



# **Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Act 2023**

**No. 110, 2023**

**An Act to amend the law relating to migration, and  
to protect the Australian community from serious  
offenders, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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## Contents

1	Short title .....	2
2	Commencement .....	2
3	Schedules .....	2
<b>Schedule 1—Amendments relating to bridging visas etc.</b>		<b>3</b>
	<i>Migration Act 1958</i>	3
<b>Schedule 2—Amendments relating to community safety orders</b>		<b>13</b>
Part 1—Amendments		13
	<i>Administrative Decisions (Judicial Review) Act 1977</i>	13
	<i>Australian Security Intelligence Organisation Act 1979</i>	13
	<i>Crimes Act 1914</i>	13
	<i>Criminal Code Act 1995</i>	16
	<i>Surveillance Devices Act 2004</i>	72
	<i>Telecommunications (Interception and Access) Act 1979</i>	94
Part 2—Application provisions		116





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**An Act to amend the law relating to migration, and to protect the Australian community from serious offenders, and for related purposes**

[Assented to 7 December 2023]

The Parliament of Australia enacts:

No. 110, 2023      *Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Act 2023*      1

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## 1 Short title

This Act is the *Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Act 2023*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	8 December 2023

Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedules

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

## **Schedule 1—Amendments relating to bridging visas etc.**

### ***Migration Act 1958***

#### **1A After section 76A**

Insert:

#### **76AA Effect of community safety order on visa held by non-citizen etc.**

- (1) This section applies if:
- (a) a community safety order is made in relation to a non-citizen; and
  - (b) the order comes into force at a particular time (the ***relevant time***).

*Non-citizen who holds a visa (other than a criminal justice visa) at the relevant time*

- (2) If the non-citizen holds a visa (other than a criminal justice visa) at the relevant time, then, despite any other provision of this Act or the regulations, the following apply:
- (a) **that visa ceases to be in effect** at the relevant time;
  - (b) **the non-citizen is taken, immediately after the relevant time, to have been granted a Subclass 070 (Bridging (Removal Pending)) visa (the *BVR visa*)**;
  - (c) the BVR visa is taken to come into effect as soon as it is taken to be granted under paragraph (b).

Note: The visa period for the visa mentioned in paragraph (a) ends at the relevant time and the visa period for the BVR visa begins when it is taken to be granted.

*Non-citizen who holds a criminal justice visa at the relevant time*

- (3) If:
- (a) the non-citizen holds a criminal justice visa at the relevant time; and

- (b) the criminal justice visa ceases to be in effect at a particular time (the ***cessation time***) during the period in which the community safety order is in force in relation to the non-citizen;

then, despite any other provision of this Act or the regulations, the following apply:

- (c) the non-citizen is taken, immediately after the cessation time, to have been granted a Subclass 070 (Bridging (Removal Pending)) visa (the ***BVR visa***);
- (d) the BVR visa is taken to come into effect as soon as it is taken to be granted under paragraph (c).

Note: The visa period for the BVR visa begins when it is taken to be granted.

*Matters relating to the BVR visa taken to be granted to the non-citizen*

- (4) Subject to subsections (6) and (7), this Act and the regulations apply, after the commencement of this section, in relation to the BVR visa that is taken to be granted under paragraph (2)(b) or (3)(c) (as the case may be) in the same way as they would apply in relation to a Subclass 070 (Bridging (Removal Pending)) visa granted under the regulations.
- (5) Without limiting subsection (4), the following provisions of the regulations, as in force at the time the BVR visa is taken to be granted under paragraph (2)(b) or (3)(c) (as the case may be), apply in relation to the BVR visa:
  - (a) a provision specifying when a Subclass 070 (Bridging (Removal Pending)) visa is in effect;
  - (b) a provision prescribing that a Subclass 070 (Bridging (Removal Pending)) visa permits the visa holder to remain in Australia;
  - (c) a provision specifying the conditions to which a Subclass 070 (Bridging (Removal Pending)) visa that is taken to be granted under paragraph (2)(b) or (3)(c) (as the case may be) is subject.
- (6) The non-citizen's BVR visa must not be subject to either of the following conditions:



- (a) a condition requiring the non-citizen to remain, between certain times of a day, **at a particular address** for the non-citizen for the day;
- (b) a condition requiring the non-citizen **to wear a monitoring device**.

*Minister must not do certain things while the community safety order is in force*

- (7) The Minister must not do either of the following at any time while the community safety order made in relation to the non-citizen is in force:
  - (a) invite the non-citizen, for the purposes of the regulations, to apply for another Subclass 070 (Bridging (Removal Pending)) visa;
  - (b) grant (whether or not on application) the non-citizen another Subclass 070 (Bridging (Removal Pending)) visa under the regulations.

*Inconsistency between the community safety order and the BVR visa*

- (8) If:
  - (a) the community safety order that is in force in relation to the non-citizen is a community safety supervision order; and
  - (b) at a particular time, one or more conditions (the **supervision order conditions**) are imposed on the non-citizen by the community safety supervision order; and
  - (c) at that time, a condition to which the non-citizen's BVR visa is subject is inconsistent, in whole or in part, with any of the supervision order conditions;
 then, despite subsections (4) and (5), the BVR visa is to be taken, at that time, not to be subject to that condition to the extent of any such inconsistency.

- (9) If:
  - (a) the community safety order made in relation to the non-citizen is a community safety detention order; and

- (b) the non-citizen is unable, at a particular time, to comply with a condition to which the non-citizen's BVR visa is subject; and
  - (c) the non-citizen is unable to comply with the condition only because the community safety detention order is in force in relation to the non-citizen at that time;
- then, despite subsections (4) and (5), the BVR visa is to be taken, at that time, not to be subject to that condition.
- (10) Subsections (8) and (9) do not apply at any time while the community safety order made in relation to the non-citizen is suspended.

*Definitions*

- (11) In this section:

**community safety detention order** has the same meaning as in Division 395 of the *Criminal Code*.

**community safety order** means a community safety detention order or a community safety supervision order.

**community safety supervision order** has the same meaning as in Division 395 of the *Criminal Code*.

**monitoring device** means any electronic device capable of being used to determine or monitor the location of a person or an object or the status of an object.

## 1 After section 76D

Insert:

### 76DAA Offence relating to requirement not to perform certain work etc.

- (1) A person commits an offence if:
- (a) the person holds a Subclass 070 (Bridging (Removal Pending)) visa; and
  - (b) the visa is subject to a condition requiring that the person not perform any work, or participate in any regular organised

- activity, involving more than incidental contact with another person who is a minor or other vulnerable person; and
- (c) the person fails to comply with the requirement of the condition.

**Penalty: 5 years imprisonment or 300 penalty units, or both.**

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

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

- (3) For the purposes of paragraph (1)(b), it does not matter whether the work or activity is for reward or otherwise.

**76DAB Offence relating to requirement not to go within certain distance of a school etc.**

- (1) A person commits an offence if:
- (a) the person holds a Subclass 070 (Bridging (Removal Pending)) visa; and
  - (b) the visa is subject to a condition requiring that the person not go within a particular distance of a school, childcare centre or day care centre; and
  - (c) the person fails to comply with the requirement of the condition.

Penalty: 5 years imprisonment or 300 penalty units, or both.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

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

**76DAC Offence relating to requirement not to contact victim of offence etc.**

- (1) A person commits an offence if:
- (a) the person holds a Subclass 070 (Bridging (Removal Pending)) visa; and

- (b) the person has been convicted of an offence involving violence or sexual assault; and
- (c) the visa is subject to a condition requiring that the person not contact or attempt to contact:
  - (i) the victim of the offence; or
  - (ii) a member of the victim's family; and
- (d) the person fails to comply with the requirement of the condition.

**Penalty: 5 years imprisonment or 300 penalty units, or both.**

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

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

- (3) Without limiting what may be taken to be a reasonable excuse for the purposes of subsection (2), it is, for the purposes of that subsection, a reasonable excuse for failing to comply with the requirement of the condition if:
- (a) the person referred to in subparagraph (1)(c)(i) or (ii):
    - (i) is at least 16 years of age; and
    - (ii) voluntarily consents to the contact or attempted contact; and
    - (iii) has capacity to give that consent; or
  - (b) the contact or attempted contact is (or would, but for this Act or the regulations, be) required or authorised by or under a law of the Commonwealth, a State or a Territory.

## **2 Section 76DA**

Omit “or 76D”, substitute “, 76D, 76DAA, 76DAB or 76DAC”.

## **3 Paragraph 76E(4)(b)**

Omit “the non-citizen does not pose a risk to the community”, substitute “those conditions are not reasonably necessary for the protection of any part of the Australian community”.

## **4 At the end of Subdivision AF of Division 3 of Part 2**

Add:

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**76F Powers of officers etc.**

*Powers relating to monitoring devices and related monitoring equipment*

- (1) An authorised officer may do all things necessary or convenient to be done for any of the following purposes in relation to a person who is subject to monitoring:
  - (a) installing, fitting, or removing the person's monitoring device or related monitoring equipment for the person's monitoring device;
  - (b) maintaining, repairing or otherwise keeping in good working order the person's monitoring device or related monitoring equipment for the person's monitoring device;
  - (c) operating or using the person's monitoring device or related monitoring equipment for the person's monitoring device;
  - (d) determining or monitoring the location of:
    - (i) the person; or
    - (ii) an object, or the status of an object, that relates to the person;through the operation of a monitoring device or related monitoring equipment.

*Collection, use and disclosure of information*

- (2) An authorised officer may collect, use, or disclose to any other person, information (including personal information) for any of the following purposes:
  - (a) determining whether a requirement of a condition of a visa held by a person who is subject to monitoring is being, or has been, complied with;
  - (b) determining whether a person who is subject to monitoring has committed an offence against this Act or the regulations;
  - (c) protecting the community in relation to persons who are subject to monitoring;
  - (d) facilitating the location of a person subject to monitoring who is suspected of having failed to comply with a requirement of a condition of a visa held by the person;

- (e) facilitating the location of a person who is or has been subject to monitoring in the event that either or both of the following apply:
  - (i) there is a real prospect of the removal of the person from Australia becoming practicable in the reasonably foreseeable future;
  - (ii) a visa held by the person ceases to be in effect;
- (f) facilitating the performance of functions, and exercise of powers, of authorised officers under this Act (including this section) and the regulations in relation to persons who are or have been subject to monitoring.

*Powers may be exercised despite other laws*

- (3) An authorised officer may exercise a power under subsection (1) or (2) despite any other provision of:
  - (a) this Act or the regulations (other than regulations made for the purposes of subsection (4) of this section); or
  - (b) any other law of the Commonwealth, a State or a Territory (whether written or unwritten).

*Powers are exercisable subject to regulations*

- (4) An authorised officer's exercise of a power under subsection (1) or (2) is subject to any conditions, restrictions or other limitations that are prescribed by the regulations for the purposes of this subsection.

*Other powers not limited*

- (5) The conferral of a power on an authorised officer by subsection (1) or (2) does not, by implication, limit any other powers that exist, or existed, for an authorised officer or any other person to do:
  - (a) a thing authorised by either of those subsections; or
  - (b) any other thing.

*Definitions*

- (6) In this section:

**authorised officer**, when used in subsection (1) or (2), includes:

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- (a) a person who is authorised in writing by the Minister, the Secretary or the Australian Border Force Commissioner for the purposes of that provision; and
- (b) a person who is included in a class of persons authorised in writing by the Minister, the Secretary or the Australian Border Force Commissioner for the purposes of that provision, including a person who becomes a member of the class after the authorisation is given.

Note: This definition does not limit the definition of *authorised officer* in subsection 5(1).

*monitoring device* has the same meaning as in section 76D.

*related monitoring equipment*, for a monitoring device, has the same meaning as in section 76D.

*subject to monitoring*: a person is *subject to monitoring* if the person holds a Subclass 070 (Bridging (Removal Pending)) visa that is subject to a condition requiring the person to wear a monitoring device at all times.

## 5 Application of amendments—new offences

Sections 76DAA, 76DAB and 76DAC of the *Migration Act 1958*, as inserted by this Schedule, apply in relation to the following:

- (a) a Subclass 070 (Bridging (Removal Pending)) visa granted after the commencement of this item;
- (b) a Subclass 070 (Bridging (Removal Pending)) visa granted, or taken to have been granted, before the commencement of this item if the visa holder engaged in the conduct after that commencement.

## 6 Application of amendments—section 76E

Section 76E of the *Migration Act 1958*, as amended by this Schedule, applies in relation to a Subclass 070 (Bridging (Removal Pending)) visa granted after the commencement of this item.

## 7 Application of amendments—powers of officers etc.

- (1) Section 76F of the *Migration Act 1958*, as inserted by this Schedule, applies on and after the commencement of this item in relation to:

- (a) persons who become subject to monitoring before, on or after that commencement; and
  - (b) monitoring devices and related monitoring equipment installed or fitted before, on or after that commencement.
- (2) Subsection 76F(2) of the *Migration Act 1958*, as inserted by this Schedule, applies in relation to the use and disclosure of information on and after the commencement of this item whether the information is collected or otherwise obtained before, on or after that commencement.



## **Schedule 2—Amendments relating to community safety orders**

### **Part 1—Amendments**

#### ***Administrative Decisions (Judicial Review) Act 1977***

##### **1 After paragraph (dad) of Schedule 1**

Insert:

(dada) decisions of the Immigration Minister under Division 395 of the *Criminal Code*;

#### ***Australian Security Intelligence Organisation Act 1979***

##### **2 At the end of subsection 35(2)**

Add:

- ; (d) a condition imposed on a person by a community safety supervision order under Division 395 of the *Criminal Code* (community safety orders);
- (e) action covered by any of subsections 395.17(2) to (5) of the *Criminal Code* (actions relating to electronic monitoring).

#### ***Crimes Act 1914***

##### **3 Paragraphs 3ZQU(1)(e) and 3ZZEA(1)(d)**

Omit “or 105A”, substitute “, 105A or 395”.

##### **4 After Part IAAB**

Insert:

## Part IAABA—Monitoring of compliance with community safety supervision orders etc.

### 3ZZUHA Simplified outline of this Part

This Part affects how Part IAAB operates, so that that Part (with some modifications set out in this Part) also applies in relation to community safety supervision orders made under Division 395 of the *Criminal Code*.

### 3ZZUHB Definitions

In this Part:

***community safety supervision order*** has the same meaning as in Division 395 of the *Criminal Code*.

***Part 9.10 object*** means the protection of the community from serious harm by addressing the unacceptable risk of a serious offender committing a serious violent or sexual offence.

***serious offender*** has the same meaning as in Division 395 of the *Criminal Code*.

***serious violent or sexual offence*** has the same meaning as in Division 395 of the *Criminal Code*.

### 3ZZUHC Application of Part IAAB to community safety supervision orders

- (1) Part IAAB (other than section 3ZZJA or 3ZZJB) applies as if:
  - (a) a reference to a Part 5.3 supervisory order included a reference to a community safety supervision order; and
  - (b) a reference to a Part 5.3 object included a reference to a Part 9.10 object.
- (2) Subsection 3ZZOA(4) applies as if the following paragraph were inserted after paragraph (b) of that subsection:

- (c) in relation to a community safety supervision order—the possibility that the person has committed, is committing, or will commit, a serious violent or sexual offence;
- (3) Paragraph 3ZZOA(5)(l) applies as if the following subparagraph were inserted before subparagraph (i) of that paragraph:
  - (ia) a community safety supervision order; or
- (4) Subsection 3ZZOA(5) applies as if the following paragraph were inserted after paragraph (q) of that subsection:
  - (qa) for a community safety supervision order:
    - (i) specify when the community safety supervision order comes into force; and
    - (ii) specify the end of the period during which the community safety supervision order is in force; and
- (5) Subsection 3ZZOB(4) applies as if the following paragraph were inserted after paragraph (c) of that subsection:
  - (d) in relation to a community safety supervision order—the possibility that the person has committed, is committing, or will commit, a serious violent or sexual offence;
- (6) Paragraph 3ZZOB(5)(j) applies as if the following subparagraph were inserted before subparagraph (i) of that paragraph:
  - (ia) a community safety supervision order; or
- (7) Subsection 3ZZOB(5) applies as if the following paragraph were inserted after paragraph (o) of that subsection:
  - (oa) for a community safety supervision order:
    - (i) specify when the community safety supervision order comes into force; and
    - (ii) specify the end of the period during which the community safety supervision order is in force; and
- (8) Paragraph 3ZZOD(1)(b) applies as if the following subparagraph were inserted after subparagraph (iii) of that paragraph:
  - (iiia) the community safety supervision order is revoked and no further community safety supervision order is made in relation to the serious offender;

## ***Criminal Code Act 1995***

### **5 At the end of Chapter 9 of the *Criminal Code***

Add:

## **Part 9.10—Community safety orders**

### **Division 395—Community safety orders**

#### **Subdivision A—Preliminary**

##### **395.1 Object**

The object of this Division is to protect the community from serious harm by providing that non-citizens who:

- (a) pose an unacceptable risk of committing serious violent or sexual offences; and
- (b) have no real prospect of their removal from Australia becoming practicable in the reasonably foreseeable future;

are subject to:

- (c) a community safety detention order; or
- (d) a community safety supervision order.

##### **395.2 Definitions**

(1) In this Division:

***AFP member*** means:

- (a) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
- (b) a special member of the Australian Federal Police (within the meaning of that Act).

***Commonwealth law enforcement officer*** has the meaning given by Part 7.8.

***community safety detention order*** means an order made under subsection 395.12(1).

**community safety order** means a community safety detention order or a community safety supervision order.

**community safety order decision** means:

- (a) a decision on an application for a community safety order; or
- (b) a decision on an application to vary a community safety supervision order; or
- (c) a decision in a review of a community safety order to affirm, revoke or vary the order; or
- (d) a decision made under section 395.34 (when a serious offender is unable to engage a legal representative).

