Telecommunications Legislation Amendment (International Production Orders) Bill 2020

No. , 2020

(Home Affairs)

A Bill for an Act to amend the Telecommunications (Interception and Access) Act 1979, and for other purposes
Contents

1 Short title................................................................. 1
2 Commencement......................................................... 1
3 Schedules...................................................................... 2

Schedule 1—Amendments

Part 1—General amendments

Australian Crime Commission Act 2002 3
Australian Security Intelligence Organisation Act 1979 3
Freedom of Information Act 1982 5
International Criminal Court Act 2002 5
Law Enforcement Integrity Commissioner Act 2006 6
Mutual Assistance in Criminal Matters Act 1987 7
Telecommunications (Interception and Access) Act 1979 8

Part 2—Application provisions

Part 3—Amendment contingent on the commencement of the Federal Circuit and Family Court of Australia Act 2020

Telecommunications (Interception and Access) Act 1979 211

Part 4—Minor amendments

Surveillance Devices Act 2004 212
Telecommunications (Interception and Access) Act 1979 212
A Bill for an Act to amend the Telecommunications (Interception and Access) Act 1979, and for other purposes

The Parliament of Australia enacts:

1 Short title

This Act is the Telecommunications Legislation Amendment (International Production Orders) Act 2020.

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

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>2. Schedule 1, Parts 1 and 2</td>
<td>The day after this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>3. Schedule 1, Part 3</td>
<td>The later of:</td>
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<td></td>
<td>(a) immediately after the commencement of the provisions covered by table item 2; and</td>
<td></td>
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<tr>
<td></td>
<td>(b) the commencement of the <em>Federal Circuit and Family Court of Australia Act 2020</em>.</td>
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<tr>
<td></td>
<td>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</td>
<td></td>
</tr>
<tr>
<td>4. Schedule 1, Part 4</td>
<td>The day after this Act receives the Royal Assent.</td>
<td></td>
</tr>
</tbody>
</table>

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

Part 1—General amendments

Australian Crime Commission Act 2002

1 Paragraph 19A(5)(d)
After “Telecommunications (Interception and Access) Act 1979”, insert “and clause 152 of Schedule 1 to that Act”.

2 Schedule 1
After “Telecommunications (Interception and Access) Act 1979, sections 63 and 133”, insert “and clause 152 of Schedule 1”.

Australian Security Intelligence Organisation Act 1979

3 At the end of section 18
Add:

Communicating information to the Australian Designated Authority etc.

(5) A person referred to in subsection (1) may communicate information to:

(a) the Australian Designated Authority (within the meaning of Schedule 1 to the Telecommunications (Interception and Access) Act 1979); or

(b) an APS employee in the Attorney-General’s Department (within the meaning of that Schedule);

for the purpose of the Australian Designated Authority exercising a power, or performing a function, under that Schedule.

4 After subsection 94(2BB)
Insert:

(2BBA) A report under subsection (1) must also include a statement of:

(a) the relevant statistics about applications made by the Organisation under clause 83 of Schedule 1 to the
Schedule 1 Amendments
Part 1 General amendments

Telecommunications (Interception and Access) Act 1979
during the period; and
(b) the relevant statistics about applications made by the
Organisation under clause 92 of that Schedule during the
period; and
(c) the relevant statistics about applications made by the
Organisation under clause 101 of that Schedule during the
period; and
(d) the number of international production orders issued under
clause 89 of that Schedule that were given by the Australian
Designated Authority to designated communications
providers during the period; and
(e) the number of international production orders issued under
clause 98 of that Schedule that were given by the Australian
Designated Authority to designated communications
providers during the period; and
(f) the number of international production orders issued under
clause 107 of that Schedule that were given by the Australian
Designated Authority to designated communications
providers during the period; and
(g) for each designated international agreement—the number of
international production orders issued under Part 4 of that
Schedule that:
   (i) were given by the Australian Designated Authority to
designated communications providers during the period;
and
   (ii) invoked the designated international agreement; and
(h) if subparagraph 89(2)(e)(ii) or (f)(ii) of that Schedule applied
to one or more international production orders issued under
clause 89 of that Schedule during the period—the number of
those orders; and
(i) the number of international production orders cancelled by
the Australian Designated Authority under clause 112 of that
Schedule during the period; and
(j) the number of international production orders revoked by the
Director-General of Security under clause 116 of that
Schedule during the period; and
(k) if one or more international production orders issued under
Part 4 of that Schedule were cancelled by the Australian
Designated Authority under clause 122 of that Schedule during the period—the number of those orders; and
(l) if there were one or more occasions during the period when protected information obtained in accordance with an international production order issued under Part 4 of that Schedule was communicated by an ASIO official to a person other than an ASIO official—the number of those occasions; and
(m) if one or more objections were received by the Australian Designated Authority under clause 121 of that Schedule during the period in relation to international production orders issued under Part 4 of that Schedule:
(i) the number of international production orders to which those objections relate; and
(ii) the number of each type of those orders; and
(iii) for each designated international agreement—the number of those orders that invoked the designated international agreement.

(2BBB) An expression used in subsection (2BBA) has same meaning as in Schedule 1 to the Telecommunications (Interception and Access) Act 1979.

**Freedom of Information Act 1982**

**5 Schedule 3**

After “Telecommunications (Interception and Access) Act 1979, sections 63 and 133”, insert “and clause 152 of Schedule 1”.

**International Criminal Court Act 2002**

**6 After subsection 69A(1)**

Insert:

(1A) The Attorney-General may authorise, in writing, the provision of material to the ICC if:
(a) the ICC has requested the material; and
Schedule 1 Amendments

Part 1 General amendments

(b) the Attorney-General is satisfied that the request relates to an investigation being conducted by the Prosecutor or a proceeding before the ICC; and

(c) the material is or includes protected information (within the meaning of Schedule 1 to the Telecommunications (Interception and Access) Act 1979) that:

(i) was obtained in accordance with an international production order issued under Part 2 or 3 of that Schedule; or

(ii) relates to such an international production order; and

(d) if the material is or includes protected information (within the meaning of Schedule 1 to the Telecommunications (Interception and Access) Act 1979) that:

(i) was obtained in accordance with an international production order issued under clause 30 or 60 of that Schedule; or

(ii) relates to such an international production order;

the Attorney-General is satisfied that the investigation is into, or the proceeding relates to, an offence punishable by a maximum penalty of imprisonment for 7 years or more, or imprisonment for life; and

(e) the Attorney-General is satisfied that the material is lawfully in the possession of a law enforcement agency.

7 Subsection 69A(2)

Omit “The authorisation”, substitute “An authorisation under subsection (1) or (1A)”.

