act on or after that commencement;

22 whether or not the proceeding begins before or after that
23 commencement.

24 *Notice given before commencement*

25 (3) The amendments made by this Schedule (other than items 96 and 99)
26 apply on and after the commencement of this item to:

27 (a) a federal criminal proceeding in relation to which a notice
28 was given under section 6 of the *National Security*
29 *Information (Criminal and Civil Proceedings) Act 2004*
30 before that commencement; and

31 (b) a civil proceeding in relation to which a notice was given
32 under section 6A of that Act before that commencement;

33 but only to the parts of the proceeding that occur after that
34 commencement (whether or not those parts began before that
35 commencement).

EXPOSURE DRAFT

Schedule 8 Amendments relating to the disclosure of national security information in criminal and civil proceedings

Part 2 Application of amendments and saving

- 1 (4) The amendments made by items 96 and 99 of this Schedule apply on
2 and after the commencement of those items to:
- 3 (a) a federal criminal proceeding in relation to which a notice
4 was given under section 6 of the *National Security*
5 *Information (Criminal and Civil Proceedings) Act 2004*
6 before that commencement; and
- 7 (b) a civil proceeding in relation to which a notice was given
8 under section 6A of that Act before that commencement;
- 9 but only to the parts of the proceeding that occur after that
10 commencement (whether or not those parts began before that
11 commencement).
- 12 (5) If, under section 6 or 6A of the *National Security Information (Criminal*
13 *and Civil Proceedings) Act 2004*, a notice was given before the
14 commencement of this item, then:
- 15 (a) any orders that were made; and
16 (b) any certificates, advices or notices that were given;
- 17 before that commencement under a provision of that Act continue in
18 force (and may be dealt with) as if they were made or given under:
- 19 (c) in the case of an order made under subsection 23(2) of that
20 Act—subsection 19(1A) of that Act as amended by this
21 Schedule; and
- 22 (d) in the case of an order made under subsection 38C(2) of that
23 Act—subsection 19(3A) of that Act as amended by this
24 Schedule; and
- 25 (e) in any other case—the provision of that Act as amended by
26 this Schedule.

101 Saving

27
28 Despite the amendments made to sections 23 and 38C of the *National*
29 *Security Information (Criminal and Civil Proceedings) Act 2004* by this
30 Schedule, regulations made under those sections and that are in force
31 immediately before the commencement of this item continue in force
32 (and may be dealt with) after that commencement, as if they were made
33 under those sections as amended by this Schedule.
34

EXPOSURE DRAFT

Consequential amendments relating to the establishment of the Parliamentary Joint
Committee on Law Enforcement **Schedule 9**

Schedule 9—Consequential amendments relating to the establishment of the Parliamentary Joint Committee on Law Enforcement

Administrative Decisions (Judicial Review) Act 1977

1 After paragraph (db) of Schedule 2

Insert:

(dc) decisions under subsection 8(4) or 9(4) of the *Parliamentary Joint Committee on Law Enforcement Act 2009*;

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

2 Paragraph 128(14)(c)

Omit “the Chair of the Board”, substitute “the Chief Executive Officer”.

3 Paragraph 128(14)(c)

Omit “the Australian Crime Commission under subsection 59(6A) of the *Australian Crime Commission Act 2002*”, substitute “Law Enforcement under subsection 8(1) of the *Parliamentary Joint Committee on Law Enforcement Act 2009*”.

Australian Crime Commission Act 2002

4 Subsection 51(4) (at the end of the definition of *relevant Act*)

Add:

; or (d) the *Parliamentary Joint Committee on Law Enforcement Act 2009* or regulations under that Act.

5 Part III

Repeal the Part.

6 Subsections 59(6A), (6B), (6C) and (6D)

EXPOSURE DRAFT

Schedule 9 Consequential amendments relating to the establishment of the
Parliamentary Joint Committee on Law Enforcement

1 Repeal the subsections.

2 **7 Transitional—Committee on the Australian Crime**
3 **Commission**

4 (1) This item applies to the Parliamentary Joint Committee on the
5 Australian Crime Commission (the *Committee*) that was in existence
6 under the *Australian Crime Commission Act 2002* immediately before
7 the commencement of this item.

8 (2) The Committee continues in existence by force of this item, after the
9 commencement of this item, as the Parliamentary Joint Committee on
10 Law Enforcement under the *Parliamentary Joint Committee on Law*
11 *Enforcement Act 2009*.

12 (3) A person who held office as a member of the Committee immediately
13 before the commencement of this item is taken to have been appointed,
14 immediately after that commencement, as a member of the
15 Parliamentary Joint Committee on Law Enforcement.

16 (4) The person who held office as Chair of the Committee immediately
17 before the commencement of this item is taken to have been elected,
18 immediately after that commencement, as Chair of the Parliamentary
19 Joint Committee on Law Enforcement.

20 (5) If the Committee was conducting a review immediately before
21 commencement:

22 (a) the Parliamentary Joint Committee on Law Enforcement may
23 continue the review after that commencement; and

24 (b) anything done for the purposes of the review before
25 commencement is taken to have been done for the purposes
26 of the review as continued in accordance with this item.

27 (6) Section 10 of the *Parliamentary Joint Committee on Law Enforcement*
28 *Act 2009* does not apply in relation to the year ending on 31 December
29 2009 if, in that year, the Ombudsman has provided to the Committee a
30 briefing under subsection 55AA(1) of the *Australian Crime Commission*
31 *Act 2002* as in force immediately before the commencement of this
32 item.

33 (7) For the avoidance of doubt, subitem (6) does not prevent the
34 Ombudsman from providing a briefing to the Parliamentary Joint
35 Committee on Law Enforcement about the involvement of the
36 Australian Crime Commission or the Australian Federal Police in

EXPOSURE DRAFT

Consequential amendments relating to the establishment of the Parliamentary Joint
Committee on Law Enforcement **Schedule 9**

1 controlled operations under Part IAB of the *Crimes Act 1914* during the
2 year ending on 31 December 2009.

3 ***Australian Federal Police Act 1979***

4 **8 After paragraph 60A(2)(e)**

5 Insert:

6 (ea) the purposes of the *Parliamentary Joint Committee on Law*
7 *Enforcement Act 2009* or regulations under that Act; or

8 **9 Paragraph 60A(2)(f)**

9 Omit “(d) and (e)”, substitute “(d), (e) and (ea)”.