Note: See also subsection (4).

**community safety order proceeding** means a proceeding under Subdivision C, D or E.

**community safety supervision order** means an order made under subsection 395.13(1).

**detained in custody** has the meaning given by subsection (2).

**detained in custody in a prison** has the meaning given by subsection (3).

**exemption condition** has the meaning given by subsection 395.15(2).

**immigration detention** has the same meaning as in the *Migration Act 1958*.

**Immigration Minister** means the Minister administering the *Migration Act 1958*.

**lawyer** means a person enrolled as a legal practitioner of a federal court or the Supreme Court of a State or Territory.

**monitoring device** means any electronic device capable of being used to determine or monitor the location of a person or an object or the status of an object.

Note: See also the definition of **related monitoring equipment** in this subsection.

**non-citizen** means a person who is not an Australian citizen.

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

**police officer** means:

- (a) an AFP member; or
- (b) a member (however described) of a police force of a State or Territory.

**premises** includes a place, an aircraft, a vehicle and a vessel.

**prison** includes any gaol, lock-up or remand centre.

**related monitoring equipment**, in relation to a monitoring device, means any electronic equipment necessary for operating the monitoring device.

**relevant expert** means any of the following persons who is competent to assess the risk of a serious offender committing a serious violent or sexual offence:

- (a) a person who is:
  - (i) registered as a medical practitioner under a law of a State or Territory; and
  - (ii) a fellow of the Royal Australian and New Zealand College of Psychiatrists;
- (b) any other person registered as a medical practitioner under a law of a State or Territory;
- (c) a person registered as a psychologist under a law of a State or Territory;
- (d) any other expert.

**reside** includes reside temporarily.

**residence** includes temporary residence.

**senior AFP member** means:

- (a) the Commissioner of the Australian Federal Police; or
- (b) a Deputy Commissioner of the Australian Federal Police; or
- (c) an AFP member of, or above, the rank of Superintendent.

**serious foreign violent or sexual offence** means an offence against a law of a foreign country, or of part of a foreign country, where:

- (a) it is an offence punishable by imprisonment for life or for a period, or maximum period, of at least 7 years; and
- (b) it is constituted by conduct that, if engaged in in Australia, would constitute an offence against a law of the Commonwealth, a State or a Territory; and
- (c) the particular conduct constituting the offence involved, involves or would involve, as the case requires:
  - (i) loss of a person's life or serious risk of loss of a person's life; or
  - (ii) serious personal injury or serious risk of serious personal injury; or
  - (iii) sexual assault; or
  - (iv) sexual assault involving a person under 16; or
  - (v) the production, publication, possession, supply or sale of, or other dealing in, child abuse material (within the meaning of Part 10.6); or
  - (vi) consenting to or procuring the employment of a child, or employing a child, in connection with material referred to in subparagraph (v); or
  - (vii) acts done in preparation for, or to facilitate, the commission of a sexual offence against a person under 16.

***serious offender*** has the meaning given by subsections 395.5(1) and (2).

Note: This definition is affected by section 395.37.

***serious violent or sexual offence*** means an offence against a law of the Commonwealth, a State or a Territory where:

- (a) it is an offence punishable by imprisonment for life or for a period, or maximum period, of at least 7 years; and
- (b) the particular conduct constituting the offence involved, involves or would involve, as the case requires:
  - (i) loss of a person's life or serious risk of loss of a person's life; or
  - (ii) serious personal injury or serious risk of serious personal injury; or
  - (iii) sexual assault; or

- (iv) sexual assault involving a person under 16; or
- (v) the production, publication, possession, supply or sale of, or other dealing in, child abuse material (within the meaning of Part 10.6); or
- (vi) consenting to or procuring the employment of a child, or employing a child, in connection with material referred to in subparagraph (v); or
- (vii) acts done in preparation for, or to facilitate, the commission of a sexual offence against a person under 16.

***specified authority***: a person, or person in a class of persons, is a ***specified authority*** for a requirement or condition in a community safety supervision order in relation to another person (the ***subject***) if:

- (a) the person or class is any of the following:
  - (i) a police officer, or class of police officer;
  - (ii) if the requirement or condition relates to electronic monitoring—a person, or class of person, who is involved in electronically monitoring the subject;
  - (iii) for any requirement or condition in the order—any other person, or class of person; and
- (b) the Court making the order is satisfied that the person or class is appropriate in relation to the requirement or condition; and
- (c) the person or class is specified in the order.

*Definition of ***detained in custody*** etc.*

- (2) A person is ***detained in custody*** if the person is detained in custody under a law of the Commonwealth, a State or a Territory.
- (3) A person is ***detained in custody in a prison*** if the person is detained in custody in a gaol, lock-up or remand centre, including under a community safety detention order. However, a person is not ***detained in custody in a prison*** if the person is in immigration detention in a gaol, lock-up or remand centre.



*When a decision is made*

- (4) To avoid doubt, a decision on an application to a Supreme Court of a State or Territory for a community safety order is not made until the Court determines the application in accordance with section 395.10.

**395.3 Concurrent operation intended**

This Division is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

**395.4 Regulations may modify operation of this Division to deal with interaction between this Division and State and Territory laws**

- (1) The regulations may modify the operation of this Division so that:
- (a) provisions of this Division do not apply to a matter that is dealt with by a law of a State or Territory specified in the regulations; or
  - (b) no inconsistency arises between the operation of a provision of this Division and the operation of a State or Territory law specified in the regulations.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that the provision of this Division does not apply to:
- (a) a person specified in the regulations; or
  - (b) a body specified in the regulations; or
  - (c) circumstances specified in the regulations; or
  - (d) a person or body specified in the regulations in the circumstances specified in the regulations.

- (3) In this section:

***matter*** includes act, omission, body, person or thing.

## Subdivision B—Community safety orders

### 395.5 Who a community safety order may apply to and effect of community safety orders

- (1) A community safety order may be made under section 395.12 or 395.13 in relation to a person (the *serious offender*) if:
- (a) the person has been convicted of a serious violent or sexual offence; and
  - (b) the person is a non-citizen; and
  - (c) there is no real prospect of removal of the person from Australia becoming practicable in the reasonably foreseeable future; and
  - (d) a subsection of section 395.6 provides that the order may be made in relation to the person; and
  - (e) the person is at least 18 years old.

Note: Before making the order, a Court must be satisfied of certain matters under section 395.12 or 395.13.

- (2) A community safety order may be made under section 395.12 or 395.13 in relation to a person (the *serious offender*) if:
- (a) the person has been convicted of a serious foreign violent or sexual offence; and
  - (b) the person is a non-citizen; and
  - (c) there is no real prospect of removal of the person from Australia becoming practicable in the reasonably foreseeable future; and
  - (d) a subsection of section 395.6 provides that the order may be made in relation to the person; and
  - (e) the person is at least 18 years old.

Note: Before making the order, a Court must be satisfied of certain matters under section 395.12 or 395.13.

#### *Effect of community safety detention order*

- (3) The effect of a community safety detention order is to commit the person to detention in a prison for the period the order is in force.

Note 1: The period must not be more than 3 years (see subsection 395.12(5)).

Note 2: See also:

- (a) section 395.41 (detention under the *Migration Act 1958*); and
- (b) section 395.42 (effect of prison detention on community safety order); and
- (c) subsection 395.47(2) (arrangements with States and Territories); and
- (d) section 395.50 (effect of community safety detention orders on bail or parole laws).

*Effect of a community safety supervision order*

- (4) The effect of a community safety supervision order is to impose on the person, for the period the order is in force, conditions contravention of which is an offence.

Note 1: The period must not be more than 3 years (see paragraph 395.13(5)(d)).

Note 2: See also sections 395.41 (detention under the *Migration Act 1958*) and 395.42 (effect of prison detention on community safety order).

### **395.6 Preconditions for community safety orders**

*Person is detained in custody in a prison*

- (1) A community safety order may be made in relation to a person if the person is detained in custody in a prison serving:
  - (a) a sentence of imprisonment for a serious violent or sexual offence; or
  - (b) a sentence of imprisonment for any other offence.

*Person is in the community*

- (2) A community safety order may be made in relation to a person if the person is in the community.

*Community safety detention order is in force*

- (3) A community safety order may be made in relation to a person if a community safety detention order is in force in relation to the person.

**395.7 Treatment of a serious offender in a prison under a community safety detention order**

- (1) A serious offender who is detained in custody in a prison under a community safety detention order must be treated in a way that is appropriate to the offender's status as a person who is not serving a sentence of imprisonment, subject to any reasonable requirements necessary to maintain:
  - (a) the management, security or good order of the prison; and
  - (b) the safe custody or welfare of the offender or any prisoners; and
  - (c) the safety and protection of the community.
- (2) The offender must not be accommodated or detained in the same area or unit of the prison as persons who are in prison for the purpose of serving sentences of imprisonment unless:
  - (a) it is reasonably necessary for the purposes of rehabilitation, treatment, work, education, general socialisation or other group activities; or
  - (b) it is necessary for the security or good order of the prison or the safe custody or welfare of the offender or prisoners; or
  - (c) it is necessary for the safety and protection of the community; or
  - (d) the offender elects to be so accommodated or detained.
- (3) This section does not apply if the offender is serving a sentence of imprisonment.

**Subdivision C—Making community safety orders**

**395.8 Applying for a community safety order**

- (1) The Immigration Minister, or a legal representative of the Immigration Minister, (the ***applicant***) may apply to a Supreme Court of a State or Territory for either of the following:
  - (a) a community safety detention order in relation to a serious offender;
  - (b) a community safety supervision order in relation to a serious offender.

Note: The court may make a community safety supervision order under section 395.13 even if a community safety detention order is applied for.

- (2) The Immigration Minister must ensure that reasonable inquiries are made to ascertain any facts known to any Commonwealth law enforcement officer that would reasonably be regarded as supporting a finding that:
- (a) if the application is for a community safety detention order—neither a community safety detention order nor a community safety supervision order should be made in relation to the offender; or
  - (b) if the application is for a community safety supervision order—the community safety supervision order should not be made in relation to the offender.

*Content of application*

- (3) The application must:
- (a) include any report or other document that the applicant intends, at the time of the application, to rely on in relation to the application; and
  - (b) include:
    - (i) a copy of any material in the possession of the applicant; and
    - (ii) a statement of any facts that the applicant is aware of; that would reasonably be regarded as supporting a finding that the order or orders mentioned in paragraph (2)(a) or (b) (as the case requires) should not be made, except any information, material or facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the Immigration Minister or any other person); and
  - (c) include information about the offender's age; and
  - (d) if the offender is a holder under the *Migration Act 1958* of a visa that is subject to one or more conditions—specify the conditions; and
  - (e) request that the order be in force for a specified period; and
  - (f) if the application is for a community safety supervision order—include the following material:

- (i) a copy of the proposed conditions;
- (ii) an explanation as to why each of the proposed conditions should be imposed on the offender;
- (iii) if the Immigration Minister is aware of any facts relating to why any of those conditions should not be imposed on the offender—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the Immigration Minister or any other person);
- (iv) if the offender is subject to an order under a law of a State or Territory that is equivalent to a community safety order—a copy of that order; and
- (g) if a report was obtained under section 395.43 in relation to the offender—include a copy of the report.

Note 1: For paragraph (3)(e), the period must not be more than 3 years (see subsection 395.12(5) and paragraph 395.13(5)(d)).

Note 2: Evidence may also be adduced later under section 395.28.

Note 3: A copy of the application must be given to the serious offender under section 395.29.

### **395.9 Appointment of and assessment by relevant expert**

- (1) If an application for a community safety order is made under section 395.8 to a Supreme Court of a State or Territory in relation to a serious offender, the Court must hold a preliminary hearing to determine whether to appoint one or more relevant experts.
- (2) The hearing must be held within 28 days after a copy of the application is given to the offender under subsection 395.29(2).
- (3) The Court may, either at the preliminary hearing or at any later time in the proceeding, appoint one or more relevant experts if the Court considers that doing so is likely to materially assist the Court in deciding whether to make a community safety order in relation to the offender.
- (4) The Immigration Minister or the offender, or a legal representative of the Immigration Minister or the offender, may nominate one or more relevant experts for the purposes of subsection (3).

- (5) The relevant expert who is appointed must:
- (a) conduct an assessment of the risk of the offender committing a serious violent or sexual offence; and
  - (b) provide a report of the expert's assessment to the Court, the Immigration Minister and the offender.

Note: For giving documents to a serious offender who is detained in custody, see section 395.33.

*Attendance and participation at assessment*

- (6) The offender must attend the assessment.

Note: The assessment may be conducted over a number of sessions.

- (7) The answer to a question or information given at the assessment, and answering a question or giving information at the assessment, are not admissible in evidence against the offender in:
- (a) any criminal proceedings, except any proceedings relating to sentencing for an offence against this Division (including any appeal in relation to those proceedings); or
  - (b) any civil proceedings against the offender, except proceedings under this Division (including any appeal in relation to those proceedings).
- (8) The Court must ensure that the effect of subsections (6), (7) and (11) is explained to the offender.

*Contents of report*

- (9) The expert's report may include any one or more of the following matters:
- (a) the expert's assessment of the risk of the offender committing a serious violent or sexual offence;
  - (b) reasons for that assessment;
  - (c) the pattern or progression to date of behaviour on the part of the offender in relation to serious violent or sexual offences, and an indication of the nature of any likely future behaviour on the offender's part in relation to serious violent or sexual offences;
  - (d) efforts made to date by the offender to address the causes of the offender's behaviour in relation to serious violent or

- sexual offences, including whether the offender has actively participated in any rehabilitation or treatment programs;
- (e) if the offender has participated in any rehabilitation or treatment programs—whether or not this participation has had a positive effect on the offender;
  - (f) any relevant background of the offender, including developmental and social factors;
  - (g) factors that might increase or decrease any risks that have been identified of the offender committing a serious violent or sexual offence;
  - (h) any other matters the expert considers relevant.

*Other relevant experts*

- (10) This section does not prevent the Immigration Minister or the offender, or a legal representative of the Immigration Minister or the offender, from calling their own relevant expert as a witness in the proceeding.

*Assessments conducted for certain purposes*

- (11) Without limiting subsection (7), an assessment of an offender conducted under paragraph (5)(a), and the report of the assessment, may be taken into account in proceedings to make, vary or review any community safety order in relation to the offender.

**395.10 Determining an application for a community safety order**

*Determining applications for community safety detention orders*

- (1) If an application is made under section 395.8 to the Supreme Court of a State or Territory for a community safety detention order in relation to a serious offender, the Court may determine the application by:
  - (a) making a community safety detention order under section 395.12; or
  - (b) making a community safety supervision order under section 395.13; or
  - (c) dismissing the application.



*Determining applications for community safety supervision orders*

- (2) If an application is made under section 395.8 to the Supreme Court of a State or Territory for a community safety supervision order in relation to a serious offender, the Court may determine the application by:
- (a) making a community safety supervision order under section 395.13; or
  - (b) dismissing the application.

**395.11 Matters a Court must have regard to in making a community safety order**

- (1) In deciding whether the Court is satisfied as referred to in paragraph 395.12(1)(b) or 395.13(1)(b) in relation to a serious offender, a Supreme Court of a State or Territory must have regard to the following matters:
- (a) the object of this Division;
  - (b) any report of an assessment received from a relevant expert, and the level of the offender's participation in the assessment, under:
    - (i) section 395.9; or
    - (ii) section 395.43;
  - (c) the results of any other assessment conducted by a relevant expert of the risk of the offender committing a serious violent or sexual offence, and the level of the offender's participation in any such assessment;
  - (d) any report, relating to the extent to which the offender can reasonably and practicably be managed in the community, that has been prepared by:
    - (i) the relevant State or Territory corrective services; or
    - (ii) any other person or body who is competent to assess that extent;
  - (e) any treatment or rehabilitation programs in which the offender has had an opportunity to participate, and the level of the offender's participation in any such programs;
  - (f) the level of the offender's compliance with any obligations to which the offender is or has been subject while:

- (i) on release on parole for any serious violent or sexual offence; or
    - (ii) subject to a community safety order;
  - (g) the level of the offender's compliance with any conditions to which a visa that the offender is, or has been, a holder of under the *Migration Act 1958* is or has been subject;
  - (h) the offender's history of any prior convictions for, and findings of guilt made in relation to, any serious violent or sexual offence;
  - (i) if information is available about the offender's history of any prior convictions for, and findings of guilt made in relation to, any serious foreign violent or sexual offence—that information;
  - (j) the views of the sentencing court at the time any sentence for any serious violent or sexual offence was imposed on the offender;
  - (k) if information is available about the views of the sentencing court at the time any sentence for any serious foreign violent or sexual offence was imposed on the offender—that information;
  - (l) whether the offender is subject to any order under a law of a State or Territory that is equivalent to a community safety order, and if so, the conditions of the order;
  - (m) any other information as to the risk of the offender committing a serious violent or sexual offence.
- (2) Subsection (1) does not prevent the Court from having regard to any other matter the Court considers relevant.
- (3) To avoid doubt, section 395.27 (civil evidence and procedure rules in relation to community safety order proceedings) applies to the Court's consideration of the matters referred to in subsections (1) and (2) of this section.

### **395.12 Making a community safety detention order**

- (1) A Supreme Court of a State or Territory may make a written order under this subsection if:

- (a) an application is made in accordance with section 395.8 for a community safety detention order in relation to a serious offender; and
- (b) after having regard to matters in accordance with section 395.11, the Court is satisfied to a high degree of probability, on the basis of admissible evidence, that the offender poses an unacceptable risk of seriously harming the community by committing a serious violent or sexual offence; and
- (c) the Court is satisfied that there is no less restrictive measure available under this Division that would be effective in protecting the community from serious harm by addressing the unacceptable risk; and
- (d) in a case where the offender is a holder under the *Migration Act 1958* of a visa that is subject to conditions—the Court is satisfied that the conditions would not be effective in protecting the community from serious harm by addressing the unacceptable risk.