Law Enforcement Integrity Commissioner Act 2006

8 Subsection 5(1) (paragraph (c) of the definition of law enforcement secrecy provision)

After “Telecommunications (Interception and Access) Act 1979”, insert “and clause 152 of Schedule 1 to that Act”.

6 Telecommunications Legislation Amendment (International Production Orders) Bill 2020
Mutual Assistance in Criminal Matters Act 1987

9 Subsection 3(1)

Insert:

*international production order* has the same meaning as in Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*.

10 Subsection 3(1) (definition of protected information)

Repeal the definition.

11 Subsection 3(1)

Insert:

*protected IPO intercept information* means information that:

(a) is protected information (within the meaning of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*); and

(b) either:

(i) was obtained in accordance with an international production order issued under clause 30 or 60 of that Schedule; or

(ii) relates to such an international production order.

*protected IPO stored communications information* means information that:

(a) is protected information (within the meaning of Schedule 1 to the *Telecommunications (Interception and Access) Act 1979*); and

(b) either:

(i) was obtained in accordance with an international production order issued under clause 39 or 69 of that Schedule; or

(ii) relates to such an international production order.

*protected IPO telecommunications data information* means information that:
Schedule 1 Amendments

Part 1 General amendments

(a) is protected information (within the meaning of Schedule 1 to the Telecommunications (Interception and Access) Act 1979);
and
(b) either:
   (i) is telecommunications data obtained in accordance with an international production order; or
   (ii) relates to an international production order that required the disclosure of telecommunications data.

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

telecommunications data (except when used in Part IIIB) has the same meaning as in Schedule 1 to the Telecommunications (Interception and Access) Act 1979.

12 Subsection 13A(2) (table item 1, column 1)

Omit “protected information”, substitute “protected SD information”.

13 Subsection 13A(2) (at the end of the table)

Add:

<table>
<thead>
<tr>
<th></th>
<th>material that is or includes protected IPO intercept information</th>
<th>a serious offence punishable by a maximum penalty of imprisonment for 7 years or more, imprisonment for life or the death penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>material that is or includes:</td>
<td>a serious offence punishable by a maximum penalty of imprisonment for 3 years or more, imprisonment for life or the death penalty</td>
</tr>
<tr>
<td></td>
<td>(a) protected IPO stored communications information; or</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) protected IPO telecommunications data information</td>
<td></td>
</tr>
</tbody>
</table>

Telecommunications (Interception and Access) Act 1979

14 Title

Omit “related”, substitute “other”.

8 Telecommunications Legislation Amendment (International Production Orders) Bill 2020
15 Subsection 5(1) (at the end of the definition of access)
Add “This definition does not apply to Schedule 1.”.

16 Subsection 5(1) (definition of carriage service provider)
Before “has”, insert “(except when used in Schedule 1)”.

17 Subsection 5(1) (paragraph (a) of the definition of carrier)
After “5-4A”, insert “and Schedule 1”.

18 Subsection 5(1) (at the end of the definition of carrier)
Add:
; and (c) in Schedule 1—has the meaning given by clause 2 of Schedule 1.

19 Subsection 5(1) (at the end of the definition of equipment)
Add “This definition does not apply to Schedule 1.”.

20 Subsection 5(1) (definition of intended recipient)
Before “has”, insert “(except when used in Schedule 1)”.

21 Subsection 5(1) (definition of issuing authority)
Before “means”, insert “(except when used in Schedule 1)”.

22 Subsection 5(1) (at the end of the definition of lawfully accessed information)
Add “, but does not include information obtained in accordance with an international production order (within the meaning of Schedule 1)”.

23 Subsection 5(1) (definition of nominated AAT member)
Before “means”, insert “(except when used in Schedule 1)”.

24 Subsection 5(1) (definition of record)
Before “means” (first occurring), insert “(except when used in Schedule 1)”.

25 Subsection 5(1) (definition of relevant statistics)
Before “means”, insert “(except when used in Schedule 1)”.

No.  , 2020  Telecommunications Legislation Amendment (International Production Orders) Bill 2020 9
26 Subsection 5(1) (definition of stored communication)
   Before “means”, insert “(except when used in Schedule 1)”.

27 Subsection 5(1) (at the end of the definition of telecommunications network)
   Add “This definition does not apply to Schedule 1.”.

28 Subsection 5(1) (definition of telephone application)
   Before “means”, insert “(except when used in Schedule 1)”.

29 Section 5A
   After “this Act”, insert “(other than Schedule 1)”.

30 Section 5F
   After “this Act”, insert “(other than Schedule 1)”.

31 Section 5G
   After “this Act”, insert “(other than Schedule 1)”.

32 Subsection 6(1)
   After “this Act”, insert “(other than Schedule 1)”.

33 Subsection 6D(1) (definition of eligible Judge)
   Before “means”, insert “(except when used in Schedule 1)”.

34 Subsections 6D(3) and (4)
   After “this Act”, insert “(other than Schedule 1)”.

35 After subsection 6DB(3)
   Insert:
   (3A) An appointment under subsection (1) has no effect for the purposes of Schedule 1.

36 Subsection 6DB(4)
   After “this Act”, insert “(other than Schedule 1)”.

10 Telecommunications Legislation Amendment (International Production Orders) Bill 2020
37 **Subsection 6E(1)**

Omit “subsection (2)”, substitute “subsections (2) and (3)”.

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38 **At the end of section 6E**

Add:

(3) A reference in this Act to lawfully intercepted information does not include a reference to information obtained in accordance with an international production order (within the meaning of Schedule 1).

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39 **Section 6P**

After “this Act”, insert “(other than Schedule 1)”.

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40 **After paragraph 7(2)(bb)**

Insert:

(bc) an act or thing done in compliance with an international production order (within the meaning of Schedule 1); or

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41 **After paragraph 108(2)(cb)**

Insert:

(cc) an act or thing done in compliance with an international production order (within the meaning of Schedule 1); or

---

42 **After section 299**

Insert:

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299A **Schedule 1**

Schedule 1 has effect.

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43 **At the end of the Act**

Add:

**Schedule 1—International production orders**

Note: See section 299A.

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*No. 11, 2020  Telecommunications Legislation Amendment (International Production Orders) Bill 2020*
Part 1—Introduction

1 Simplified outline of this Schedule

- This Schedule provides for a scheme to facilitate cooperation in law enforcement matters between Australia and each foreign country that is a party to a designated international agreement.

- The scheme deals with electronic information held by, or under the control of, designated communications providers.

- The scheme has the following components:
  (a) the issue under this Schedule of international production orders that are directed to designated communications providers;
  (b) in a case where a corresponding order is issued by a competent authority of a foreign country in accordance with a designated international agreement—the exemption of acts or things done in compliance with such an order from Commonwealth laws restricting interception or disclosure.

- The scheme extends to matters outside Australia.

- An international production order may be issued for purposes in connection with:
  (a) the investigation of an offence of a serious nature; or
  (b) the monitoring of a person subject to a control order, so as to protect the public from terrorist acts, prevent support for terrorist acts and hostile acts overseas and detect breaches of the control order; or
  (c) the carrying out by the Organisation of its functions.

- There are 3 types of international production orders:
  (a) international production orders relating to interception; and
Amendments Schedule 1
General amendments Part 1

2 Definitions

In this Schedule:

access, when used in relation to material, includes:
(a) access that is subject to a pre-condition (for example, the use of a password); and
(b) access by way of push technology; and
(c) access by way of a standing request.

account includes:
(a) a free account; and
(b) a pre-paid account; and
(c) anything that may reasonably be regarded as the equivalent of an account.

ASIO official means:
(a) the Director-General of Security; or
(b) a Deputy Director-General of Security; or
(c) an ASIO employee; or
(d) an ASIO affiliate.

Attorney-General’s Department means the Department administered by the Attorney-General.

Australian Designated Authority means the Secretary of the Attorney-General’s Department.

carriage service means a service for carrying communications by means of guided and/or unguided electromagnetic energy.

carriage service provider means a person who supplies a carriage service to the public or a section of the public.

(b) international production orders relating to stored communications; and
(c) international production orders relating to telecommunications data.
carrier means a person who owns or operates a telecommunications network that is used to supply a carriage service to the public or a section of the public.

certified copy:
(a) in relation to an international production order issued under clause 30—has the meaning given by clause 174; or
(b) in relation to an international production order issued under clause 39—has the meaning given by clause 175; or
(c) in relation to an international production order issued under clause 48—has the meaning given by clause 176; or
(d) in relation to an international production order issued under clause 60—has the meaning given by subclause 177(2); or
(e) in relation to an international production order issued under clause 69—has the meaning given by subclause 177(4); or
(f) in relation to an international production order issued under clause 78—has the meaning given by subclause 177(6); or
(g) in relation to an international production order issued under clause 89—has the meaning given by subclause 178(2); or
(h) in relation to an international production order issued under clause 98—has the meaning given by subclause 178(4); or
(i) in relation to an international production order issued under clause 107—has the meaning given by subclause 178(6).

control order IPO agency means a control order warrant agency.

designated communications provider means:
(a) a carrier; or
(b) a carriage service provider; or
(c) a message/call application service provider; or
(d) a storage/back-up service provider; or
(e) a general electronic content service provider.

designated international agreement has the meaning given by clause 3.

eligible Judge has the meaning given by clause 14.

general electronic content service has the meaning given by clause 8.
**general electronic content service provider** means a person who provides a general electronic content service to the public or a section of the public.

**individual carriage service** means a carriage service to the extent to which the service is supplied using a particular telecommunications identifier.

**individual message/call application service** means a message/call application service to the extent to which the service is provided using a particular telecommunications identifier.

**intended recipient** of a communication has the meaning given by clause 11.

**intercept** means:

(a) record; or

(b) live stream to a single destination.

**international production order** means an international production order issued under this Schedule.

**issuing authority** means a person in respect of whom an appointment is in force under clause 16.

**manager** of a designated communications provider means:

(a) the chief executive officer (however described) of the provider; or

(b) any other individual who is involved in the management of the provider.

**material** means material:

(a) whether in the form of text; or

(b) whether in the form of data; or

(c) whether in the form of speech, music or other sounds; or

(d) whether in the form of visual images (moving or otherwise); or

(e) whether in the form of signals; or

(f) whether in any other form; or

(g) whether in any combination of forms.
Schedule 1 Amendments
Part 1 General amendments

meets the enforcement threshold has the meaning given by clause 125.

member of staff of the Attorney-General’s Department means:
(a) the Secretary of the Attorney-General’s Department; or
(b) an APS employee in that Department.

message means a message:
(a) whether in the form of text; or
(b) whether in the form of data; or
(c) whether in the form of speech, music or other sounds; or
(d) whether in the form of visual images (animated or otherwise); or
(e) whether in the form of signals; or
(f) whether in any other form; or
(g) whether in any combination of forms.

message application service has the meaning given by clause 4.

message/call application service means:
(a) a message application service; or
(b) a voice call application service; or
(c) a video call application service.

message/call application service provider means a person who provides a message/call application service to the public or a section of the public.

nominated AAT member means a member of the Administrative Appeals Tribunal in respect of whom a nomination is in force under clause 15 to issue international production orders under Division 2 of Part 2, and Division 2 of Part 3, of this Schedule.

nominated AAT Security Division member means a member of the Administrative Appeals Tribunal in respect of whom a nomination is in force under clause 17 to issue international production orders under Part 4 of this Schedule.

posted on a general electronic content service has the meaning given by clause 9.
protected information means:
(a) information obtained in accordance with an international production order; or
(b) information about any of the following:
   (i) an application for an international production order;
   (ii) the issue of an international production order;
   (iii) the existence or non-existence of an international production order;
   (iv) compliance or non-compliance with an international production order;
   (v) the revocation of an international production order;
   (vi) the cancellation of an international production order.

relevant agency means:
(a) an interception agency; or
(b) a criminal law-enforcement agency; or
(c) an enforcement agency; or
(d) a control order IPO agency.

relevant statistics, in relation to applications of a particular kind, means the following statistics:
(a) how many applications of that kind were made;
(b) how many applications of that kind were withdrawn;
(c) how many applications of that kind were refused;
(d) how many international production orders were issued in response to applications of that kind.

serious category 1 offence means:
(a) an offence that is punishable by a maximum term of imprisonment of 3 years or more; or
(b) an offence that is punishable by imprisonment for life.