Note 1: The rules of evidence and procedure for civil matters apply when the Court has regard to matters in accordance with section 395.11, as referred to in paragraph (1)(b) of this section (see subsection 395.11(3) and section 395.27).

Note 2: For paragraph (1)(c), an example of a less restrictive measure that is available under this Division is a community safety supervision order. A Court can make a community safety supervision order under section 395.13 even if a community safety detention order was applied for (see subsection 395.10(1)).

- (2) If the Court is not satisfied as mentioned in paragraph (1)(b) or (c) (or both), but is satisfied as mentioned in paragraph (1)(d), then the Court must:
  - (a) seek the following material from the Immigration Minister:
    - (i) a copy of the proposed conditions that would be sought for a community safety supervision order in relation to the offender;
    - (ii) an explanation as to why each of the proposed conditions should be imposed on the offender;
    - (iii) if the Immigration Minister is aware of any facts relating to why any of those conditions should not be imposed on the offender—a statement of those facts,

except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the Immigration Minister or any other person); and

- (b) consider whether to make a community safety supervision order under section 395.13 in relation to the offender.

Note: A copy of the material must be given to the serious offender under section 395.29.

*Onus of satisfying Court*

- (3) The Immigration Minister bears the onus of satisfying the Court of the matters referred to in paragraphs (1)(b), (c) and (d).

*Period of order*

- (4) The order must specify the period during which it is in force.

Note: The order may be suspended during the period that it is in force if the offender is detained under the *Migration Act 1958* (see section 395.41) or detained in custody in a prison other than as a result of the order (see section 395.42).

- (5) The period must be a period of no more than 3 years that the Court is satisfied is reasonably necessary to protect the community from serious harm by addressing the unacceptable risk.

*Court may make successive community safety detention orders*

- (6) To avoid doubt, subsection (5) does not prevent a Supreme Court of a State or Territory making a community safety detention order in relation to a serious offender that begins to be in force immediately after a previous community safety detention order in relation to the offender ceases to be in force.

**395.13 Making a community safety supervision order**

- (1) A Supreme Court of a State or Territory may make a written order under this subsection, in accordance with sections 395.14 and 395.15, if:
- (a) any of the following applies:

- (i) an application is made in accordance with section 395.8 for a community safety supervision order in relation to a serious offender;
- (ii) an application is made in accordance with section 395.8 for a community safety detention order in relation to a serious offender, and the Court is not satisfied as mentioned in paragraph 395.12(1)(b) or (c) (or both), but is satisfied as mentioned in paragraph 395.12(1)(d);
- (iii) the Court has reviewed under section 395.25 a community safety detention order in relation to a serious offender and the Court is not satisfied as mentioned in paragraph 395.25(6)(a); and
- (b) after having regard to matters in accordance with section 395.11, the Court is satisfied on the balance of probabilities, on the basis of admissible evidence, that the offender poses an unacceptable risk of seriously harming the community by committing a serious violent or sexual offence; and
- (c) in a case where the offender is a holder under the *Migration Act 1958* of a visa that is subject to conditions—the Court is satisfied that the conditions would not be effective in protecting the community from serious harm by addressing the unacceptable risk; and
- (d) the Court is satisfied on the balance of probabilities that:
  - (i) each of the conditions; and
  - (ii) the combined effect of all of the conditions;to be imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk.

*Determining whether conditions are reasonably necessary, appropriate and adapted*

- (2) For the purposes of paragraph (1)(d), in determining whether each of the conditions to be imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, the Court must take into account, as a paramount consideration in all cases, the object of this Division (see section 395.1).

- (3) If the coming into effect of the order would result in the offender being taken to be granted a visa under section 76AA of the *Migration Act 1958*, then, for the purposes of paragraph (1)(d) of this section, in determining whether each of the conditions to be imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, the Court must take into account the conditions to which the visa would be subject.

*Onus of satisfying Court*

- (4) The Immigration Minister bears the onus of satisfying the Court of:
- (a) the matters referred to in paragraphs (1)(b) and (d); and
  - (b) if paragraph (1)(c) applies—the matters referred to in paragraph (1)(c).

*Content of order*

- (5) The order must:
- (a) state that the Court is satisfied of:
    - (i) the matters mentioned in paragraphs (1)(b) and (d); and
    - (ii) if paragraph (1)(c) applies—the matters mentioned in paragraph (1)(c); and
  - (b) specify the name of the offender to whom the order relates; and
  - (c) specify all of the conditions, and any exemption conditions, that are to be imposed in accordance with section 395.14 or 395.15 on the offender by the order; and
  - (d) specify the period during which the order is to be in force, which must be a period of no more than 3 years that the Court is satisfied is reasonably necessary to protect the community from serious harm by addressing the unacceptable risk; and
  - (e) state that the offender's lawyer may request a copy of the order.

Note: The order may be suspended during the period that it is in force if the offender is detained under the *Migration Act 1958* (see section 395.41) or detained in custody in a prison (see section 395.42).

*Court may make successive community safety supervision orders*

- (6) To avoid doubt, paragraph (5)(d) does not prevent a Supreme Court of a State or Territory making a community safety supervision order in relation to a serious offender that begins to be in force immediately after a previous community safety supervision order, or community safety detention order, in relation to the offender ceases to be in force.

*Automatic revocation of community safety detention orders etc.*

- (7) A community safety detention order that is in force in relation to a serious offender is revoked by force of this subsection if:
- (a) a Court makes a community safety supervision order in relation to the offender; and
  - (b) the community safety detention order is in force immediately before the community safety supervision order begins to be in force.

**395.14 Conditions of community safety supervision orders**

- (1) The conditions that a Court may impose on a serious offender by a community safety supervision order are:
- (a) any conditions that the Court is satisfied; and
  - (b) those conditions whose combined effect the Court is satisfied;
- on the balance of probabilities, are reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.

Note: The Court may, under section 395.15, specify conditions from which exemptions may be granted.

- (2) If the offender is subject to an order under a law of a State or Territory that is equivalent to a community safety order, the Court must consider the conditions under that State or Territory order in imposing conditions in accordance with subsection (1).

*General rules about conditions*

- (3) To avoid doubt, without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, a condition imposed under this section may:
- (a) prohibit or restrict specified conduct of the offender, or impose obligations on the offender; or
  - (b) impose restrictions and obligations on the offender in relation to classes of conduct, and prohibit other classes of that conduct; or
  - (c) impose different restrictions, obligations and prohibitions in relation to different classes of conduct; or
  - (d) for conduct that is prohibited by a condition described in a paragraph of subsection (5) of this section—impose restrictions and obligations on the offender in relation to that conduct instead of prohibiting that conduct; or
  - (e) for conduct described in a paragraph of subsection (5) or (7) of this section—impose different restrictions, obligations and prohibitions in relation to that conduct.
- (4) A condition imposed under this section must not require the offender to remain at specified premises for more than 12 hours within any 24 hours.

*General conditions*

- (5) Without limiting this section, the conditions that the Court may impose in accordance with subsection (1) include conditions relating to the following:
- (a) that the offender not be present at one or more of the following:
    - (i) specified areas or places;
    - (ii) specified classes of areas or places;
    - (iii) any area or place determined by a specified authority;
  - (b) that the offender reside at specified premises, and not begin to reside at any other premises without the prior permission of a specified authority;
  - (c) that the offender remain at specified premises between specified times each day, or on specified days, subject to subsection (4);



- (d) that the offender not leave the State or Territory in which the offender's residence is located;
- (e) that the offender not change the offender's name, or use any name that is not specified in the order;
- (f) that the offender not apply for any licence to operate equipment, machinery, a heavy vehicle or a weapon, or any licence to possess a weapon;
- (g) that the offender not communicate or associate by any means (including through third parties) with one or more of the following:
  - (i) specified individuals;
  - (ii) specified classes of individuals;
  - (iii) any individuals determined by a specified authority;
- (h) that the offender not access or use specified forms of telecommunication or other technology (including the internet);
- (i) that the offender not possess or use specified articles or substances;
- (j) that the offender not carry out specified activities;
- (k) that the offender not engage in one or more of the following:
  - (i) specified work;
  - (ii) specified classes of work;
  - (iii) specified activities relating to specified work or classes of work;
- (l) that the offender not engage in any training or education without the prior permission of a specified authority;
- (m) that the offender do any or all of the following:
  - (i) attend and participate in treatment, rehabilitation or intervention programs or activities;
  - (ii) undertake psychological or psychiatric assessment or counselling;as specified in the order or as directed by a specified authority;
- (n) that the offender attend and participate in interviews and assessments (including for the purposes of paragraph (m)) as specified in the order or as directed by a specified authority;

- (o) that the offender allow the results of the interviews and assessments referred to in paragraph (n), and any other specified information, to be disclosed to a specified authority;
- (p) that the offender provide specified information to a specified authority within a specified period or before a specified event;
- (q) that the offender comply with any reasonable direction given to the offender by a specified authority in relation to any specified condition (whether or not the condition is imposed in accordance with this subsection).

Note: See also subsection (10) and section 395.2 in relation to references to premises, reside or residence, and work.

- (6) If a condition of the order authorises a specified authority to give a direction, the specified authority may give a direction only if the specified authority is satisfied that the direction is reasonable in all the circumstances to give effect to:
  - (a) the condition; or
  - (b) the object of this Division (see section 395.1).

*Conditions relating to monitoring and enforcement*

- (7) Without limiting this section, the conditions that the Court may impose in accordance with subsection (1) include conditions relating to the following:
  - (a) that the offender submit to testing by a specified authority in relation to the possession or use of specified articles or substances;
  - (b) that the offender allow the offender to be photographed by a specified authority;
  - (c) that the offender allow impressions of the offender's fingerprints to be taken by a specified authority;
  - (d) that the offender be subject to electronic monitoring (for example, by wearing a monitoring device at all times), and comply with directions given by a specified authority in relation to electronic monitoring;
  - (e) a condition that:

- (i) the person carry at all times a specified mobile phone;  
and
- (ii) the person be available to answer any call from a specified authority or, as soon as reasonably practicable, return a call that the person was unable to answer; and
- (iii) the person comply with specified directions, or any directions given by a specified authority, in relation to the condition in subparagraph (i) or (ii);
- (f) that the offender attend at places, and report to persons, at times, specified:
  - (i) in the order; or
  - (ii) by a specified authority;
- (g) that the offender allow visits at specified premises from, and entry to specified premises by, a specified authority at any time for the purpose of ensuring the offender's compliance with a condition imposed in accordance with paragraph (5)(c);
- (h) that the offender provide a specified authority with a schedule setting out the offender's proposed movements for a specified period and comply with that schedule during the period;
- (i) that the offender allow any police officer to enter specified premises and:
  - (i) search the offender; and
  - (ii) search the offender's residence or any premises which the offender intends to be the offender's residence; and
  - (iii) search any other premises under the offender's control; and
  - (iv) seize any item found during those searches, including to allow the item to be examined forensically;
- (j) that the offender facilitate access (including by providing passwords or in any other way) to one or more of the following:
  - (i) electronic equipment or technology;
  - (ii) any data held within, or accessible from, any electronic equipment or technology;

owned or controlled by the offender, for the purposes of a police officer searching and seizing any such equipment or accessing such data (or both).

Note 1: For paragraphs (b) and (c), restrictions apply to the use of photographs or impressions of fingerprints (see section 395.16).

Note 2: For paragraph (d), see also section 395.17 (obligations relating to monitoring devices).

- (8) A power exercised under a condition imposed in accordance with subsection (7) (other than a power to give a direction) may be exercised only if the person exercising the power is satisfied that it is reasonably necessary to do so in order to:
- (a) give effect to the order; or
  - (b) facilitate or monitor compliance with the order.

*Access to lawyers*

- (9) This section does not affect the offender's right to contact, communicate or associate with the offender's lawyer unless the offender's lawyer is a specified individual, or an individual in a specified class of individuals, as mentioned in paragraph (5)(g). If the offender's lawyer is so specified, the offender may contact, communicate or associate with any other lawyer who is not so specified.

*References to work*

- (10) In subsection (5), a reference to work includes a reference to voluntary work.

### **395.15 Conditions where exemptions may be granted**

- (1) A Supreme Court of a State or Territory that makes a community safety supervision order in relation to a serious offender may specify conditions included in the order that are to be exemption conditions.
- (2) An ***exemption condition*** is a condition specified in the order from which the offender may apply for a temporary exemption.
- (3) The Court may make provision in relation to applications for temporary exemptions.

- (4) The offender may apply, in writing, to a specified authority for an exemption from an exemption condition. The application must:
  - (a) include a reason for the exemption; and
  - (b) comply with any other requirements provided for under subsection (3).
- (5) If the offender so applies, the specified authority may:
  - (a) require further information to be provided by the offender before making a decision in relation to the application; and
  - (b) either:
    - (i) grant or refuse the exemption; or
    - (ii) grant the exemption subject to any reasonable directions specified in writing by the specified authority.

### **395.16 Treatment of photographs and impressions of fingerprints**

- (1) A photograph, or an impression of fingerprints, taken of or from a serious offender as mentioned in paragraph 395.14(7)(b) or (c) must be used only for the purpose of ensuring compliance with a community safety supervision order relating to the offender.
- (2) The photograph or the impression must be destroyed if:
  - (a) no community safety supervision order has been in force in relation to the offender for 12 months; and
  - (b) either:
    - (i) no proceedings relating to a community safety supervision order relating to the offender were on foot in that 12-month period; or
    - (ii) proceedings relating to a community safety supervision order relating to the offender were discontinued or completed within that 12-month period.
- (3) A person commits an offence if:
  - (a) the person engages in conduct; and
  - (b) the conduct contravenes subsection (1).

Penalty: Imprisonment for 2 years.

### **395.17 Obligations relating to monitoring devices**

#### *Additional obligations on serious offender*

- (1) If the Court imposes a condition under paragraph 395.14(7)(d) in a community safety supervision order that a serious offender wear a monitoring device, then:
  - (a) the condition must require the offender to wear the monitoring device at all times; and
  - (b) the order must include the condition referred to in paragraph 395.14(7)(e); and
  - (c) the order must include a condition that the offender do all of the following:
    - (i) allow a specified authority to enter the offender's residence at any reasonable time for any purpose relating to the electronic monitoring of the offender;
    - (ii) allow a specified authority to install, repair or fit the monitoring device or any related monitoring equipment;
    - (iii) take the steps specified in the order (if any) and any other reasonable steps to ensure that the monitoring device and any related monitoring equipment are or remain in good working order;
    - (iv) if the offender becomes aware that the monitoring device and any related monitoring equipment are not in good working order—notify a specified authority as soon as reasonably practicable;
    - (v) allow a specified authority, police officer or corrective services officer to remove the monitoring device;
    - (vi) allow a police officer to remove any related monitoring equipment.

#### *Powers of specified authorities and others*

- (2) After including the condition under paragraph 395.14(7)(d) in the order, the Court must also include in the order an authorisation for:
  - (a) one or more specified authorities to enter the offender's residence as specified in the order at any reasonable time for any purpose relating to the electronic monitoring of the offender; and

- (b) one or more specified authorities to install, repair or fit the monitoring device and any related monitoring equipment; and
  - (c) one or more specified authorities or police officers to take the steps specified in the order to ensure that the device and any related monitoring equipment are or remain in good working order; and
  - (d) one or more specified authorities, police officers or corrective services officers to remove the monitoring device; and
  - (e) one or more police officers to remove any related monitoring equipment.
- (3) If:
- (a) a monitoring device is installed on the offender; and
  - (b) any of the following events occurs:
    - (i) the condition under paragraph 395.14(7)(d) is removed from the order;
    - (ii) the order ceases to be in force;
    - (iii) the offender is detained in custody;
- the device and any related monitoring equipment may be removed in accordance with paragraph (2)(d) or (e) even though:
- (c) for subparagraph (b)(i) or (ii)—no authorisation under subsection (2) is in force; or
  - (d) for subparagraph (b)(iii)—the offender is not required to comply with a condition of the order because of section 395.41 or 395.42.

Note: For the definition of *detained in custody*, see section 395.2.

*Powers relating to monitoring devices and related electronic equipment*

- (4) Before exercising a power referred to in paragraph (2)(a), (b), (d) or (e), or subsection (3), a specified authority, police officer or corrective services officer must inform the offender:
- (a) that the device and equipment are to be installed, repaired, fitted or removed (as the case requires); and
  - (b) of the proposed timing of the taking of the action; and
  - (c) that the offender may consent to the taking of the action; and

- (d) that if consent is not given, reasonable force may be used to take the action, or to enter the offender's residence in order to take the action.
- (5) If the offender does not give consent, reasonable force may be used by a police officer to take the action, or to enter the offender's residence in order to take the action.

**395.18 Copy of a community safety supervision order must be given to serious offender's lawyer**

- (1) A copy of a community safety supervision order that is made under section 395.13 in relation to a serious offender must be given to the offender's lawyer as soon as practicable after being requested by the lawyer.
- (2) This section does not entitle the lawyer to request, or be given a copy of, a document other than the order.

**Subdivision D—Varying a community safety supervision order**

**395.19 Application for variations of community safety supervision orders**

*Requirement to apply for variation*

- (1) If the Immigration Minister is satisfied that a condition in a community safety supervision order in relation to a serious offender is no longer reasonably necessary, or reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence, the Immigration Minister or a legal representative of the Immigration Minister must apply to a Supreme Court of a State or Territory to vary, under section 395.20, the order by:
  - (a) removing the condition; or
  - (b) varying the condition.

Note 1: The Immigration Minister or legal representative may also apply under subsection (2) for other variations of the order, including adding conditions.



Note 2: A copy of the application must be given to the offender under section 395.29.