Note: For the definition of offence, see section 5.

serious category 2 offence means:
(a) a serious offence (see section 5D); or
(b) an offence that is punishable by a maximum term of imprisonment of 7 years or more; or
(c) an offence that is punishable by imprisonment for life.
Note: For the definition of offence, see section 5.

service includes a website. This definition does not apply to the definition of carriage service.

storage/back-up service has the meaning given by clause 7.

storage/back-up service provider means a person who provides a storage/back-up service to the public or a section of the public.

stored communication means:

(a) a communication that:
   (i) has been carried by a carriage service; and
   (ii) is not being carried by a carriage service; and
   (iii) is held on equipment that is operated by, and is in the possession of, the carriage service provider who supplied the carriage service; or

(b) a communication that:
   (i) has been carried by a carriage service; and
   (ii) is not being carried by a carriage service; and
   (iii) is held on equipment that is operated by, and is in the possession of, the carrier who owns or operates a telecommunications network used to supply the carriage service; or

(c) a message that:
   (i) has been sent or received using a message/call application service provided by a message/call application service provider; and
   (ii) is held on equipment that is operated by, and is in the possession of, the message/call application service provider; or

(d) a recording of a voice call that:
   (i) has been made or received using a message/call application service provided by a message/call application service provider; and
   (ii) is held on equipment that is operated by, and is in the possession of, the message/call application service provider; or

(e) a recording of a video call that:
Amendments Schedule 1
General amendments Part 1

(i) has been made or received using a message/call application service provided by a message/call application service provider; and

(ii) is held on equipment that is operated by, and is in the possession of, the message/call application service provider; or

(f) material that:

(i) has been uploaded by an end-user for storage or back-up by a storage/back-up service provided by a storage/back-up service provider; and

(ii) is held on equipment that is operated by, and is in the possession of, the storage/back-up service provider; or

(g) material that:

(i) is accessible to, or deliverable to, one or more of the end-users using a general electronic content service provided by a general electronic content service provider; and

(ii) is held on equipment that is operated by, and is in the possession of, the general electronic content service provider.

telecommunications data:

(a) when used in relation to a communication carried by an individual carriage service—means information about the communication (other than information that is the contents or substance of the communication); or

(b) when used in relation to an individual carriage service—means information about the individual carriage service; or

(c) when used in relation to a message sent or received using an individual message/call application service—means information about the message (other than information that is the contents or substance of the message); or

(d) when used in relation to a voice call made or received using an individual message/call application service—means information about the voice call (other than information that is the contents or substance of the voice call); or

(e) when used in relation to a video call made or received using an individual message/call application service—means

No. 2020 Telecommunications Legislation Amendment (International Production Orders) Bill 2020
information about the video call (other than information that
is the contents or substance of the video call); or

(f) when used in relation to an individual message/call
application service—means information about the individual
message/call application service; or

(g) when used in relation to material that has been uploaded by
an end-user for storage or back-up by a storage/back-up
service—means information about the material (other than
information that is the content or substance of the material); or

(h) when used in relation to an account that a person has with a
storage/back-up service—means information relating to the
account; or

(i) when used in relation to material that has been posted on a
general electronic content service—means information about
the material (other than information that is the content or
substance of the material); or

(j) when used in relation to an account that a person has with a
general electronic content service—means information
relating to the account; or

(k) when used otherwise than in relation to a matter or thing
mentioned in any of the preceding paragraphs—means:

(i) information about a communication carried by an
individual carriage service (other than information that
is the contents or substance of the communication); or

(ii) information about an individual carriage service; or

(iii) information about a message sent or received using an
individual message/call application service (other than
information that is the contents or substance of the
message); or

(iv) information about a voice call made or received using
an individual message/call application service (other
than information that is the contents or substance of the
voice call); or

(v) information about a video call made or received using
an individual message/call application service (other
than information that is the contents or substance of the
video call); or
Amendments Schedule 1
General amendments Part 1

(vi) information about an individual message/call application service; or
(vii) information about material that has been uploaded by an end-user for storage or back-up by a storage/back-up service (other than information that is the content or substance of the material); or
(viii) information relating to an account that a person has with a storage/back-up service; or
(ix) information about material that has been posted on a general electronic content service (other than information that is the content or substance of the material); or
(x) information relating to an account that a person has with a general electronic content service.

telecommunications identifier means:

(a) the address or identifier used by a carrier or a carriage service provider for the purposes of:
   (i) directing a communication to its intended destination; or
   (ii) identifying the origin of a communication; or
(b) the address or identifier used by a message/call application service provider for the purposes of:
   (i) directing a message to its intended destination; or
   (ii) identifying the origin of a message; or
(c) the address or identifier used by a message/call application service provider for the purposes of:
   (i) directing a voice call to its intended destination; or
   (ii) identifying the origin of a voice call; or
(d) the address or identifier used by a message/call application service provider for the purposes of:
   (i) directing a video call to its intended destination; or
   (ii) identifying the origin of a video call;

and includes (for example):

(e) a telephone number; and
(f) a unique identifier for a device (for example, an electronic serial number or a Media Access Control address); and

(g) a user account identifier; and
Schedule 1 Amendments
Part 1 General amendments

(h) an internet protocol address; and

(i) an email address.

*telecommunications network* means a system, or series of systems, that carries, or is capable of carrying, communications by means of guided and/or unguided electromagnetic energy.

*telephone application* means an application made by telephone for an international production order.

*telephone number* includes a mobile telephone number.

*uploaded* has a meaning affected by clause 10.

*use* has a meaning affected by clause 12.

*video call* includes a video call that has an audio component.

*video call application service* has the meaning given by clause 6.

*voice call* includes a call that involves a recorded or synthetic voice.

*voice call application service* has the meaning given by clause 5.

3 Designated international agreement

*Bilateral agreement*

(1) For the purposes of this Schedule, if:

(a) there is an agreement between Australia and a foreign country; and

(b) the name of the agreement is specified in the regulations;

then, after the agreement has entered into force for Australia and the foreign country, the agreement is a designated international agreement.

(2) If:

(a) there is an agreement between Australia and a foreign country; and

(b) the agreement deals with (among other things) the issue of orders (however described) by a competent authority (however described) of the foreign country; and
(c) one or more offences against the law of the foreign country

are punishable by death;

the name of the agreement must not be specified under

paragraph (1)(b) unless the Minister has received a written

assurance from the government of the foreign country relating to

the use or non-use, in connection with any proceeding by way of a

prosecution for an offence against the law of the foreign country

that is punishable by death, of Australian-sourced information

obtained in accordance with such an order.

Note: For Australian-sourced information, see subclause (8).

Multilateral agreement

(3) For the purposes of this Schedule, if:

(a) there is an agreement between Australia and 2 or more

foreign countries; and

(b) the name of the agreement is specified in the regulations;

then, after the agreement has entered into force for Australia, the

agreement is a designated international agreement.

(4) If there is an agreement between Australia and 2 or more foreign
countries, the regulations may declare that one or more of those
foreign countries are recognised parties to the agreement for the
purposes of this Schedule.

(5) If:

(a) there is an agreement between Australia and 2 or more

foreign countries; and

(b) the agreement deals with (among other things) the issue of

orders (however described) by a competent authority

(however described) of each of the foreign countries; and

(c) one or more offences against the law of one or more of those

foreign countries are punishable by death;

a foreign country covered by paragraph (c) must not be declared
under subclause (4) unless the Minister has received a written
assurance from the government of the foreign country relating to
the use or non-use, in connection with any proceeding by way of a
prosecution for an offence against the law of the foreign country
that is punishable by death, of Australian-sourced information
obtained in accordance with such an order.
Note: For *Australian-sourced information*, see subclause (8).

(6) If:
   
   (a) apart from this subclause, there is a designated international agreement between Australia and one or more foreign countries; and

   (b) one or more of those foreign countries are not recognised parties to the agreement;

   this Schedule (other than subclauses (3) and (4)) has effect as if those foreign countries were not parties to the agreement.

   Note: For *recognised parties*, see subclause (4).

*Announcement by Minister*

(7) The Minister must announce, by notifiable instrument, the day an agreement mentioned in subclause (1) or (3) enters into force for Australia.

*Australian-sourced information*

(8) For the purposes of the application of subclause (2) or (5) to an order, information obtained in accordance with the order is *Australian-sourced information* if the order:

   (a) requires an act or thing to be done in Australia; or

   (b) is directed to an individual who is physically present in Australia; or

   (c) is directed to a body corporate that is incorporated in Australia; or

   (d) is directed to a body established by or under a law of the Commonwealth, a State or a Territory.

*4 Message application service*

(1) For the purposes of this Schedule, *message application service* means a service that enables end-users to send or receive messages to or from other end-users using a carriage service.

(2) For the purposes of subclause (1), it is immaterial whether the service also enables end-users to send or receive messages to or from persons (other than end-users) using a carriage service.
Example: A webmail service that enables end-users to send emails to, or receive emails from, any email address.

(3) For the purposes of this Schedule, a person does not provide a message application service merely because the person supplies a carriage service that enables messages to be sent or received.

(4) For the purposes of this Schedule, a person does not provide a message application service merely because the person provides a billing service, or a fee collection service, in relation to a message application service.

5 Voice call application service

(1) For the purposes of this Schedule, **voice call application service** means a service that enables end-users to make or receive voice calls to or from other end-users using a carriage service.

(2) For the purposes of subclause (1), it is immaterial whether the service also enables end-users to make or receive voice calls to or from persons (other than end-users) using a carriage service.

Example: A VOIP service that enables end-users to make voice calls to, or receive voice calls from, any telephone number.

(3) For the purposes of this Schedule, a person does not provide a voice call application service merely because the person supplies a carriage service that enables voice calls to be made or received.

(4) For the purposes of this Schedule, a person does not provide a voice call application service merely because the person provides a billing service, or a fee collection service, in relation to a voice call application service.

6 Video call application service

(1) For the purposes of this Schedule, **video call application service** means a service that enables end-users to make or receive video calls to or from other end-users using a carriage service.

(2) For the purposes of subclause (1), it is immaterial whether the service also enables end-users to make or receive video calls to or from persons (other than end-users) using a carriage service.
Schedule 1 Amendments
Part 1 General amendments

(3) For the purposes of this Schedule, a person does not provide a video call application service merely because the person supplies a carriage service that enables video calls to be made or received.

(4) For the purposes of this Schedule, a person does not provide a video call application service merely because the person provides a billing service, or a fee collection service, in relation to a video call application service.

7 Storage/back-up service

(1) For the purposes of this Schedule, storage/back-up service means a service that enables end-users to store or back-up material, where the uploading of the material for storage or back-up is by means of a carriage service.

(2) For the purposes of this Schedule, a person does not provide a storage/back-up service merely because the person supplies a carriage service that enables material to be uploaded for storage or back-up.

(3) For the purposes of this Schedule, a person does not provide a storage/back-up service merely because the person provides a billing service, or a fee collection service, in relation to a storage/back-up service.

8 General electronic content service

(1) For the purposes of this Schedule, general electronic content service means:

(a) a service that allows end-users to access material using a carriage service; or

(b) a service that delivers material to persons having equipment appropriate for receiving that material, where the delivery of the service is by means of a carriage service;

but does not include:

(c) a message/call application service; or

(d) a storage/back-up service; or

(e) a service prescribed by the regulations.
(2) For the purposes of this Schedule, a person does not provide a
general electronic content service merely because the person
supplies a carriage service that enables material to be accessed or
delivered.

(3) For the purposes of this Schedule, a person does not provide a
general electronic content service merely because the person
provides a billing service, or a fee collection service, in relation to
a general electronic content service.

9 When material is posted on a general electronic content service

For the purposes of this Schedule, material is *posted* on a general
electronic content service by a person if:

(a) the person is an end-user of the service; and

(b) the person causes the material to be accessible to, or
delivered to, one or more other end-users using the service.

10 Uploaded material

For the purposes of this Schedule, if:

(a) a person uses a device; and

(b) the device has software that automatically uploads material
for storage or back-up by a storage/back-up service; and

(c) as a result, material is automatically uploaded for storage or
back-up by the storage/back-up service;

the person is taken to have uploaded the material for storage or
back-up by the storage/back-up service.

11 Intended recipient of a communication

For the purposes of this Schedule, the *intended recipient* of a
communication is:

(a) if the communication is addressed to an individual (either in
the individual’s own capacity or in the capacity of an
employee or agent of another person)—the individual; or

(b) if the communication is addressed to a person who is not an
individual—the person; or

(c) if the communication is not addressed to a person—the
person who has, or whose employee or agent has, control
Schedule 1  Amendments
Part 1  General amendments

over the individual carriage service that was used to receive
the communication.

12 Use of a thing

A reference in this Schedule to the use of a thing is a reference to
the use of the thing either:
(a) in isolation; or
(b) in conjunction with one or more other things.
Note:  See also section 18A of the Acts Interpretation Act 1901.

13 Identification of a particular person

For the purposes of this Schedule, a particular person may be
identified:
(a) by the person’s full name; or
(b) by a name by which the person is commonly known; or
(c) as the person to whom a particular individual carriage service
is supplied; or
(d) as the person to whom a particular individual message/call
application service is provided; or
(e) as the person who has a particular account with a designated
communications provider; or
(f) as the person who has a particular telephone number; or
(g) as the person who has a particular email address; or
(h) as the person who has a particular internet protocol address;
or
(i) as the person who has a device that has a particular unique
identifier (for example, an electronic serial number or a
Media Access Control address); or
(j) by any other unique identifying factor that is applicable to the
person.

14 Eligible judge

(1) For the purposes of this Schedule, eligible Judge means a Judge in
relation to whom a consent under subclause (2) and a declaration
under subclause (3) are in force.
(2) A Judge may, by writing, consent to be nominated by the Attorney-General under subclause (3).