*Who may otherwise apply*

- (2) Any of the following persons (the **applicant**) may (subject to subsection (1)) apply to a Supreme Court of a State or Territory to vary, under section 395.20, a community safety supervision order in relation to a serious offender, by adding, varying or removing one or more conditions mentioned in section 395.14:

- (a) the Immigration Minister or a legal representative of the Immigration Minister;
- (b) the offender or a legal representative of the offender.

Note: If the application is made by or on behalf of the Immigration Minister, a copy of the application must be given to the offender under section 395.29.

- (3) An application under subsection (1) or (2) must be made to the Supreme Court of the State or Territory where the offender resides.

Note: See subsection 395.2(1) for the definition of **reside**.

*Contents of application*

- (4) An application under subsection (1) or (2) must include:
- (a) a copy of the conditions as sought to be varied; and
  - (b) if the applicant is the Immigration Minister or a legal representative of the Immigration Minister—the following material:
    - (i) an explanation as to why each condition that is sought to be added or varied should be added or varied;
    - (ii) if the Immigration Minister is aware of any facts relating to why any of those conditions should not be added or varied—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the Immigration Minister or any other person);
    - (iii) the outcomes and particulars of all previous applications made under this section (whether by or on behalf of the

Immigration Minister or the offender) for variations of the order; and

- (c) if the applicant is the offender or a legal representative of the offender—the outcomes and particulars of all previous applications made under this section by or on behalf of the offender for variations of the order; and
  - (d) if a report was obtained under section 395.43 in relation to the offender for the purposes of determining whether to apply for the variation—a copy of the report.
- (5) If the applicant is the offender or a legal representative of the offender, the applicant:
- (a) may also include in the application an explanation as to why each condition that is sought to be varied or removed should be varied or removed; and
  - (b) must cause a copy of the application to be served on the Immigration Minister within 2 business days after the application is made.

*Adducing additional evidence*

- (6) The following persons may adduce additional evidence (including by calling witnesses or producing material), or make additional submissions, to the Court in relation to the application to vary the order:
- (a) the Immigration Minister;
  - (b) one or more AFP members;
  - (c) the offender;
  - (d) one or more representatives of the offender.
- (7) Subsection (6) does not otherwise limit the power of the Court to control proceedings in relation to an application to vary a community safety supervision order.

**395.20 Varying a community safety supervision order (other than by consent)**

- (1) If an application is made in accordance with subsection 395.19(1) or (2), and subsection (2) of this section, to a Supreme Court of a State or Territory to vary a community safety supervision order in

relation to a serious offender, the Court may vary the order, but only if:

- (a) for an application for the order to be varied by adding or varying conditions—the Court is satisfied on the balance of probabilities that each of the conditions being added or varied is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence; and
- (b) for an application for the order to be varied by removing conditions—the Court is not satisfied on the balance of probabilities that each of the conditions being removed is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.

Note: See section 395.22 for the terms of a varied community safety supervision order.

- (2) For the purposes of subsection (1), in determining whether each of the conditions to be added, varied or removed by the order is reasonably necessary, and reasonably appropriate and adapted, the Court must take into account, as a paramount consideration in all cases, the object of this Division (see section 395.1).
- (3) The Immigration Minister bears the onus of satisfying the Court of the matters referred to in subsection (1).

*Relevant experts*

- (4) The Court may appoint one or more relevant experts for the purposes of the proceedings relating to the application. If the Court does so, subsections 395.9(5) to (9) apply in relation to the proceedings.
- (5) The Immigration Minister, the offender, or a legal representative of the Immigration Minister or offender, may nominate one or more relevant experts for the purposes of subsection (4).
- (6) Subsection (4) does not prevent the Immigration Minister, the offender, or a legal representative of the Immigration Minister or

offender, from calling another relevant expert as a witness in the proceedings.

### **395.21 Varying community safety supervision order by consent**

- (1) Any of the following persons (the *applicant*) may apply to a Supreme Court of a State or Territory to vary a community safety supervision order in relation to a serious offender by varying or removing one or more conditions mentioned in section 395.14:
  - (a) the Immigration Minister or a legal representative of the Immigration Minister;
  - (b) the offender or a legal representative of the offender.
- (2) The application must be made to the Court of the State or Territory where the offender resides.

Note: See subsection 395.2(1) for the definition of *reside*.

- (3) The Court may vary the order if the Court is satisfied that:
  - (a) written consent to the variation has been given by:
    - (i) if the applicant is the Immigration Minister or a legal representative of the Immigration Minister—the serious offender; or
    - (ii) if the applicant is the offender or a legal representative of the offender—the Immigration Minister; and
  - (b) the variation does not involve adding any conditions to the order; and
  - (c) the variation is appropriate in the circumstances.

### **395.22 Terms of a varied community safety supervision order**

A community safety supervision order in relation to a person that is varied under section 395.20, 395.21 or 395.26 must:

- (a) state that the Court is satisfied:
  - (i) for a variation under subsection 395.20(1) or 395.21(3)—of the matters mentioned in that subsection; or
  - (ii) for a variation under section 395.26—of the matters mentioned in subsection 395.26(1), (3) or (4) (as the case requires); and

- (b) specify the variations to the conditions that are to be made;  
and
- (c) state the period during which the order, as varied, is in force;  
and
- (d) state that the offender's lawyer may request a copy of the order.

## **Subdivision E—Review of community safety order**

### **395.23 Periodic review of community safety order**

*When application for review must be made*

- (1) The Immigration Minister, or a legal representative of the Immigration Minister, must, before the end of the period referred to in subsection (2), apply to a Supreme Court of a State or Territory for a review of a community safety order that is in force in relation to a serious offender.

Note: A copy of the application must be given to the offender under section 395.29.

- (2) The application must be made:
  - (a) before the end of 12 months after the order began to be in force (unless paragraph (b) or (c) applies); or
  - (b) if the order has been reviewed under this Subdivision by a Supreme Court of a State or Territory—before the end of 12 months after the most recent review ended (unless paragraph (c) applies); or
  - (c) if paragraph (a) or (b) would otherwise apply and, at the time described in that paragraph, the community safety order is suspended under section 395.42 because the offender is detained in custody in a prison—on or before the day the offender's detention in a prison ends.
- (3) Despite subsection (1), an application for a review is not required if an application for a new community safety order in relation to the offender has been made and not withdrawn.

*Review must be conducted before end of period*

- (4) On receiving the application, the Court must begin the review of the order before the end of that period.

Note: For the process for reviewing a community safety order, see section 395.25.

*Where application must be made*

- (5) The application must be made to the Court of the State or Territory where:
- (a) for a community safety detention order—the prison in which the offender is detained is located; or
  - (b) for a community safety supervision order—the offender resides.

Note: See subsection 395.2(1) for the definition of *reside*.

*Order ceases to be in force if application not made*

- (6) If an application is not made in accordance with this section, the order ceases to be in force at the end of the period referred to in subsection (2).

**395.24 Review of community safety order on application**

- (1) The following persons may apply to a Supreme Court of a State or Territory for review of a community safety order:
- (a) the Immigration Minister or a legal representative of the Immigration Minister;
  - (b) a serious offender, or a legal representative of a serious offender, in relation to whom the community safety order is in force.

Note 1: For the process for reviewing a community safety order, see section 395.25.

Note 2: A copy of the application must be given to the serious offender under section 395.29.

- (2) The application must include a copy of any report obtained under section 395.43 for the purposes of determining whether an application for a review of the community safety supervision order should be made.

- (3) The Court may review the order if the Court is satisfied that:
  - (a) there are new facts or circumstances which would justify reviewing the order; or
  - (b) it would be in the interests of justice, having regard to the purposes of the order and the manner and effect of its implementation, to review the order.
- (4) Otherwise, the Court must dismiss the application.
- (5) The application must be made to the Court of the State or Territory where:
  - (a) for a community safety detention order—the prison in which the offender is detained is located; or
  - (b) for a community safety supervision order—the offender resides.

Note: See subsection 395.2(1) for the definition of *reside*.

### **395.25 Process for reviewing a community safety order**

- (1) This section applies if, under section 395.23 or 395.24, a Supreme Court of a State or Territory reviews a community safety order that is in force in relation to a serious offender.

#### *Parties to the review*

- (2) The parties to the review are:
  - (a) the Immigration Minister; and
  - (b) the offender.

#### *Relevant experts*

- (3) The Court may appoint one or more relevant experts for the purposes of the review. If the Court does so, subsections 395.9(5) to (9) apply in relation to the review.
- (4) The Immigration Minister or the offender, or a legal representative of the Immigration Minister or the offender, may nominate one or more relevant experts for the purposes of subsection (3).
- (5) Subsection (3) does not prevent the Immigration Minister or the offender, or a legal representative of the Immigration Minister or

the offender, from calling their own relevant expert as a witness in the review.

*Affirming or revoking the order*

- (6) The Court may affirm the order (including affirm the order with variations made under section 395.26) if, after having regard to the matters in section 395.11, the Court is satisfied that the Court:
- (a) for a community safety detention order—could have made the order under section 395.12; or
  - (b) for a community safety supervision order—could have made the order under section 395.13, or could have made the order disregarding paragraph 395.13(1)(d).

Note: The rules of evidence and procedure for civil matters apply when the Court has regard to matters in accordance with section 395.11, as referred to in this subsection (see subsection 395.11(3) and section 395.27).

- (7) If the review is of a community safety detention order, and the Court does not affirm the order under subsection (6), the Court must:
- (a) consider making a community safety supervision order in relation to the offender under section 395.13; and
  - (b) seek the following material from the Immigration Minister:
    - (i) a copy of the proposed conditions that would be sought for a community safety supervision order;
    - (ii) an explanation as to why each of the proposed conditions should be imposed on the offender;
    - (iii) if the Immigration Minister is aware of any facts relating to why any of those conditions should not be imposed on the offender—a statement of those facts, except any facts that are likely to be protected by public interest immunity (whether the claim for public interest immunity is to be made by the Immigration Minister or any other person); and
  - (c) if the Court does not make a community safety supervision order in relation to the offender—revoke the community safety detention order.



Note: If the Court makes a community safety supervision order in relation to the offender, the community safety detention order is revoked under subsection 395.13(7).

- (8) If the Court does not affirm a community safety supervision order under subsection (6), the Court must revoke the order.

*Onus of satisfying Court*

- (9) The Immigration Minister must ensure that reasonable inquiries are made to ascertain any facts known to any Commonwealth law enforcement officer that would reasonably be regarded as supporting a finding that the order should not be affirmed.
- (10) The Immigration Minister bears the onus of satisfying the Court of the matters referred to in section 395.12 or 395.13.
- (11) The Immigration Minister, or the legal representative of the Immigration Minister, must present to the Court:
- (a) a copy of any material in the possession of the Immigration Minister or legal representative; and
  - (b) a statement of any facts that the Immigration Minister or legal representative is aware of;
- that would reasonably be regarded as supporting a finding that:
- (c) the order should not be affirmed, or should not be affirmed in the terms in which the order is made; or
  - (d) if the court is considering making a community safety supervision order under subsection (7)—a community safety supervision order should not be made.

### **395.26 Varying community safety orders after review**

*Varying the period specified by a community safety order*

- (1) A Supreme Court of a State or Territory must vary a community safety order in relation to a serious offender to specify a shorter period for which the order will be in force if:
- (a) the Court affirms the order under subsection 395.25(6); and
  - (b) the Court is not satisfied that the period currently specified is reasonably necessary to protect the community from serious

harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.

The shorter period must be a period that the Court is satisfied is reasonably necessary to address the unacceptable risk.

Note: See section 395.22 for the terms of a varied community safety supervision order.

*Varying or removing conditions*

- (2) A Supreme Court of a State or Territory must vary, or remove, a condition imposed by a community safety supervision order if:
  - (a) the Court affirms the order under subsection 395.25(6); and
  - (b) the Court is not satisfied that the condition is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.
- (3) The Court must be satisfied that a condition that is varied under subsection (2) is (after the variation) reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.

*Varying to add conditions*

- (4) The Court may vary a community safety supervision order to add one or more conditions if the Court is satisfied that the conditions are reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence.

*Object of this Division*

- (5) For the purposes of subsections (3) and (4), in determining whether a condition to be varied or imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, the Court must take into account, as a paramount consideration in all cases, the object of this Division (see section 395.1).

*Onus of satisfying Court*

- (6) The Immigration Minister bears the onus of satisfying the Court of the matters referred to in subsection (1), (3) or (4).

**Subdivision F—Provisions relating to community safety order proceedings**

**395.27 Civil evidence and procedure rules in relation to community safety order proceedings**

- (1) A Supreme Court of a State or Territory must, subject to subsection (2), apply the rules of evidence and procedure for civil matters during a community safety order proceeding.
- (2) Despite anything in the rules of evidence and procedure, the Court may receive in evidence in the proceeding evidence of:
- (a) the level of the serious offender's compliance with any conditions (however described) to which the offender is or has been subject while:
    - (i) on release on parole for any offence; or
    - (ii) subject to a community safety supervision order; and
  - (b) the offender's history of any prior convictions for, and findings of guilt made in relation to, any offence; and
  - (c) the level of the offender's compliance with any conditions to which a visa that the offender is, or has been, a holder of under the *Migration Act 1958* is or has been subject.

**395.28 Adducing evidence and making submissions**

A party to a community safety order proceeding in a Supreme Court of a State or Territory may adduce evidence (including by calling witnesses or producing material), or make submissions, to the Court in relation to the proceeding.

**395.29 Giving copies of applications etc. to serious offenders**

- (1) This section applies if the Immigration Minister, or a legal representative of the Immigration Minister, (the *applicant*) applies to a Supreme Court of a State or Territory for:

- (a) a community safety order; or
  - (b) a variation of a community safety supervision order under section 395.19; or
  - (c) a review of a community safety order; in relation to a serious offender.
- (2) Within 2 business days after the application is made, the applicant must (subject to sections 395.30 to 395.32) give a copy of the application to the offender personally, and to the offender's legal representative.

Note: For giving documents to a serious offender who is detained in custody, see section 395.33.
- (3) If the Court seeks material from the Immigration Minister under paragraph 395.12(2)(a) or 395.25(7)(b), within 2 business days after the material is provided to the Court, the applicant must (subject to sections 395.30 to 395.32) give a copy of the material to the offender personally, and to the offender's legal representative.
- (4) If:
  - (a) the community safety order is made or varied; and
  - (b) neither the offender nor a legal representative of the offender is present during the proceedings in which the order is made or varied;the applicant must (subject to sections 395.30 to 395.32), within 2 business days after the order is made or varied, give to the offender personally, and to the offender's legal representative, a copy of the order that is made, or of the order as varied.

**395.30 Information excluded from application or material—national security information**

- (1) This section applies if the Immigration Minister, or a legal representative of the Immigration Minister, (the **applicant**) gives a copy of an application or material to a serious offender, or a serious offender's legal representative, (the **recipient**) under subsection 395.29(2) or (3).
- (2) The applicant is not required to include any information in the application or material if a Minister (the **decision-maker**) is likely to:

- (a) take any actions in relation to the information under the *National Security Information (Criminal and Civil Proceedings) Act 2004*; or
  - (b) seek an order of a court preventing or limiting disclosure of the information.
- (3) However, the applicant must (subject to subsection (4)) give the recipient personally a complete copy of the application or material if any of the following events occurs:
  - (a) the decision-maker decides not to take any of the actions referred to in paragraph (2)(a) or (b);
  - (b) a Minister gives a certificate under Subdivision C of Division 2 of Part 3A of the *National Security Information (Criminal and Civil Proceedings) Act 2004*;
  - (c) a court makes an order in relation to any action taken by the decision-maker under paragraph (2)(a) or (b).
- (4) Subsection (3) is subject to:
  - (a) the certificate referred to in paragraph (3)(b); or
  - (b) any order made by a court.
- (5) The copy of the application or material must be given under subsection (3):
  - (a) within 2 business days of the event referred to in subsection (3); and
  - (b) within a reasonable period before:
    - (i) if the application is for a community safety order—the preliminary hearing referred to in section 395.9; or
    - (ii) if the application is for a variation or review of a community safety order—the hearing on the application.

### **395.31 Information excluded from application or material—public interest immunity**

- (1) This section applies if:
  - (a) the Immigration Minister, or a legal representative of the Immigration Minister, (the ***applicant***) gives a copy of an application or material to a serious offender, or a serious

- offender's legal representative, under subsection 395.29(2) or (3); and
- (b) information (however described) is excluded from the application or material on the basis of public interest immunity.
- (2) The applicant must give written notice to the offender, and the offender's legal representative, personally stating that the information has been excluded on the basis of public interest immunity. The notice must be given at the time that a copy of the application or material is given to the offender or legal representative.
- (3) To avoid doubt, nothing in this section imposes an obligation on the offender to satisfy the Court that a claim of public interest immunity should not be upheld.

Note: The offender may seek to access any information, material or facts that are likely to be protected by public interest immunity (for example, through a subpoena). Under the law of public interest immunity, the person claiming the immunity must make and substantiate the claim, and satisfy the Court that the claim should be upheld.

### **395.32 Information excluded from application and material**

- (1) This section applies if:
- (a) the Immigration Minister, or a legal representative of the Immigration Minister, (the ***applicant***) is required to give a copy of an application or material to a serious offender, or a serious offender's legal representative, under subsection 395.29(2) or (3); and
- (b) the application or material contains any of the following material (***relevant material***):
- (i) terrorism material within the meaning of paragraph 105A.14D(1)(b);
  - (ii) child abuse material within the meaning of Part 10.6;
  - (iii) abhorrent violent material within the meaning of Subdivision H of Division 474.

- (2) The applicant may apply to the Supreme Court of a State or Territory referred to in subsection 395.29(1) for an order in relation to the manner in which the relevant material is to be dealt with.
- (3) The Court may make an order in relation to the manner in which the relevant material is to be dealt with, including that the relevant material:
  - (a) be provided to the offender's legal representative; or
  - (b) be available for inspection by the offender at specified premises.

### **395.33 Giving documents to serious offenders who are detained in custody**

- (1) A document that is required to be given under this Division to a serious offender who is detained in custody is taken to have been given to the offender at the time referred to in paragraph (3)(b) if the document is given to the following person (the *recipient*):
  - (a) the legal representative of the offender;
  - (b) if the offender does not have a legal representative—the chief executive officer (however described) of the prison or other facility in which the offender is detained, or a delegate of the chief executive officer.
- (2) The recipient must, as soon as reasonably practicable, give the document to the offender personally.
- (3) Once the recipient has done so, the recipient must notify the Court and the person who gave the recipient the document, in writing:
  - (a) that the document has been given to the offender; and
  - (b) of the day that document was so given.

### **395.34 When a serious offender is unable to engage a legal representative**

- (1) This section applies if:
  - (a) a community safety order proceeding relating to a serious offender is before a Supreme Court of a State or Territory;and

- (b) the offender, due to circumstances beyond the offender's control, is unable to engage a legal representative in relation to the proceeding.
- (2) The Court may make either or both of the following orders:
  - (a) an order staying the proceeding for such period and subject to such conditions as the Court thinks fit;
  - (b) an order requiring the Commonwealth to bear, in accordance with the regulations (if any), all or part of the reasonable costs and expenses of the offender's legal representation for the proceeding.
- (3) The regulations may prescribe matters that the Court may, must or must not take into account in determining either or both of the following:
  - (a) whether circumstances are beyond the offender's control;
  - (b) reasonable costs and expenses of the offender's legal representation for the proceeding.
- (4) This section does not limit any other power of the Court.

### **395.35 Reasons for decisions**

A Supreme Court of a State or Territory that makes a community safety order decision in a community safety order proceeding must:

- (a) state the reasons for its decision; and
- (b) cause those reasons to be entered in the records of the Court; and
- (c) cause a copy of any order it made to be provided to each party to the proceeding.

Note: See also subsection 395.2(4) for when a Court makes a community safety order decision.

### **395.36 Right of appeal**

- (1) An appeal lies to the court of appeal (however described) of a State or Territory if:
  - (a) the Supreme Court of the State or Territory makes a community safety order decision; and



- (b) the court of appeal has jurisdiction to hear appeals from the Supreme Court in relation to civil matters.
- (2) The appeal is to be by way of rehearing. In particular, in relation to the appeal, the court of appeal:
  - (a) subject to this subsection, has all the powers, functions and duties that the Supreme Court has in relation to the relevant community safety order proceedings; and
  - (b) may receive further evidence as to questions of fact (orally in court, by affidavit or in any other way) if the court of appeal is satisfied that there are special grounds for doing so.
- (3) The appeal against the decision of the Supreme Court may be made:
  - (a) as of right, within 28 days after the day on which the decision was made; or
  - (b) by leave, within such further time as the court of appeal allows.
- (4) The making of the appeal does not stay the operation of the order.
- (5) This section does not limit any other right of appeal that exists apart from this section.

### **395.37 Consequences of sentences ending or orders ceasing to be in force**

- (1) This section applies in relation to a community safety order proceeding if:
  - (a) the proceeding is any of the following:
    - (i) a proceeding on an application for a community safety order in relation to a serious offender;
    - (ii) an appeal against a decision to dismiss such an application;
    - (iii) an appeal against a decision to revoke a community safety order in relation to a serious offender;
    - (iv) an appeal against a decision (including in a review of such an order) to specify a particular period for which such an order will be in force;

- (v) an appeal against a decision under section 395.34 to stay a community safety order proceeding in relation to a serious offender (including a decision under that section to stay a proceeding for a specified period or to impose a specified condition); and
  - (b) before the application or appeal is determined (whether before or after the appeal is made) one of the following events occurs:
    - (i) a sentence of imprisonment referred to in subsection 395.6(1) ends;
    - (ii) a community safety order in relation to the offender ceases to be in force;
    - (iii) a community safety order in force in relation to the offender was revoked as referred to in subparagraph (a)(iii) of this subsection.
- (2) For the purposes of the community safety order proceeding, the offender is taken to remain a serious offender:
- (a) who is serving a sentence of imprisonment; or
  - (b) in relation to whom a community safety order is in force;
- despite the event in subsection (1) occurring.

*Power of police officer to detain serious offender*

- (3) If a community safety detention order is in force in relation to the offender at any time after the offender is released as mentioned in paragraph (1)(b):
- (a) any police officer may take the offender into custody; and
  - (b) any police officer may detain the offender;
- for the purpose of giving effect to the order.
- (4) A police officer, in:
- (a) taking the offender into custody; or
  - (b) detaining the offender;
- under subsection (3) has the same powers and obligations as the police officer would have if the police officer were arresting the offender, or detaining the offender, for an offence.
- (5) In subsection (4):

**offence** means:

- (a) if the police officer is an AFP member—an offence against a law of the Commonwealth; or
- (b) if the police officer is not an AFP member—an offence against a law of the State or Territory of whose police force the police officer is a member.

### **Subdivision G—Offences relating to community safety supervision orders**

#### **395.38 Offence for contravening a community safety supervision order**

- (1) A person commits an offence if:
  - (a) a community safety supervision order is in force in relation to the person, and not suspended under section 395.41 or 395.42; and
  - (b) the person engages in conduct; and
  - (c) the conduct contravenes a condition the order imposes; and
  - (d) if the condition is an exemption condition—there is no exemption in force at the time the conduct is engaged in that exempts the person from the application of the condition.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (2) A person commits an offence if:
  - (a) a community safety supervision order is in force in relation to the person, and not suspended under section 395.41 or 395.42; and
  - (b) the order includes an exemption condition; and
  - (c) an exemption is in force in relation to the condition; and
  - (d) a direction is specified in relation to the exemption condition under subparagraph 395.15(5)(b)(ii); and
  - (e) the person engages in conduct; and
  - (f) the conduct contravenes the direction.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (3) Subsections (1) and (2) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).

### **395.39 Offence relating to monitoring devices**

(1) A person commits an offence if:

- (a) a community safety supervision order is in force in relation to the person, and not suspended under section 395.41 or 395.42; and
- (b) the order requires the person to wear a monitoring device; and
- (c) the person engages in conduct; and
- (d) the conduct results in interference with, or disruption or loss of, a function of the monitoring device or any related monitoring equipment.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(2) A person (the *perpetrator*) commits an offence if:

- (a) the perpetrator knows that, or is reckless as to whether, a community safety supervision order is in force in relation to another person; and
- (b) the order is not suspended under section 395.41 or 395.42; and
- (c) the perpetrator knows that, or is reckless as to whether, the order requires the other person to wear a monitoring device; and
- (d) the perpetrator engages in conduct; and
- (e) the conduct results in interference with, or disruption or loss of, a function of the monitoring device or any related monitoring equipment.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

(3) Strict liability applies in relation to paragraph (2)(b).

(4) Subsections (1) and (2) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3)).

### **395.40 Mandatory 1 year imprisonment for offences**

If a person is convicted of an offence against section 395.38 or 395.39, the Court must impose a sentence of imprisonment of at least 1 year.

### **Subdivision H—Miscellaneous**

#### **395.41 Detention under the *Migration Act 1958***

- (1) The fact that:
- (a) a community safety order is in force in relation to a serious offender; or
  - (b) a serious offender is detained in accordance with a community safety detention order;
- does not prevent the offender being detained under the *Migration Act 1958*.

Note: For example, the offender may be detained under the *Migration Act 1958* if there is a real prospect of the removal of the offender from Australia becoming practicable in the reasonably foreseeable future.

#### *Effect of detention on community safety orders*

- (2) A community safety detention order in relation to a serious offender is suspended during the period that the offender is detained under the *Migration Act 1958*.
- (3) A community safety supervision order in relation to a serious offender is suspended during the period that the offender is detained under the *Migration Act 1958*.

#### *Effect of suspension*

- (4) A community safety order continues to be in force during the period in which the order is suspended under this section.
- (5) However, the offender is not required to comply with any condition in a community safety supervision order during the period that the order is suspended.

### **395.42 Effect of prison detention on community safety order**

#### *Effect of prison detention on community safety orders*

- (1) A community safety detention order in relation to a serious offender is suspended during the period that the offender is detained in custody in a prison other than as a result of the order.

Note: For the definition of *detained in custody in a prison*, see section 395.2.

- (2) A community safety supervision order in relation to a serious offender is suspended during the period that the offender is detained in custody in a prison.

#### *Effect of suspension*

- (3) A community safety order continues to be in force during the period in which the order is suspended under this section.
- (4) However, the offender is not required to comply with any condition in a community safety supervision order during the period that the order is suspended.

### **395.43 Immigration Minister may direct serious offenders to be assessed**

- (1) The Immigration Minister may direct any of the following serious offenders to be subject to an assessment of the risk of the person committing a serious violent or sexual offence:
- (a) a serious offender in relation to whom an application for a community safety order could be made;
  - (b) a serious offender in relation to whom a community safety order is in force.
- (2) The Immigration Minister may appoint a relevant expert to conduct the assessment, and provide a report, for the purposes of determining whether:
- (a) an application for a community safety order in relation to the offender should be made; or
  - (b) an application for a variation or review of a community safety order in relation to the offender should be made.

- (3) The relevant expert who is appointed must:
- (a) conduct an assessment of the risk of the offender committing a serious violent or sexual offence; and
  - (b) provide a report of the expert's assessment to the Immigration Minister.

Note: For giving documents to a serious offender who is detained in custody, see section 395.33.

*Attendance and participation at assessment*

- (4) The offender must attend the assessment.

Note: The assessment may be conducted over a number of sessions.

- (5) The answer to a question or information given at the assessment, and answering a question or giving information at the assessment, are not admissible in evidence against the offender in:
- (a) any criminal proceedings, except any proceedings relating to sentencing for an offence against this Division (including any appeal in relation to those proceedings); or
  - (b) any civil proceedings against the offender, except proceedings under this Division (including any appeal in relation to those proceedings).

- (6) The Immigration Minister must ensure that the effect of subsections (4), (5) and (8) is explained to the offender.

*Contents of report*

- (7) The expert's report may include any one or more of the following matters:
- (a) the expert's assessment of the risk of the offender committing a serious violent or sexual offence;
  - (b) reasons for that assessment;
  - (c) the pattern or progression to date of behaviour on the part of the offender in relation to serious violent or sexual offences, and an indication of the nature of any likely future behaviour on the offender's part in relation to serious violent or sexual offences;
  - (d) efforts made to date by the offender to address the causes of the offender's behaviour in relation to serious violent or

- sexual offences, including whether the offender has actively participated in any rehabilitation or treatment programs;
- (e) if the offender has participated in any rehabilitation or treatment programs—whether or not this participation has had a positive effect on the offender;
  - (f) any relevant background of the offender, including developmental and social factors;
  - (g) factors that might increase or decrease any risks that have been identified of the offender committing a serious violent or sexual offence;
  - (h) any other matters the expert considers relevant.

*Assessments conducted for certain purposes*

- (8) Without limiting subsection (5), an assessment of an offender conducted under paragraph (3)(a), and the report of the assessment, may be taken into account:
  - (a) by the Immigration Minister in determining whether to make any application for a community safety order, or any application for a variation or review of a community safety order, in relation to the offender; and
  - (b) by the Court in proceedings to make, vary or review any community safety order in relation to the offender.

**395.44 Sharing information**

*Requesting information*

- (1) The Immigration Minister may request a person prescribed by the regulations for the purposes of this subsection to give the Immigration Minister information (including personal information) that the Immigration Minister reasonably believes to be relevant to the administration or execution of this Division.
- (2) The request need not be in writing.
- (3) Despite any law of the Commonwealth, a State or a Territory (whether written or unwritten), the person may provide the information to the Immigration Minister.



*Disclosing information*

- (4) The Immigration Minister may disclose information to a person prescribed by the regulations for the purposes of this subsection if:
  - (a) the information was acquired by any of the following in the exercise of a power under, or the performance of a function or duty in connection with, this Division:
    - (i) the Immigration Minister;
    - (ii) a legal representative of the Immigration Minister;
    - (iii) the Secretary of the Department administered by the Immigration Minister;
    - (iv) an APS employee in the Department administered by the Immigration Minister; and
  - (b) the Immigration Minister reasonably believes that the disclosure is necessary to enable the person to exercise the person's powers, or to perform the person's functions or duties; and
  - (c) if the regulations provide that information may be disclosed to the person only if specified circumstances are met—those circumstances are met.
- (5) Subsection (4) applies despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten).

**395.45 Sharing information relating to community safety supervision orders**

- (1) An AFP member may disclose information (including personal information), to a person employed or engaged by a body covered by an arrangement under subsection 395.48(1), for the purpose of facilitating the performance of any functions or the exercise of any powers in relation to community safety supervision orders.
- (2) A person (the ***first person***) employed or engaged by a body covered by an arrangement under subsection 395.48(1) may disclose information (including personal information) to another person if the first person reasonably believes that the disclosure is authorised by the arrangement.

- (3) This section applies despite any other law of the Commonwealth, a State or a Territory (whether written or unwritten).

#### **395.46 Delegation by the Immigration Minister**

The Immigration Minister may, in writing, delegate any of the Immigration Minister's powers or functions under section 395.44 to any of the following persons:

- (a) the Secretary of the Department administered by the Immigration Minister;
- (b) any APS employee in that Department who performs duties in connection with the administration or execution of this Division.

#### **395.47 Arrangement with States and Territories**

- (1) The Immigration Minister may arrange for a serious offender in relation to whom a community safety detention order is in force to be detained in a prison of a State or Territory.
- (2) If an arrangement is made under subsection (1), the community safety detention order is taken to authorise the chief executive officer (however described) of the prison to detain the offender in the prison while the order is in force.

#### **395.48 Arrangements by Australian Federal Police Commissioner for functions and powers relating to community safety supervision orders**

- (1) The Commissioner of the Australian Federal Police may make an arrangement with a State or Territory, or any other body, for the performance of any functions or the exercise of any powers in relation to community safety supervision orders.
- (2) Without limiting subsection (1), for the purposes of section 395.45, the arrangement may authorise a person employed or engaged by a body covered by the arrangement to disclose information (including personal information).

- (3) The Commissioner of the Australian Federal Police may, in writing, delegate to a senior AFP member the Commissioner's powers under subsection (1).

### **395.49 Annual report**

- (1) The Immigration Minister must, as soon as practicable after each 30 June, cause a report to be prepared about the operation of this Division during the year ended on that 30 June.
- (2) Without limiting subsection (1), a report relating to a year must include the number of each of the following:
- (a) applications for each kind of community safety order made during the year;
  - (b) each kind of community safety order made during the year;
  - (c) applications for review of each kind of community safety order made by serious offenders during the year;
  - (d) applications for review of each kind of community safety order made by the Immigration Minister, or a legal representative of the Immigration Minister, during the year;
  - (e) each kind of community safety order affirmed during the year;
  - (f) each kind of community safety order varied during the year;
  - (g) community safety orders revoked (including by operation of this Act) during the year.
- (3) The Immigration Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the report is completed.

### **395.50 Effect of community safety detention orders on bail or parole laws**

- (1) A person in relation to whom a community safety detention order is in force is not eligible to be released on bail or parole until the order ceases to be in force.
- (2) Subsection (1) does not prevent the person from applying, before the order ceases to be in force, to be released on bail if the person is charged with an offence while the order is in force.

Note: Although the person can apply to be released on bail, as a result of subsection (1), the person cannot be released on bail until the community safety detention order ceases to be in force.

- (3) This section applies despite any law of the Commonwealth, a State or a Territory.

## ***Surveillance Devices Act 2004***

### **6 After paragraph 3(aaf)**

Insert:

- (aag) to establish procedures for law enforcement officers to obtain warrants for the installation and use of surveillance devices, or for access to data held in computers, in cases where a community safety supervision order is in force, and the use of the device or the access to the data would be likely to substantially assist in:
  - (i) achieving a Part 9.10 object; or
  - (ii) determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with; and
- (aah) to establish procedures for law enforcement officers to obtain tracking device authorisations for the use of tracking devices in cases where a community safety supervision order is in force in relation to a person, and the use of a tracking device is to obtain information relating to the person for either of the following purposes:
  - (i) achieving a Part 9.10 object;
  - (ii) determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with; and

### **7 At the end of section 4**

Add:

- (7) To avoid doubt, it is intended that a warrant may be issued under this Act for the installation, use, maintenance or retrieval of a surveillance device, or for access to data held in a computer, if:
  - (a) consideration is being given, will be given, or is likely to be given, as to whether to apply for a Part 9.10 order, and the

- use of the device or the access to the data would be likely to assist in determining whether to apply for the order; or
- (b) a community safety supervision order is in force, and the use of the device or the access to the data would be likely to substantially assist in:
- (i) achieving a Part 9.10 object; or
  - (ii) determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with.
- (8) To avoid doubt, a tracking device authorisation may be given under this Act for the use of a tracking device to obtain information relating to a person if:
- (a) a community safety supervision order is in force in relation to the person; and
  - (b) the use is for either of the following purposes:
    - (i) achieving a Part 9.10 object;
    - (ii) determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with.

## **8 Subsection 6(1)**

Insert:

***community safety detention order*** has the same meaning as in Division 395 of the *Criminal Code*.

***community safety supervision order*** has the same meaning as in Division 395 of the *Criminal Code*.

***Immigration Minister*** means the Minister administering the *Migration Act 1958*.

***Part 9.10 information*** has the meaning given by subsection 50A(6).

***Part 9.10 object*** means the protection of the community from serious harm by addressing the unacceptable risk of a serious offender committing a serious violent or sexual offence.

**Part 9.10 order** means a community safety detention order or a community safety supervision order.

**Part 9.10 warrant** means a surveillance device warrant or computer access warrant:

- (a) issued to determine whether to apply for a Part 9.10 order; or
- (b) issued in relation to a community safety supervision order that is or was in force.