(3) The Attorney-General may, by writing, declare Judges in relation to whom consents are in force under subclause (2) to be eligible Judges for the purposes of this Schedule.

(4) An eligible Judge has, in relation to the performance or exercise of a function or power conferred on an eligible Judge by this Schedule, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

15 Nominated AAT member

(1) The Attorney-General may, by writing, nominate a person who holds one of the following appointments to the Administrative Appeals Tribunal to issue international production orders under Division 2 of Part 2, and Division 2 of Part 3, of this Schedule:

(a) Deputy President;
(b) senior member (of any level);
(c) member (of any level).

(2) Despite subclause (1), the Attorney-General must not nominate a person who holds an appointment as a part-time senior member or a member of the Tribunal unless the person:

(a) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or of the Australian Capital Territory; and
(b) has been so enrolled for not less than 5 years.

(3) A nomination ceases to have effect if the nominated AAT member ceases to hold an appointment of a kind set out in subclause (1).

(4) A nominated AAT member has, in relation to the performance or exercise of a function or power conferred on a nominated AAT member by this Schedule, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.
16 Issuing authority

(1) The Attorney-General may, by writing, appoint as an issuing authority:
   (a) a person who is:
       (i) a judge of a court created by the Parliament; or
       (ii) a magistrate;
       and in relation to whom a consent under subclause (2) is in force; or
   (b) a person who:
       (i) holds an appointment to the Administrative Appeals Tribunal as Deputy President, senior member (of any level) or member (of any level); and
       (ii) is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or a Territory; and
       (iii) has been so enrolled for at least 5 years.

(2) A person who is:
   (a) a judge of a court created by the Parliament; or
   (b) a magistrate;
may, by writing, consent to be appointed by the Attorney-General under subclause (1).

(3) A person’s appointment ceases to have effect if the person ceases to be a person whom the Attorney-General could appoint under this clause.

(4) An appointment under subclause (1) has no effect for the purposes of a provision of this Act (other than this Schedule).

(5) An issuing authority has, in relation to the performance or exercise of a function or power conferred on an issuing authority by this Schedule, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

17 Nominated AAT Security Division member

(1) The Attorney-General may, by writing, nominate a person who:
   (a) holds one of the following appointments to the Administrative Appeals Tribunal:
Amendments Schedule 1
General amendments Part 1

1 (i) Deputy President;
2 (ii) senior member (of any level);
3 (iii) member (of any level); and
4 (b) is a member of the Security Division of the Administrative
5 Appeals Tribunal;
6 to issue international production orders under Part 4 of this
7 Schedule.
8 (2) Despite subclause (1), the Attorney-General must not nominate a
9 person who holds an appointment as a part-time senior member or
10 a member of the Administrative Appeals Tribunal unless the
11 person:
12 (a) is enrolled as a legal practitioner of the High Court, of
13 another federal court or of the Supreme Court of a State or of
14 the Australian Capital Territory; and
15 (b) has been so enrolled for not less than 5 years.
16 (3) A nomination of a person ceases to have effect if:
17 (a) the person ceases to hold an appointment of a kind set out in
18 subclause (1); or
19 (b) the person ceases to be a member of the Security Division of
20 the Administrative Appeals Tribunal.
21 (4) A nominated AAT Security Division member has, in relation to the
22 performance or exercise of a function or power conferred on a
23 nominated AAT Security Division member by this Schedule, the
24 same protection and immunity as a Justice of the High Court has in
25 relation to proceedings in the High Court.
26 (5) For the purposes of this clause, a person is a member of the
27 Security Division of the Administrative Appeals Tribunal if the
28 person:
29 (a) is the head of that Division; or
30 (b) has been assigned to that Division.

18 Meaning of expressions in other provisions of this Act

In determining the meaning of an expression (other than
“international production order”) used in a provision of this Act

No. 2020 Telecommunications Legislation Amendment (International Production
Orders) Bill 2020
Schedule 1  Amendments
Part 1  General amendments

(others than this Schedule), an expression used in this Schedule is to be disregarded.

19 Extra-territorial application

This Schedule extends to acts, omissions, matters and things outside Australia.

20 Constitutional basis of this Schedule

This Schedule relies on the Commonwealth’s legislative powers under paragraph 51(v) (communications) of the Constitution.

Part 2—International production orders relating to the enforcement of the criminal law

Division 1—Introduction

21 Simplified outline of this Part

• An international production order may be issued for purposes in connection with the investigation of an offence of a serious nature.

• There are 3 types of international production orders:
  (a) international production orders relating to interception; and
  (b) international production orders relating to stored communications; and
  (c) international production orders relating to telecommunications data.

• An international production order is directed to a designated communications provider.

• An international production order may be issued in response to an application made by:

32 Telecommunications Legislation Amendment (International Production Orders) Bill 2020
(a) in the case of an order relating to interception—an interception agency; or
(b) in the case of an order relating to stored communications—a criminal-law enforcement agency; or
(c) in the case of an order relating to telecommunications data—an enforcement agency.

• An application for an international production order must nominate a designated international agreement.

Note: An international production order comes into force when it is given to a designated communications provider under clause 111.

Division 2—International production orders relating to interception: enforcement of the criminal law

Subdivision A—Applications

22 Application for international production order—enforcement of the criminal law

(1) An interception agency may apply to an eligible Judge or nominated AAT member for an international production order under clause 30 that:
   (a) is in respect of:
      (i) one or more individual carriage services; or
      (ii) one or more individual message/call application services; and
   (b) is directed to a designated communications provider.

(2) The application must nominate a designated international agreement.

(3) The application must be made on the interception agency’s behalf by:
   (a) in the case of the Australian Federal Police—a member of the Australian Federal Police; or
Schedule 1 Amendments
Part 1 General amendments

(b) in the case of the Australian Commission for Law Enforcement Integrity:
   (i) the Integrity Commissioner; or
   (ii) an Assistant Integrity Commissioner; or
   (iii) a staff member of the Australian Commission for Law Enforcement Integrity who is authorised in writing by the Integrity Commissioner for the purposes of this paragraph; or

(c) in the case of the ACC:
   (i) the Chief Executive Officer of the ACC or an examiner; or
   (ii) a member of a police force who is a member of the staff of the ACC; or

(d) in the case of the Police Force of a State—an officer of that Police Force; or

(e) in the case of the Crime Commission:
   (i) a member of the Crime Commission; or
   (ii) a member of the staff of the Crime Commission; or

(f) in the case of the Independent Commission Against Corruption—an officer of that Commission; or

(g) in the case of the IBAC—an IBAC officer; or

(h) in the case of the Crime and Corruption Commission—a commission officer (within the meaning of the Crime and Corruption Act); or

(i) in the case of the Law Enforcement Conduct Commission:
   (i) the Chief Commissioner of the Commission; or
   (ii) the Commissioner for Integrity of the Commission; or
   (iii) an Assistant Commissioner of the Commission; or
   (iv) a member of the staff of the Law Enforcement Conduct Commission; or

(j) in the case of the Corruption and Crime Commission—an officer of the Corruption and Crime Commission; or

(k) in the case of the Independent Commissioner Against Corruption:
   (i) the Independent Commissioner Against Corruption; or
   (ii) the Deputy Commissioner referred to in section 9 of the Independent Commissioner Against Corruption Act; or

34 Telecommunications Legislation Amendment (International Production Orders) Bill 2020
23 Form of application

(1) Subject to subclause (2), an application under clause 22 for an international production order must be in writing.