**9 Subsection 6(1) (paragraph (oa) of the definition of *relevant proceeding*)**

After “orders)”, insert “or Division 395 of the *Criminal Code* (community safety orders)”.

**10 Subsection 6(1)**

Insert:

***serious offender*** has the same meaning as in Division 395 of the *Criminal Code*.

***serious violent or sexual offence*** has the same meaning as in Division 395 of the *Criminal Code*.

***succeeding community safety supervision order*** has the meaning given by section 6F.

**11 Subsection 6(1) (definition of *unsworn application*)**

After “27A(13)”, insert “, (13A)”.

**12 After section 6D**

Insert:

**6E When a community safety supervision order is taken to be in force**

For the purposes of this Act, a community safety supervision order is taken to be in force in relation to a person if the order has been made but the period specified in the order under paragraph 395.13(5)(d) of the *Criminal Code* has not yet begun.

## **6F Succeeding community safety supervision order**

- (1) If a community safety supervision order is made in relation to a person, any later community safety supervision order in relation to the person is a ***succeeding community safety supervision order*** in relation to an earlier community safety supervision order.
- (2) If 2 or more successive community safety supervision orders are made in relation to the same person, each later community safety supervision order is a ***succeeding community safety supervision order*** in relation to each earlier community safety supervision order.

## **13 After subsection 14(3C)**

Insert:

### *Warrants sought for Part 9.10 order applications*

- (3D) A law enforcement officer (or another person on the officer's behalf) may apply for the issue of a surveillance device warrant if:
  - (a) a person is a serious offender in relation to whom an application for a Part 9.10 order could be made; and
  - (b) the officer suspects on reasonable grounds that there is an appreciable risk of the person committing a serious violent or sexual offence; and
  - (c) consideration is being given, will be given, or is likely to be given, by the Immigration Minister (or a person on behalf of the Immigration Minister), as to whether to apply for a Part 9.10 order in relation to the person; and
  - (d) the officer suspects on reasonable grounds that the use of a surveillance device to obtain information would be likely to assist in determining whether to apply for the Part 9.10 order.

### *Warrants sought for community safety supervision orders*

- (3E) A law enforcement officer (or another person on the officer's behalf) may apply for the issue of a surveillance device warrant if:
  - (a) a community safety supervision order is in force in relation to a person; and

(b) the law enforcement officer suspects on reasonable grounds that the use of a surveillance device to obtain information relating to the person would be likely to substantially assist in:

- (i) achieving a Part 9.10 object; or
- (ii) determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with.

Note: For community safety supervision orders that have been made but not come into force, see section 6E.

**14 Subsection 14(4)**

Omit “or (3C)”, substitute “, (3C), (3D) or (3E)”.

**15 Paragraph 14(6)(a)**

After “paragraph (3C)(b)”, insert “or (3E)(b)”.

**16 After paragraph 16(1)(bc)**

Insert:

- (bd) in the case of a warrant sought to determine whether to apply for a Part 9.10 order—that the conditions in paragraphs 14(3D)(a) and (c) are met, and that there are reasonable grounds for the suspicions founding the application for the warrant (as mentioned in paragraphs 14(3D)(b) and (d)); and
- (be) in the case of a warrant sought in relation to a community safety supervision order that is in force in relation to a person—that the order is in force in relation to the person, and that there are reasonable grounds for the suspicion founding the application for the warrant (as mentioned in paragraph 14(3E)(b)); and

**17 Subsection 16(1) (at the end of the note)**

Add “For community safety supervision orders that have been made but not come into force, see section 6E.”.

**18 After subsection 16(3)**

Insert:



- (3A) In addition to the matters in subsection (2), in determining whether to issue a surveillance device warrant sought to determine whether to apply for a Part 9.10 order in relation to a person, the eligible Judge or nominated AAT member must have regard to:
- (a) the likely value of the information sought to be obtained in determining whether to apply for the Part 9.10 order; and
  - (b) any previous application for a surveillance device warrant sought or issued to determine whether to apply for a Part 9.10 order in relation to the person.

## **19 At the end of section 16**

Add:

- (5) In addition to the matters in subsection (2), in determining whether to issue a surveillance device warrant sought in a case where a community safety supervision order is in force in relation to a person, the eligible Judge or nominated AAT member must have regard to:
- (a) the likely value of the information sought to be obtained, in:
    - (i) achieving a Part 9.10 object; or
    - (ii) determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with; and
  - (b) whether the use of the surveillance device in accordance with the warrant would be the means of obtaining the evidence or information sought to be obtained, that is likely to have the least interference with any person's privacy; and
  - (c) the possibility that the person has committed, is committing, or will commit, a serious violent or sexual offence; and
  - (d) the possibility that the person has contravened, is contravening, or will contravene, the community safety supervision order or a succeeding community safety supervision order; and
  - (e) any previous surveillance device warrant sought or issued on the basis of a community safety supervision order that is or was in force in relation to the person.

## **20 Paragraph 17(1)(a)**

Omit "and (4)", substitute ", (3A), (4) and (5)".

**21 After subsection 17(1AB)**

Insert:

- (1AC) If a surveillance device warrant is issued to determine whether to apply for a Part 9.10 order in relation to a person, the warrant must also specify the name of the person.
- (1AD) If a warrant is issued on the basis of a community safety supervision order that is in force in relation to a person, the warrant must also specify the following details in relation to the order:
- (a) the name of the person;
  - (b) the date the order was made;
  - (c) if (disregarding section 6E) the order is not already in force—when the order comes into force.

**22 After subsection 17(1B)**

Insert:

- (1C) To avoid doubt, a warrant issued on the basis that a community safety supervision order is in force remains in force for the period mentioned in paragraph (1A)(a) even if the order ceases to be in force, provided that the order is replaced by a succeeding community safety supervision order.

Note: If there is no succeeding community safety supervision order, the warrant must be revoked (see section 21).

**23 Subsection 19(4)**

Omit “and (4)”, substitute “, (3A), (4) and (5)”.

**24 Subsection 20(2)**

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

**25 After paragraph 21(2)(c)**

Insert:

- and (d) the warrant was not issued to determine whether to apply for a Part 9.10 order;

**26 Subsection 21(2)**

Omit “subsection (3)”, substitute “subsections (3) and (3A)”.

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**27 After subsection 21(3)**

Insert:

- (3A) The chief officer is required to take steps under subsection (2) in relation to a surveillance device warrant that is issued on the basis of a community safety supervision order that was in force in relation to a person only if neither the community safety supervision order, nor any succeeding community safety supervision order, is in force in relation to the person.

**28 Subsection 21(5)**

Omit “subsection (6)”, substitute “subsections (6) and (7)”.

**29 At the end of section 21**

Add:

- (7) If the law enforcement officer to whom a warrant is issued, or who is primarily responsible for executing a warrant issued, on the basis that a community safety supervision order was in force in relation to a person believes that neither that order, nor any succeeding community safety supervision order, is in force in relation to the person, the officer must immediately inform the chief officer of the law enforcement agency to which the officer belongs or is seconded.

**30 After subsection 27A(5A)**

Insert:

*Warrants sought for Part 9.10 order applications*

- (5B) A law enforcement officer (or another person on the officer’s behalf) may apply for the issue of a computer access warrant if:
- (a) a person is a serious offender in relation to whom an application for a Part 9.10 order could be made; and
  - (b) the officer suspects on reasonable grounds that there is an appreciable risk of the person committing a serious violent or sexual offence; and
  - (c) consideration is being given, will be given, or is likely to be given, by the Immigration Minister (or a person on behalf of

- the Immigration Minister), as to whether to apply for a Part 9.10 order in relation to the person; and
- (d) the officer suspects on reasonable grounds that access to data held in a computer (the *target computer*) would be likely to assist in determining whether to apply for the Part 9.10 order.

### **31 After subsection 27A(6)**

Insert:

#### *Warrants sought for community safety supervision orders*

- (6A) A law enforcement officer (or another person on the officer's behalf) may apply for the issue of a computer access warrant if:
- (a) a community safety supervision order is in force in relation to a person; and
- (b) the officer suspects on reasonable grounds that access to data held in a computer (the *target computer*) to obtain information relating to the person would be likely to substantially assist in:
- (i) achieving a Part 9.10 object; or
- (ii) determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with.

Note: For community safety supervision orders that have been made but not come into force, see section 6E.

### **32 Subsection 27A(7)**

Omit “or (6)”, substitute “, (5B), (6) or (6A)”.

### **33 After subsection 27A(13)**

Insert:

#### *Unsworn applications—warrants sought for community safety supervision orders*

- (13A) If a law enforcement officer believes that:
- (a) immediate access to data held in the target computer referred to in subsection (6A) would be likely to substantially assist as described in paragraph (6A)(b); and

(b) it is impracticable for an affidavit to be prepared or sworn before an application for a warrant is made;  
an application for a warrant under subsection (6A) may be made before an affidavit is prepared or sworn.

*Applicant must provide information*

**34 Subsection 27A(14)**

After “(13)”, insert “or (13A)”.

**35 Subsection 27A(15)**

Omit “or (6)”, substitute “, (5B), (6) or (6A)”.

**36 After paragraph 27C(1)(da)**

Insert:

(db) in the case of a computer access warrant sought to determine whether to apply for a Part 9.10 order—that the conditions in paragraphs 27A(5B)(a) and (c) are met, and there are reasonable grounds for the suspicions founding the application for the warrant (as mentioned in paragraphs 27A(5B)(b) and (d)); and

**37 After paragraph 27C(1)(e)**

Insert:

(ea) in the case of a computer access warrant sought in relation to a community safety supervision order that is in force in relation to a person—that the order is in force in relation to the person, and there are reasonable grounds for the suspicion founding the application for the warrant (as mentioned in paragraph 27A(6A)(b)); and

**38 Subsection 27C(1) (at the end of the note)**

Add “For community safety supervision orders that have been made but not come into force, see section 6E.”.

**39 At the end of section 27C**

Add:

- (5) In addition to the matters in subsection (2), in determining whether to issue a computer access warrant sought to determine whether to apply for a Part 9.10 order in relation to a person, the eligible Judge or nominated AAT member must have regard to:
- (a) the likely value of the information sought to be obtained in determining whether to apply for the Part 9.10 order; and
  - (b) any previous application for a computer access warrant sought or issued to determine whether to apply for a Part 9.10 order in relation to the person.
- (6) In addition to the matters in subsection (2), in determining whether to issue a computer access warrant sought in a case where a community safety supervision order is in force in relation to a person, the eligible Judge or nominated AAT member must have regard to:
- (a) the likely value of the information sought to be obtained, in:
    - (i) achieving a Part 9.10 object; or
    - (ii) determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with; and
  - (b) whether the access to the data in accordance with the warrant would be the means of obtaining the evidence or information sought to be obtained, that is likely to have the least interference with any person's privacy; and
  - (c) the possibility that the person has committed, is committing, or will commit, a serious violent or sexual offence; and
  - (d) the possibility that the person has contravened, is contravening, or will contravene, the community safety supervision order or a succeeding community safety supervision order; and
  - (e) any previous computer access warrant sought or issued on the basis of a community safety supervision order that is or was in force in relation to the person.

**40 Paragraph 27D(1)(a)**

Omit “and (4)”, substitute “, (4), (5) and (6)”.

**41 After subsection 27D(2)**

Insert:

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- (2A) If a computer access warrant is issued to determine whether to apply for a Part 9.10 order in relation to a person, the warrant must also specify the name of the person.
- (2B) If a computer access warrant is issued on the basis of a community safety supervision order that is in force in relation to a person, the warrant must also specify the following details:
- (a) the name of the person;
  - (b) the date the community safety supervision order was made;
  - (c) if (disregarding section 6E) the order is not already in force—when the order comes into force.

#### **42 After subsection 27D(3A)**

Insert:

- (3B) To avoid doubt, a warrant issued on the basis that a community safety supervision order is in force remains in force for the period mentioned in paragraph (3)(a) even if the order ceases to be in force, provided that the order is replaced by a succeeding community safety supervision order.

Note: If there is no succeeding community safety supervision order, the warrant must be revoked (see section 27H).

#### **43 At the end of subsection 27E(4)**

Add:

- ; or (f) in the case of a warrant sought to determine whether to apply for a Part 9.10 order—access to the data would be likely to assist as described in paragraph 27A(5B)(d); or
- (g) in the case of a warrant issued on the basis of a community safety supervision order that is in force in relation to a person—access to the data would be likely to substantially assist as described in paragraph 27A(6A)(b).

#### **44 Subsection 27F(4)**

Omit “and (4)”, substitute “, (4), (5) and (6)”.

#### **45 Subsection 27G(2)**

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

**46 After paragraph 27H(2)(c)**

Insert:

and (d) the warrant was not issued to determine whether to apply for a Part 9.10 order;

**47 Subsection 27H(2)**

Omit “subsection (3)”, substitute “subsections (3) and (4)”.

**48 Subsection 27H(3)**

Omit “surveillance device warrant”, substitute “computer access warrant”.

**49 After subsection 27H(3)**

Insert:

- (4) The chief officer is required to take steps under subsection (2) in relation to a computer access warrant that is issued on the basis of a community safety supervision order that was in force in relation to a person only if neither the community safety supervision order, nor any succeeding community safety supervision order, is in force in relation to the person.

**50 At the end of section 27H**

Add:

- (11) If the law enforcement officer to whom a warrant is issued, or who is primarily responsible for executing a warrant issued, on the basis that a community safety supervision order was in force in relation to a person believes that neither the community safety supervision order, nor any succeeding community safety supervision order, is in force in relation to the person, the officer must immediately inform the chief officer of the law enforcement agency to which the officer belongs or is seconded.

**51 At the end of section 37**

Add:

- (5) If a community safety supervision order is in force in relation to a person, a State or Territory law enforcement officer acting in the



course of the officer's duties may, without warrant, use an optical surveillance device to obtain information about the activities of the person for either of the following purposes:

- (a) achieving a Part 9.10 object;
- (b) determining whether the community safety supervision order has been, or is being, complied with;

if the use of that device does not involve:

- (c) entry onto premises without permission; or
- (d) interference without permission with any vehicle or thing.

## **52 After subsection 38(3A)**

Insert:

- (3B) If a community safety supervision order is in force in relation to a person, a State or Territory law enforcement officer acting in the course of the officer's duties may, without warrant, use a surveillance device to obtain information relating to the person for either of the following purposes:

- (a) achieving a Part 9.10 object;
- (b) determining whether the community safety supervision order has been, or is being, complied with;

if the use involves listening to, or recording, words spoken by a person, and the use is confined to circumstances where:

- (c) the State or Territory law enforcement officer is the speaker of the words or is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard; or
- (d) the State or Territory law enforcement officer listens to or records the words with the consent, express or implied, of a person who is permitted to listen to or record the words:
  - (i) by paragraph (c); or
  - (ii) so far as subsection (7) applies in relation to the community safety supervision order—by that subsection.

## **53 At the end of section 38**

Add:

(7) If:

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- (a) a community safety supervision order is in force in relation to a person; and
  - (b) a person (other than a State or Territory law enforcement officer) is assisting a State or Territory law enforcement officer who is acting in the course of the officer's duties in relation to either of the following purposes:
    - (i) achieving a Part 9.10 object;
    - (ii) determining whether the community safety supervision order has been, or is being, complied with;
- the person assisting may, without warrant, use a surveillance device to obtain information relating to the person mentioned in paragraph (a) if:
- (c) the use involves listening to, or recording, words spoken by a person; and
  - (d) the person assisting is the speaker of the words or is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard.

**54 After subsection 39(3B)**

Insert:

- (3C) If a community safety supervision order is in force in relation to a person, a law enforcement officer may, with the written permission of an appropriate authorising officer, use a tracking device without a warrant to obtain information relating to the person for either of the following purposes:
- (a) achieving a Part 9.10 object;
  - (b) determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with.

**55 Subsection 39(4)**

Omit "and (3B)", substitute ", (3B) and (3C)".

**56 Subsections 39(5) and (7)**

Omit "or (3B)", substitute ", (3B) or (3C)".

**57 After paragraph 40(1)(db)**

Insert:

- (dc) if the authorisation is given on the basis of a community safety supervision order that is in force in relation to a person—the following details:
  - (i) the name of the person;
  - (ii) the date the order was made;
  - (iii) if (disregarding section 6E) the order is not already in force—when the order comes into force; and

**58 Subparagraph 45(5)(ia)(i)**

Omit “or Division 105A (post-sentence orders)”, substitute “, Division 105A (post-sentence orders) or Division 395 (community safety orders)”.

**59 After paragraph 45(5)(k)**

Insert:

- (ka) in the case of information:
  - (i) obtained under a warrant issued on the basis of a community safety supervision order that is or was in force; or
  - (ii) relating to an application for, the issue of, the existence of, or the expiration of, such a warrant; or
  - (iii) that is likely to enable the identification of a person, object or premises specified in such a warrant;determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with;
- (kb) in the case of information:
  - (i) obtained under a tracking device authorisation given on the basis of a community safety supervision order; or
  - (ii) relating to an application for, the giving of, the existence of, or the expiration of, a tracking device authorisation given on the basis of a community safety supervision order; or
  - (iii) that is likely to enable the identification of a person, object or premises specified in a tracking device

authorisation given on the basis of a community safety supervision order;  
determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with;

**60 Subsection 45(5A)**

Omit “and (j)”, substitute “, (j) and (ka)”.

**61 Subsection 45(5A) (at the end of the note)**

Add “or a Part 9.10 order”.

**62 Subsection 45(6)**

Omit “(k)”, substitute “(kb)”.

**63 After section 46A**

Insert:

**46B Destruction of records—information obtained before a community safety supervision order came into force**

(1) If:

- (a) a record or report is in the possession of a law enforcement agency; and
- (b) the record or report comprises information obtained from the use of a surveillance device under:
  - (i) a surveillance device warrant; or
  - (ii) a tracking device authorisation;issued or given on the basis of a community safety supervision order made in relation to a person; and
- (c) in the case of a surveillance device warrant issued on the basis that a community safety supervision order was in force—the warrant was issued for the purpose, or for purposes that include the purpose, of obtaining information that would be likely to substantially assist in connection with determining whether the order, or any succeeding community safety supervision order, has been, or is being, complied with; and

- (d) in the case of a tracking device authorisation—the authorisation was given to obtain information relating to the person for the purpose, or for purposes that include the purpose, of determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with; and
- (e) the use of the surveillance device occurred when the community safety supervision order had been made, but had not come into force; and
- (f) the chief officer of the agency is satisfied that none of the information obtained from the use of the surveillance device is likely to assist in connection with achieving a Part 9.10 object;

the chief officer of the agency must cause the record or report to be destroyed as soon as practicable.

(2) If:

- (a) a record or report is in the possession of a law enforcement agency; and
- (b) the record or report comprises information obtained from access to data under a computer access warrant issued on the basis of a community safety supervision order made in relation to a person; and
- (c) the warrant was issued for the purpose, or for purposes that include the purpose, of obtaining information that would be likely to substantially assist in connection with determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with; and
- (d) access to the data occurred when the community safety supervision order had been made, but had not come into force; and
- (e) the chief officer of the agency is satisfied that none of the information obtained from accessing the data is likely to assist in connection with achieving a Part 9.10 object;

the chief officer of the agency must cause the record or report to be destroyed as soon as practicable.

(3) Section 6E does not apply to subsection (1) or (2) of this section.

**64 After subparagraph 49(2)(b)(xb)**

Insert:

- (xc) if the warrant is a Part 9.10 warrant—give the details specified in subsection (2AA); and

**65 After subsection 49(2A)**

Insert:

(2AA) For the purposes of subparagraph (2)(b)(xc), the details are:

- (a) if the warrant was issued to determine whether to apply for a Part 9.10 order—the benefit of the use of the device in determining whether to make the application; and
- (b) if the warrant was issued on the basis of a community safety supervision order that is or was in force in relation to a person—the benefit of the use of the device in:
  - (i) achieving a Part 9.10 object; or
  - (ii) determining whether the community safety supervision order has been, or is being, complied with; and
- (c) the general use to be made of any evidence or information obtained by the use of the device.

**66 After subparagraph 49(2B)(b)(ix)**

Insert:

- (ixa) if the warrant is a Part 9.10 warrant—give the details specified in subsection (2CA); and

**67 After subsection 49(2C)**

Insert:

(2CA) For the purposes of subparagraph (2B)(b)(ixa), the details are:

- (a) if the warrant was issued to determine whether to apply for a Part 9.10 order—the benefit of obtaining access to data held in the computer in determining whether to make the application; and
- (b) if the warrant was issued on the basis of a community safety supervision order that is or was in force in relation to a person—the benefit of obtaining access to data held in the computer in:

- (i) achieving a Part 9.10 object; or
- (ii) determining whether the community safety supervision order has been, or is being, complied with; and
- (c) the general use to be made of any evidence or information obtained by access to data held in the computer.

**68 Section 49A (at the end of the heading)**

Add “or Part 9.10 warrants”.

**69 Subsection 49A(1)**

After “Part 5.3 warrant”, insert “or a Part 9.10 warrant”.

**70 After paragraph 49A(2)(c)**

Insert:

- (ca) section 46B;

**71 Subsection 49A(4)**

After “Part 5.3 supervisory order”, insert “, or a community safety supervision order,”.

**72 Subsections 50A(2) to (5)**

After “Part 5.3 information” (wherever occurring), insert “or Part 9.10 information”.

**73 Subsection 50A(6)**

Insert:

**Part 9.10 information** means information that, if made public, could reasonably be expected to enable a reasonable person to conclude that:

- (a) a surveillance device warrant issued in response to an application under subsection 14(3D) or (3E) authorising:
  - (i) the use of a surveillance device on particular premises; or
  - (ii) the use of a surveillance device in or on a particular object or class of object; or

- (iii) the use of a surveillance device in respect of the conversations, activities or location of a particular person;  
is likely to be, or is not likely to be, in force; or
- (b) a computer access warrant issued in response to an application under subsection 27A(5B) or (6A) authorising:
  - (i) access to data held in a particular computer; or
  - (ii) access to data held in a computer on particular premises;  
or
  - (iii) access to data held in a computer associated with, used by or likely to be used by, a particular person;  
is likely to be, or is not likely to be, in force.

**74 Paragraph 52(1)(j)**

After “(1A)”, insert “or 46B(1) or (2)”.

**75 Subparagraph 53(2)(c)(iiic)**

After “Part 5.3 supervisory order”, insert “, or a community safety supervision order,”.

**76 Subsection 55(2A)**

After “Part 5.3 warrants”, insert “or Part 9.10 warrants”.

**77 Subsection 61(4) (at the end of the heading)**

Add “*or Part 9.10 information*”.

**78 At the end of subsection 61(4)**

Add “or Part 9.10 information”.

**79 Paragraphs 61(6)(c) and (d)**

After “Part 5.3 information”, insert “or Part 9.10 information”.

**80 Section 61A (at the end of the heading)**

Add “**or Part 9.10 warrants**”.

**81 Subsection 61A(1)**

After “Part 5.3 warrants”, insert “or Part 9.10 warrants”.



## **82 After subsection 64A(6)**

Insert:

### *Part 9.10 warrants*

- (6AA) In the case of a computer that is subject to a Part 9.10 warrant that is a computer access warrant, the eligible Judge or nominated AAT member may grant the assistance order if the eligible Judge or nominated AAT member is satisfied that:
- (a) there are reasonable grounds for suspecting that access to the data held in the computer would be likely to substantially assist in:
    - (i) if the computer access warrant was issued to determine whether to apply for a Part 9.10 order—determining whether to apply for the Part 9.10 order; or
    - (ii) if the computer access warrant was issued on the basis of a community safety supervision order that is in force—achieving a Part 9.10 object, or determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with; and
  - (b) the specified person is:
    - (i) if the warrant was issued to determine whether to apply for a Part 9.10 order—the person to whom the application relates; or
    - (ii) if the warrant was issued in relation to a community safety supervision order that is in force—the subject of the community safety supervision order; or
    - (iii) the owner or lessee of the computer; or
    - (iv) an employee of the owner or lessee of the computer; or
    - (v) a person engaged under a contract for services by the owner or lessee of the computer; or
    - (vi) a person who uses or has used the computer; or
    - (vii) a person who is or was a system administrator for the system including the computer; and
  - (c) the specified person has relevant knowledge of:
    - (i) the computer or a computer network of which the computer forms or formed a part; or

- (ii) measures applied to protect data held in the computer.

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

### **83 Subsection 5(1)**

Insert:

***community safety detention order*** has the same meaning as in Division 395 of the *Criminal Code*.

***community safety supervision order*** has the same meaning as in Division 395 of the *Criminal Code*.

***Immigration Minister*** means the Minister administering the *Migration Act 1958*.

***Part 9.10 object*** means the protection of the community from serious harm by addressing the unacceptable risk of a serious offender committing serious violent or sexual offences.

***Part 9.10 order*** means a community safety detention order or a community safety supervision order.

***Part 9.10 warrant*** means a warrant issued:

- (a) under subsection 46(9) or (12) or 46A(2E) or (2G); or
- (b) under section 48 in the circumstances mentioned in subsection 46(9) or (12).

***Part 9.10 warrant agency*** means:

- (a) a Commonwealth agency; or
- (b) an eligible authority of a State that a declaration in force under section 34 authorises to apply for Part 9.10 warrants.

### **84 Subsection 5(1) (at the end of paragraph (b) of the definition of *permitted purpose*)**

Add:

- (x) the performance of a function or duty, or the exercise of a power, by a person, court or other body under, or in relation to a matter arising under, Division 395 of the *Criminal Code* (community safety orders); or

- (xi) the making of a decision whether to apply for a Part 9.10 order, or for a variation or review of a Part 9.10 order, under Division 395 of the *Criminal Code* in relation to a person; or

## **85 Subsection 5(1)**

Insert:

*serious offender* has the same meaning as in Division 395 of the *Criminal Code*.

*serious violent or sexual offence* has the same meaning as in Division 395 of the *Criminal Code*.

*succeeding community safety supervision order* has the meaning given by section 6UB.

## **86 After paragraph 5B(1)(bb)**

Insert:

- (bba) a proceeding under, or a proceeding relating to a matter arising under, Division 395 of the *Criminal Code* (community safety orders); or

## **87 Paragraph 6H(a)**

Omit “or 46(7)(c) to (h)”, substitute “46(7)(c) to (h), 46(9)(c), (d) and (e), or 46(12)(c) to (g)”.

## **88 Paragraph 6H(b)**

Omit “or 46A(2C)(c) to (h)”, substitute “, 46A(2C)(c) to (h), 46A(2E)(c), (d) and (e), or 46A(2G)(a) to (g)”.

## **89 After section 6U**

Insert:

### **6UA When a community safety supervision order is taken to be in force**

For the purposes of this Act, a community safety supervision order is taken to be in force in relation to a person if the order has been

made but the period specified in the order under paragraph 395.13(5)(d) of the *Criminal Code* has not yet begun.

**6UB Succeeding community safety supervision orders**

- (1) If a community safety supervision order is made in relation to a person, any later community safety supervision order in relation to the person is a ***succeeding community safety supervision order*** in relation to an earlier community safety supervision order.
- (2) If 2 or more successive community safety supervision orders are made in relation to the same person, each later community safety supervision order is a ***succeeding community safety supervision order*** in relation to each earlier community safety supervision order.

**90 Subsection 7(9) (at the end of the note)**

Add:

; or (c) purposes relating to a community safety supervision order or an application for a Part 9.10 order.

**91 Section 34 (note)**

After “Part 5.3 warrants”, insert “or Part 9.10 warrants”.

**92 Section 34 (note)**

Omit “section 38A”, substitute “sections 38A and 38B”.

**93 At the end of Division 2 of Part 2-5**

Add:

**38B Agencies authorised to apply for Part 9.10 warrants**

- (1) This section applies to a declaration made under section 34 in relation to an eligible authority of a State.

*Authorisation*

- (2) When the Minister makes the declaration, the Minister must, in the declaration, authorise the eligible authority to apply for Part 9.10 warrants if:

- (a) the Premier of the State requests that the eligible authority be so authorised; and
  - (b) the Minister is satisfied as mentioned in subsection (4) of this section.
- (3) The Minister must amend the declaration to authorise the eligible authority to apply for Part 9.10 warrants if:
  - (a) the declaration does not already so authorise the eligible authority; and
  - (b) the Premier of the State requests that the eligible authority be so authorised; and
  - (c) the Minister is satisfied as mentioned in subsection (4).

*Criteria to be authorised to apply for a Part 9.10 warrant*

- (4) For the purposes of paragraph (2)(b) or (3)(c), the Minister must be satisfied that the law of the State makes satisfactory provision:
  - (a) imposing on the chief officer of the eligible authority requirements corresponding to the requirements that paragraphs 80(f) and (g) and 81(1)(h) and subsection 81(2), so far as that subsection relates to paragraph 81(1)(h), impose on the chief officer of a Commonwealth agency; and
  - (b) imposing on the chief officer of the eligible authority requirements corresponding to the requirements that section 59C imposes on the chief officer of a Commonwealth agency; and
  - (c) giving an authority of the State powers corresponding to those that subsections 83(3) and 84(2) and sections 85 and 85B give to the Ombudsman, if the authority of the State receives a notice from the eligible authority because of the requirements mentioned in paragraph (b) of this subsection; and
  - (d) requiring an authority of the State that has made an inspection of the eligible authority's records under the powers mentioned in paragraph (c) to report in writing to the responsible Minister about the results of the inspection; and
  - (e) requiring the responsible Minister to give to the Minister, as soon as practicable, a copy of a report that an authority of the State gives to the responsible Minister under a power or requirement mentioned in paragraph (c) or (d).

*Removal of authorisation*

- (5) The Minister must amend the declaration to remove the authorisation of the eligible authority to apply for Part 9.10 warrants if the Premier of the State requests the Minister to remove the authorisation.
- (6) The Minister may amend the declaration to remove the authorisation of the eligible authority to apply for Part 9.10 warrants if the Minister is satisfied that:
  - (a) the law of the State no longer makes satisfactory provision in relation to the eligible authority as mentioned in subsection (4); or
  - (b) the extent of compliance with a requirement of a law of that State, being a requirement of a kind mentioned in subsection (4), has been unsatisfactory in so far as the requirement relates to the eligible authority; or
  - (c) the extent of compliance by the chief officer of the eligible authority, or by officers of the eligible authority, with this Act has been unsatisfactory, so far as this Act relates to Part 9.10 warrants.
- (7) If the Minister amends the declaration under subsection (5) or (6), the amendment does not affect the validity of a Part 9.10 warrant issued before the amendment in response to an application by the eligible authority.

**94 Paragraph 44A(2)(a)**

Omit “or 46(8)(a) to (e)”, substitute “, 46(8)(a) to (e), 46(10)(a) to (h) or 46(13)(a) to (e)”.

**95 Paragraph 44A(2)(b)**

Omit “or 46A(2D)(a) to (e)”, substitute “, 46A(2D)(a) to (e), 46A(2F)(a) to (h) or 46A(2H)(a) to (e)”.

**96 Paragraph 45(2)(a)**

Omit “or 46(8)(a) to (e)”, substitute “, 46(8)(a) to (e), 46(10)(a) to (h) or 46(13)(a) to (e)”.

**97 Paragraph 45(2)(b)**

Omit “or 46A(2D)(a) to (e)”, substitute “, 46A(2D)(a) to (e), 46A(2F)(a) to (h) or 46A(2H)(a) to (e)”.

**98 At the end of section 46**

Add:

*Warrant sought for community safety supervision order*

- (9) If a Part 9.10 warrant agency applies to an eligible Judge or nominated AAT member for a warrant in respect of a telecommunications service and the Judge or nominated AAT member is satisfied, on the basis of the information given to the Judge or nominated AAT member under this Part in connection with the application, that:
- (a) Division 3 has been complied with in relation to the application; and
  - (b) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
  - (c) there are reasonable grounds for suspecting that a particular person is using, or is likely to use, the service; and
  - (d) either:
    - (i) a community safety supervision order is in force in relation to the particular person; or
    - (ii) a community safety supervision order is in force in relation to another person, and the particular person is likely to communicate with the other person using the service; and
  - (e) information that would be likely to be obtained by intercepting under a warrant communications made to or from the service would be likely to substantially assist in connection with:
    - (i) achieving a Part 9.10 object; or
    - (ii) determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with; and
  - (f) having regard to the matters referred to in subsection (10), and to no other matters, the Judge or nominated AAT

member should issue a warrant authorising such communications to be intercepted;  
the Judge or nominated AAT member may, in the Judge or member's discretion, issue such a warrant.

Note 1: Subsection (11) restricts the issuing of warrants if subparagraph (d)(ii) applies.

Note 2: For community safety supervision orders that have been made but not come into force, see section 6UA.

- (10) For the purposes of subsection (9), the matters to which the Judge or nominated AAT member must have regard are:
- (a) how much the privacy of any person or persons would be likely to be interfered with by intercepting under a warrant communications made to or from the service referred to in subsection (9); and
  - (b) how much the information referred to in paragraph (9)(e) would be likely to assist in connection with:
    - (i) achieving a Part 9.10 object; or
    - (ii) determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with; and
  - (c) to what extent methods for:
    - (i) achieving a Part 9.10 object; or
    - (ii) determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with;that do not involve so intercepting communications have been used by, or are available to, the agency; and
  - (d) how much the use of such methods would be likely to assist in connection with:
    - (i) achieving a Part 9.10 object; or
    - (ii) determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with; and
  - (e) how much the use of such methods would be likely to prejudice:
    - (i) achieving a Part 9.10 object; or



- (ii) determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with; whether because of delay or for any other reason; and
  - (f) whether intercepting under a warrant communications made to or from the service referred to in subsection (9) would be the method that is likely to have the least interference with any person's privacy; and
  - (g) the possibility that the person in relation to whom the order is in force has committed, is committing, or will commit a serious violent or sexual offence; and
  - (h) the possibility that the person in relation to whom the order is in force:
    - (i) has contravened, is contravening or will contravene the community safety supervision order; or
    - (ii) will contravene a succeeding community safety supervision order; and
  - (i) in relation to an application by an interception agency of Victoria—any submissions made by the Victorian PIM under section 44A to the Judge or nominated AAT member; and
  - (j) in relation to an application by an interception agency of Queensland—any submissions made by the Queensland PIM under section 45 to the Judge or nominated AAT member.
- (11) The Judge or nominated AAT member must not issue a warrant in a case in which subparagraph (9)(d)(ii) applies unless the Judge or nominated AAT member is satisfied that:
- (a) the agency has exhausted all other practicable methods of identifying the telecommunications services used, or likely to be used, by the person to whom the community safety supervision order referred to in subparagraph (9)(d)(ii) relates; or
  - (b) interception of communications made to or from a telecommunications service used or likely to be used by that person would not otherwise be possible.