(2) If the person making an application under clause 22 for an international production order on an interception agency’s behalf:
   (a) is the chief officer of the agency or a person in relation to whom an authorisation by the chief officer is in force under subclause (3); and
   (b) thinks it necessary, because of urgent circumstances, to make the application by telephone;

the person may make the application by telephone.

Note: See also clause 172.

(3) The chief officer of an interception agency may authorise in writing, for the purposes of subclause (2), persons who, or classes of persons who, are entitled under clause 22 to make applications on the agency’s behalf.

24 Contents of application

A written application under clause 22 by an interception agency for an international production order must set out:

(a) the name of the agency; and

(b) the name of the person making the application on the agency’s behalf.

25 Affidavits to accompany written application

(1) A written application under clause 22 by an interception agency for an international production order must be accompanied by an affidavit complying with this clause.

(2) The affidavit must set out the facts and other grounds on which the application is based.
(3) If the application is for an international production order in respect of one or more individual carriage services, the affidavit must set out the following information, so far as it can be derived from the interception agency’s records:

   (a) the number of previous applications (if any) for international production orders that the agency has made under clause 22 in relation to those individual carriage services;

   (b) the number of international production orders (if any) previously issued in response to such applications;

   (c) particulars of the use made by the agency of intercepted communications made available to the agency under such orders.

(4) If the application is for an international production order in respect of one or more individual message/call application services, the affidavit must set out the following information, so far as it can be derived from the interception agency’s records:

   (a) the number of previous applications (if any) for international production orders that the agency has made under clause 22 in relation to those individual message/call application services;

   (b) the number of international production orders (if any) previously issued in response to such applications;

   (c) particulars of the use made by the agency of intercepted messages, voice calls or video calls made available to the agency under such orders.

(5) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.

26 Information to be given on telephone application

The information given to an eligible Judge or nominated AAT member in connection with a telephone application under clause 22 to the eligible Judge or nominated AAT member:

   (a) must include particulars of the urgent circumstances because of which the person making the application on the
interception agency’s behalf thinks it necessary to make the
application by telephone; and
(b) must include each matter that, if the application had been
made in writing, clause 24 or 25 would have required the
application, or an affidavit accompanying it, to set out; and
(c) must be given orally or in writing, as the eligible Judge or
nominated AAT member directs.

27 Giving further information to eligible Judge or nominated AAT member

(1) An eligible Judge or nominated AAT member may require further
information to be given in connection with an application under
clause 22 to the eligible Judge or nominated AAT member for an
international production order.

(2) The further information:
   (a) must be given on oath if the application was made in writing;
and
   (b) must be given orally or otherwise, as the eligible Judge or
nominated AAT member directs.

28 Application by interception agency of Victoria

Scope

(1) This clause applies if an interception agency of Victoria applies,
under clause 22, to an eligible Judge or nominated AAT member
for an international production order under clause 30 that is in
respect of:
   (a) one or more individual carriage services; or
   (b) one or more individual message/call application services.

PIM may make submissions

(2) A Victorian PIM may, orally or in writing, make submissions to
the eligible Judge or nominated AAT member about the following
matters:
   (a) in the case of an application for an international production
order that is in respect of one or more individual carriage
services—the matters mentioned in subparagraphs 30(5)(a)(i) to (vi);

(b) in the case of an application for an international production order that is in respect of one or more individual message/call application services—the matters mentioned in subparagraphs 30(5)(b)(i) to (vi).

**PIM may question certain persons**

(3) The Victorian PIM may, for the purpose of making submissions under subclause (2), question:

(a) the person making the application for the international production order on the interception agency’s behalf; or

(b) a person who, under clause 27, is required by the eligible Judge or nominated AAT member to give further information to the eligible Judge or nominated AAT member in connection with the application.

However, the Victorian PIM may only do so in the presence of the eligible Judge or nominated AAT member.

29 Application by interception agency of Queensland

**Scope**

(1) This clause applies if an interception agency of Queensland applies, under clause 22, to an eligible Judge or nominated AAT member for an international production order under clause 30 that is in respect of:

(a) one or more individual carriage services; or

(b) one or more individual message/call application services.

**PIM may make submissions**

(2) A Queensland PIM may, orally or in writing, make submissions to the eligible Judge or nominated AAT member about the following matters:

(a) in the case of an application for an international production order that is in respect of one or more individual carriage services—the matters mentioned in subparagraphs 30(5)(a)(i) to (vi);
(b) in the case of an application for an international production
order that is in respect of one or more individual message/call
application services—the matters mentioned in
subparagraphs 30(5)(b)(i) to (vi).

**PIM may question certain persons**

(3) The Queensland PIM may, for the purpose of making submissions
under subclause (2), question:
   (a) the person making the application for the international
   production order on the interception agency’s behalf; or
   (b) a person who, under clause 27, is required by the eligible
   Judge or nominated AAT member to give further information
   to the eligible Judge or nominated AAT member in
   connection with the application.
   However, the Queensland PIM may only do so in the presence of
   the eligible Judge or nominated AAT member.

(4) A Queensland PIM may, by writing, delegate to a Queensland
deputy PIM the Queensland PIM’s power under subclause (2) or
(3), or both.

(5) In exercising powers under the delegation, the Queensland deputy
PIM must comply with any directions of the Queensland PIM.

**Subdivision B—International production orders relating to
interception**

**30 Issue of international production order—enforcement of the
criminal law**

**Scope**

(1) This clause applies if an interception agency applies, under clause
22, to an eligible Judge or nominated AAT member for an
international production order that:
   (a) is in respect of:
       (i) one or more individual carriage services; or
       (ii) one or more individual message/call application
       services; and
Schedule 1 Amendments

Part 1 General amendments

(b) is directed to a designated communications provider.