*Warrant sought for Part 9.10 order application*

- (12) If a Part 9.10 warrant agency applies to an eligible Judge or nominated AAT member for a warrant in respect of a
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telecommunications service and the Judge or nominated AAT member is satisfied, on the basis of the information given to the Judge or nominated AAT member under this Part in connection with the application, that:

- (a) Division 3 has been complied with in relation to the application; and
- (b) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
- (c) there are reasonable grounds for suspecting that a particular person is using, or is likely to use, the service; and
- (d) the person is a serious offender in relation to whom an application for a Part 9.10 order could be made; and
- (e) there are reasonable grounds to suspect that there is an appreciable risk of the person committing a serious violent or sexual offence; and
- (f) consideration is being given, will be given, or is likely to be given, by the Immigration Minister (or a person on behalf of the Immigration Minister), as to whether to apply for a Part 9.10 order in relation to the person; and
- (g) information that would be likely to be obtained by intercepting under a warrant communications made to or from the service would be likely to assist in determining whether to apply for the Part 9.10 order; and
- (h) having regard to the matters referred to in subsection (13), and to no other matters, the Judge or nominated AAT member should issue a warrant authorising such communications to be intercepted;

the Judge or nominated AAT member may, in the Judge's or member's discretion, issue such a warrant.

- (13) For the purposes of subsection (12), the matters to which the Judge or nominated AAT member must have regard are:
- (a) how much the privacy of any person or persons would be likely to be interfered with by intercepting under a warrant communications made to or from the service referred to in subsection (12); and

- (b) how much the information referred to in paragraph (12)(g) would be likely to assist in determining whether to apply for the Part 9.10 order; and
- (c) to what extent methods of determining whether to apply for the Part 9.10 order that do not involve so intercepting communications have been used by, or are available to, the Immigration Minister (or a legal representative of the Immigration Minister); and
- (d) how much the use of such methods would be likely to assist in determining whether to apply for the Part 9.10 order; and
- (e) how much the use of such methods would be likely to prejudice determining whether to apply for the Part 9.10 order, whether because of delay or for any other reason; and
- (f) in relation to an application by an interception agency of Victoria—any submissions made by the Victorian PIM under section 44A to the Judge or nominated AAT member; and
- (g) in relation to an application by an interception agency of Queensland—any submissions made by the Queensland PIM under section 45 to the Judge or nominated AAT member.

## **99 After subsection 46A(2D)**

Insert:

### *Warrant for community safety supervision order*

- (2E) If a Part 9.10 warrant agency applies to an eligible Judge or nominated AAT member for a warrant in respect of a person and the Judge or nominated AAT member is satisfied, on the basis of the information given to the Judge or nominated AAT member under this Part in connection with the application, that:
  - (a) Division 3 has been complied with in relation to the application; and
  - (b) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
  - (c) there are reasonable grounds for suspecting that a particular person is using, or is likely to use, more than one telecommunications service; and

- (d) a community safety supervision order is in force in relation to the person; and
- (e) information that would be likely to be obtained by intercepting under a warrant:
  - (i) communications made to or from any telecommunications service that the person is using, or is likely to use; or
  - (ii) communications made by means of a particular telecommunications device or particular telecommunications devices that the person is using, or is likely to use;would be likely to substantially assist in connection with:
  - (iii) achieving a Part 9.10 object; or
  - (iv) determining whether the community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with; and
- (f) having regard to the matters referred to in subsection (2F), and to no other matters, the Judge or nominated AAT member should issue a warrant authorising such communications to be intercepted;

the Judge or nominated AAT member may, in the Judge or member's discretion, issue such a warrant.

Note 1: Subsection (3) restricts the issuing of a warrant authorising interception of communications made by means of a telecommunications device or telecommunications devices identified in the warrant.

Note 2: For community safety supervision orders that have been made but not come into force, see section 6UA.

- (2F) For the purposes of subsection (2E), the matters to which the Judge or nominated AAT member must have regard are:
- (a) how much the privacy of any person or persons would be likely to be interfered with by intercepting under a warrant:
    - (i) communications made to or from any telecommunications service used, or likely to be used, by the person in respect of whom the warrant is sought; or
    - (ii) communications made by means of a particular telecommunications device or particular

- telecommunications devices used, or likely to be used,  
by the person in respect of whom the warrant is sought;  
as the case requires; and
- (b) how much the information referred to in paragraph (2E)(e)  
would be likely to assist in connection with:
- (i) achieving a Part 9.10 object; or
  - (ii) determining whether the community safety supervision  
order, or any succeeding community safety supervision  
order, has been, or is being, complied with; and
- (c) to what extent methods (including the use of a warrant issued  
under section 46) for:
- (i) achieving a Part 9.10 object; or
  - (ii) determining whether the community safety supervision  
order, or any succeeding community safety supervision  
order, has been, or is being, complied with;
- that do not involve the use of a warrant issued under this  
section in relation to the person have been used by, or are  
available to, the agency; and
- (d) how much the use of such methods would be likely to assist  
in connection with:
- (i) achieving a Part 9.10 object; or
  - (ii) determining whether the community safety supervision  
order, or any succeeding community safety supervision  
order, has been, or is being, complied with; and
- (e) how much the use of such methods would be likely to  
prejudice:
- (i) achieving a Part 9.10 object; or
  - (ii) determining whether the community safety supervision  
order, or any succeeding community safety supervision  
order, has been, or is being, complied with;
- whether because of delay or for any other reason; and
- (f) whether intercepting under a warrant communications  
referred to in paragraph (a) of this subsection would be the  
method that is likely to have the least interference with any  
person's privacy; and
- (g) the possibility that the person in relation to whom the order is  
in force has committed, is committing, or will commit a  
serious violent or sexual offence; and
-

- (h) the possibility that the person in relation to whom the order is in force:
  - (i) has contravened, is contravening, or will contravene, the community safety supervision order; or
  - (ii) will contravene a succeeding community safety supervision order; and
- (i) in relation to an application by an interception agency of Victoria—any submissions made by the Victorian PIM under section 44A to the Judge or nominated AAT member; and
- (j) in relation to an application by an interception agency of Queensland—any submissions made by the Queensland PIM under section 45 to the Judge or nominated AAT member.

*Warrant sought for Part 9.10 order application*

- (2G) If a Part 9.10 warrant agency applies to an eligible Judge or nominated AAT member for a warrant in respect of a person and the Judge or nominated AAT member is satisfied, on the basis of the information given to the Judge or nominated AAT member under this Part in connection with the application, that:
- (a) Division 3 has been complied with in relation to the application; and
  - (b) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
  - (c) there are reasonable grounds for suspecting that a particular person is using, or is likely to use, more than one telecommunications service; and
  - (d) the person is a serious offender in relation to whom an application for a Part 9.10 order could be made; and
  - (e) there are reasonable grounds to suspect that there is an appreciable risk of the person committing a serious violent or sexual offence; and
  - (f) consideration is being given, will be given, or is likely to be given, by the Immigration Minister (or a person on behalf of the Immigration Minister), as to whether to apply for a Part 9.10 order in relation to the person; and
  - (g) information that would be likely to be obtained by intercepting under a warrant:

- (i) communications made to or from any telecommunications service that the person is using, or is likely to use; or
  - (ii) communications made by means of a particular telecommunications device or particular telecommunications devices that the person is using, or is likely to use;
- would be likely to assist in determining whether to apply for the Part 9.10 order; and
- (h) having regard to the matters referred to in subsection (2H), and to no other matters, the Judge or nominated AAT member should issue a warrant authorising such communications to be intercepted;
- the Judge or nominated AAT member may, in the Judge's or member's discretion, issue such a warrant.
- (2H) For the purposes of subsection (2G), the matters to which the Judge or nominated AAT member must have regard are:
- (a) how much the privacy of any person or persons would be likely to be interfered with by intercepting under a warrant:
    - (i) communications made to or from any telecommunications service used, or likely to be used, by the person in respect of whom the warrant is sought; or
    - (ii) communications made by means of a particular telecommunications device or particular telecommunications devices used, or likely to be used, by the person in respect of whom the warrant is sought; and
  - (b) how much the information referred to in paragraph (2G)(g) would be likely to assist in connection with determining whether to apply for the Part 9.10 order; and
  - (c) to what extent methods (including the use of a warrant issued under section 46) for determining whether to apply for a Part 9.10 order that do not involve so intercepting communications have been used by, or are available to, the Immigration Minister (or a legal representative of the Immigration Minister); and

- (d) how much the use of such methods would be likely to assist in determining whether to apply for the Part 9.10 order; and
- (e) how much the use of such methods would be likely to prejudice determining whether to apply for the Part 9.10 order, whether because of delay or for any other reasons; and
- (f) in relation to an application by an interception agency of Victoria—any submissions made by the Victorian PIM under section 44A to the Judge or nominated AAT member; and
- (g) in relation to an application by an interception agency of Queensland—any submissions made by the Queensland PIM under section 45 to the Judge or nominated AAT member.

**100 Subsection 48(1) (note)**

Omit “Note”, substitute “Note 1”.

**101 At the end of subsection 48(1)**

Add:

Note 2: Only a Part 9.10 warrant agency may apply for a warrant under section 46 in the circumstances mentioned in subsection 46(9) or (12).

**102 Subparagraph 48(3)(d)(ii)**

After “subsection 46(4)”, insert “or (9)”.

**103 Paragraph 49(3)(a)**

Omit “or 46(4)(d)(ii)”, substitute “, 46(4)(d)(ii) or 46(9)(d)(ii)”.

**104 After subsection 49(6A)**

Insert:

- (6B) To avoid doubt, a warrant issued on the basis that a community safety supervision order is in force remains in force for the period mentioned in subsection (3) even if the order ceases to be in force, provided that the order is replaced by a succeeding community safety supervision order.

Note: If there is no succeeding community safety supervision order, the warrant must be revoked (see section 57).



**105 At the end of section 49**

Add:

*Content of warrants issued for community safety supervision orders*

- (10) A warrant issued for a community safety supervision order that is in force must:
- (a) state that the warrant is issued on the basis of a community safety supervision order made in relation to a person; and
  - (b) specify the name of the person; and
  - (c) specify the date the community safety supervision order was made.

*Warrants issued for Part 9.10 order applications*

- (11) A warrant issued to determine whether to make an application for a Part 9.10 order in relation to a person must:
- (a) state that the warrant is issued on that basis; and
  - (b) specify the name of the person.

**106 At the end of section 57**

Add:

- (7) For the purposes of the application of subsection (1) to a community safety supervision order warrant issued on the ground that a community safety supervision order was in force, that ground is taken to have ceased to exist if, and only if, neither that community safety supervision order, nor any succeeding community safety supervision order, is in force.

**107 After section 59B**

Insert:

**59C Notification to Ombudsman by Commonwealth agencies in relation to Part 9.10 warrants**

- (1) Within 6 months after a Part 9.10 warrant is issued in response to an application by a Commonwealth agency, the chief officer of the agency must:

- (a) notify the Ombudsman that the warrant has been issued; and
  - (b) give to the Ombudsman a copy of the warrant.
- (2) As soon as practicable after an officer of a Commonwealth agency contravenes any of the following conditions, restrictions or provisions, the chief officer of the agency must notify the Ombudsman of the contravention:
  - (a) a condition or restriction specified in the warrant under subsection 49(2);
  - (b) the following provisions, to the extent that they apply to the warrant:
    - (i) paragraph 57(1)(b);
    - (ii) subsection 63(1);
    - (iii) subsection 63(2);
    - (iv) section 79;
  - (c) section 79AB;
  - (d) subsection 103B(4).
- (3) A failure to comply with subsection (1) or (2) does not affect the validity of the warrant.

**108 At the end of subsection 65A(2)**

Add:

- ; or (c) any of the following:
  - (i) achieving a Part 9.10 object;
  - (ii) determining whether a community safety supervision order has been, or is being, complied with;
  - (iii) the performance of a function or duty, or the exercise of a power, by a person, court or other body under, or in relation to a matter arising under, Division 395 of the *Criminal Code* (community safety orders).

**109 At the end of subsection 67(1C)**

Add:

- ; or (d) if the information was obtained under a Part 9.10 warrant issued on the basis that a community safety supervision order was in force in relation to a person—any of the following:
  - (i) achieving a Part 9.10 object;

- (ii) determining whether the community safety supervision order has been, or is being, complied with; or
- (e) if the information was obtained under any Part 9.10 warrant—the performance of a function or duty, or the exercise of a power, by a person, court or other body under, or in relation to a matter arising under:
  - (i) Division 395 of the *Criminal Code* (community safety orders); or
  - (ii) a Part 9.10 order.

## **110 After section 79AA**

Insert:

### **79AB Destruction of restricted records—information obtained before a community safety supervision order came into force**

- (1) If:
  - (a) a restricted record is in the possession of an agency; and
  - (b) the restricted record relates to an interception authorised by a community safety supervision order warrant; and
  - (c) the warrant was issued for the purpose, or for purposes that include the purpose, of obtaining information that would be likely to assist in connection with determining whether the relevant community safety supervision order, or any succeeding community safety supervision order, has been, or is being, complied with; and
  - (d) the interception occurred when the community safety supervision order had been made but had not come into force; and
  - (e) the chief officer of the agency is satisfied that none of the information obtained by the interception is likely to assist in connection with achieving a Part 9.10 object;the chief officer of the agency must cause the restricted record to be destroyed as soon as practicable.
- (2) Section 6UA does not apply to subsection (1) of this section.

**111 At the end of subsection 81A(2)**

Add:

- ; and (i) in the case of a Part 9.10 warrant—the name of the person to whom the relevant community safety supervision order or application relates.

**112 After paragraph 81C(2)(h)**

Insert:

- ; (i) in the case of a Part 9.10 warrant—the name of the person to whom the relevant community safety supervision order or application relates.

**113 Subsections 83(1) and (2)**

After “79AA,”, insert “79AB,”.

**114 Subsection 83(3)**

After “(about Part 5.3 warrants)”, insert “or subsection 59C(2) (about Part 9.10 warrants)”.

**115 Subsection 85(3)**

After “79AA,”, insert “79AB,”.

**116 After section 85A**

Insert:

**85B Annual report may cover notified breaches in relation to Part 9.10 warrants**

- (1) In a report under subsection 84(1) in relation to a financial year, the Ombudsman may include a report on a contravention of which the Ombudsman is notified under subsection 59C(2) (about Part 9.10 warrants), if the Ombudsman does not conduct an inspection under subsection 83(3) in relation to a period during which the contravention occurred.

Note: If the Ombudsman conducts an inspection under subsection 83(3), the relevant report under subsection 84(1):

- (a) must include the matters mentioned in subsection 84(1A) in relation to the inspection; and

(b) may include other information about contraventions of this Act (see section 85).

(2) For the purposes of subsection (1), it does not matter whether the Ombudsman is notified under subsection 59C(2) before, during or after the financial year to which the report relates.

(3) Subsection (1) does not limit what the Ombudsman may include in a report under section 84 or 85.

**117 Subsection 103B(2)**

After “Part 5.3 information”, insert “or Part 9.10 information”.

**118 Subsection 103B(3)**

After “Part 5.3 information”, insert “or Part 9.10 information (as the case may be)”.

**119 Paragraphs 103B(4)(a) and (b)**

After “Part 5.3 information”, insert “or Part 9.10 information (as the case may be)”.

**120 Subsection 103B(5)**

After “Part 5.3 information”, insert “or Part 9.10 information (as the case may be)”.

**121 Subsection 103B(6)**

Insert:

***Part 9.10 information*** means information that, if made public, could reasonably be expected to enable a reasonable person to conclude that:

- (a) a Part 9.10 warrant is likely to be, or is not likely to be, in force in relation to a telecommunications service used, or likely to be used, by a particular person; or
- (b) a Part 9.10 warrant is likely to be, or is not likely to be, in force in relation to a particular person.

**122 At the end of the heading to section 139B**

Add “or Part 9.10 orders”.

**123 At the end of subsection 139B(2)**

Add:

; or (c) Division 395 of the *Criminal Code* (community safety orders).

**124 After subparagraph 180D(2)(b)(ia)**

Insert:

(ib) for the purposes of Division 395 of the *Criminal Code* (community safety orders); or

**125 After subparagraph 180D(2)(c)(ia)**

Insert:

(ib) for the purposes of Division 395 of the *Criminal Code* (community safety orders); or

**126 After subparagraph 181B(3)(b)(iia)**

Insert:

(iib) for the purposes of Division 395 of the *Criminal Code* (community safety orders); or

**127 After subparagraph 181B(6)(b)(iaa)**

Insert:

(iab) for the purposes of Division 395 of the *Criminal Code* (community safety orders); or

**128 After subparagraph 182(2)(a)(iiia)**

Insert:

(iiib) for the purposes of Division 395 of the *Criminal Code* (community safety orders); or

**129 After subparagraph 182(3)(a)(iia)**

Insert:

(iib) for the purposes of Division 395 of the *Criminal Code* (community safety orders); or

**130 After subparagraph 182B(b)(iva)**

Insert:

(ivb) for the purposes of Division 395 of the *Criminal Code* (community safety orders); or

## Part 2—Application provisions

### 131 Application provisions—Division 395 and related amendments

- (1) Division 395 of the *Criminal Code*, as inserted by this Schedule, applies in relation to a conviction for a serious violent or sexual offence, or a serious foreign violent or sexual offence, that occurs before, on or after the commencement of this item.
- (2) The *Surveillance Devices Act 2004* and the *Telecommunications (Interception and Access) Act 1979*, as amended by this Schedule, apply in relation to a serious offender, whether the conviction concerned occurs before, on or after the commencement of this item.

### 132 Application provision—declarations

Subsections 38B(3), (5) and (6) of the *Telecommunications (Interception and Access) Act 1979*, as inserted by this Schedule, apply in relation to a declaration that is in force on or after the commencement of this item, whether the declaration was made before, on or after that commencement.

### 133 Application provision—information and documents

The amendments of the *Telecommunications (Interception and Access) Act 1979* made by this Schedule apply in relation to:

- (a) the making of a record of, the disclosure of or the use of information on or after the commencement of this item; and
- (b) the disclosure or use of a document on or after the commencement of this item;

whether the information or document was obtained before, on or after that commencement.



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*[Minister's second reading speech made in—  
House of Representatives on 27 November 2023  
Senate on 5 December 2023]*

(164/23)

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*No. 110, 2023    Migration and Other Legislation Amendment (Bridging Visas, Serious  
Offenders and Other Measures) Act 2023    117*