**Issue of international production order**

(2) If the eligible Judge or nominated AAT member is satisfied, on the basis of the information given to the eligible Judge or nominated AAT member under this Division in connection with the application, that:

(a) in the case of an application for an international production order that is in respect of one or more individual carriage services—there are reasonable grounds for suspecting that:

(i) the designated communications provider owns or operates a telecommunications network that is, or is likely to be, used to supply those individual carriage services; or

(ii) the designated communications provider supplies those individual carriage services; and

(b) in the case of an application for an international production order that is in respect of one or more individual message/call application services—there are reasonable grounds for suspecting that the designated communications provider provides those individual message/call application services; and

(c) Subdivision A has been complied with in relation to the application; and

(d) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and

(e) in the case of an application for an international production order that is in respect of one or more individual carriage services—there are reasonable grounds for suspecting that a particular person is using, or is likely to use, those individual carriage services; and

(f) in the case of an application for an international production order that is in respect of one or more individual message/call application services—there are reasonable grounds for suspecting that a particular person is using, or is likely to use, those individual message/call application services; and
(g) in the case of an application for an international production order that is in respect of one or more individual carriage services—information that would be likely to be obtained by intercepting, under an order issued under this clause, communications that are being carried by those individual carriage services would be likely to assist in connection with the investigation by the interception agency of a serious category 2 offence, or serious category 2 offences, in which:
   (i) the particular person is involved; or
   (ii) another person is involved with whom the particular person is likely to communicate using those individual carriage services; and

(h) in the case of an application for an international production order that is in respect of one or more individual message/call application services—information that would be likely to be obtained by intercepting, under an order issued under this clause, messages sent or received, voice calls made or received, or video calls made or received, using those individual message/call application services would be likely to assist in connection with the investigation by the interception agency of a serious category 2 offence, or serious category 2 offences, in which:
   (i) the particular person is involved; or
   (ii) another person is involved with whom the particular person is likely to communicate using those individual message/call application services;

the eligible Judge or nominated AAT member may issue an order (to be known as an international production order) directing the designated communications provider to:
   (i) in the case of an application for an international production order that is in respect of one or more individual carriage services:
      (i) intercept communications carried by those individual carriage services during a specified period; and
      (ii) make those intercepted communications available to the interception agency; and
      (iii) disclose to the interception agency specified telecommunications data that relates to those intercepted communications; and
iv) disclose to the interception agency specified telecommunications data that relates to those individual carriage services; or

(j) in the case of an application for an international production order that is in respect of one or more individual message/call application services:

(i) intercept messages sent or received, voice calls made or received, or video calls made or received, using those individual message/call application services during a specified period; and

(ii) make those intercepted messages, voice calls or video calls available to the interception agency; and

(iii) disclose to the interception agency specified telecommunications data that relates to those intercepted messages, voice calls or video calls; and

(iv) disclose to the interception agency specified telecommunications data that relates to those individual message/call application services.

Note: Subclauses (6) and (7) restrict the issuing of international production orders if subparagraph (2)(g)(ii) or (h)(ii) applies.

Period specified in international production order

(3) A period specified in an international production order for the purposes of subparagraph (2)(i)(i) or (j)(i) must not begin before the time when the order is given to the designated communications provider.

Note: International production orders are given under clause 111.

(4) The period specified in an international production order for the purposes of subparagraph (2)(i)(i) or (j)(i) must not be longer than:

(a) if subparagraph (2)(g)(ii) or (h)(ii) applies (as the case requires)—45 days; or

(b) otherwise—90 days.
(5) In deciding whether to issue an international production order under subclause (2), the eligible Judge or nominated AAT member must have regard to the following matters:

(a) in the case of an application for an international production order that is in respect of one or more individual carriage services:

(i) how much the privacy of any person or persons would be likely to be interfered with by intercepting, under an international production order, communications that are being carried by those individual carriage services; and

(ii) the gravity of the conduct constituting the serious category 2 offence or serious category 2 offences being investigated; and

(iii) how much the information mentioned in paragraph (2)(g) would be likely to assist in connection with the investigation by the interception agency of the serious category 2 offence or serious category 2 offences; and

(iv) to what extent methods of investigating the serious category 2 offence or serious category 2 offences that do not involve so intercepting communications have been used by, or are available to, the interception agency; and

(v) how much the use of such methods would be likely to assist in connection with the investigation by the interception agency of the serious category 2 offence or serious category 2 offences; and

(vi) how much the use of such methods would be likely to prejudice the investigation by the interception agency of the serious category 2 offence or serious category 2 offences, whether because of delay or for any other reason; and

(vii) in relation to an application by an interception agency of Victoria—any submissions made by a Victorian PIM under clause 28 to the eligible Judge or nominated AAT member; and
Schedule 1 Amendments
Part 1 General amendments

(viii) in relation to an application by an interception agency of
Queensland—any submissions made by a Queensland
PIM under clause 29 to the eligible Judge or nominated
AAT member; and

(ix) such other matters (if any) as the eligible Judge or
nominated AAT member considers relevant;

(b) in the case of an application for an international production
order that is in respect of one or more individual message/call
application services:

(i) how much the privacy of any person or persons would
be likely to be interfered with by intercepting, under an
international production order, messages sent or
received, voice calls made or received, or video calls
made or received, using those individual message/call
application services; and

(ii) the gravity of the conduct constituting the serious
category 2 offence or serious category 2 offences being
investigated; and

(iii) how much the information mentioned in
paragraph (2)(b) would be likely to assist in connection
with the investigation by the interception agency of the
serious category 2 offence or serious category 2
offences; and

(iv) to what extent methods of investigating the serious
category 2 offence or serious category 2 offences that do
not involve so intercepting messages, voice calls or
video calls have been used by, or are available to, the
interception agency; and

(v) how much the use of such methods would be likely to
assist in connection with the investigation by the
interception agency of the serious category 2 offence or
serious category 2 offences; and

(vi) how much the use of such methods would be likely to
prejudice the investigation by the interception agency of
the serious category 2 offence or serious category 2
offences, whether because of delay or for any other
reason; and

(vii) in relation to an application by an interception agency of
Victoria—any submissions made by a Victorian PIM
under clause 28 to the eligible Judge or nominated AAT member; and

(viii) in relation to an application by an interception agency of Queensland—any submissions made by a Queensland PIM under clause 29 to the eligible Judge or nominated AAT member; and

(ix) such other matters (if any) as the eligible Judge or nominated AAT member considers relevant.

Restriction on issuing order

(6) The eligible Judge or nominated AAT member must not issue an international production order under subclause (2) in a case where subparagraph (2)(g)(ii) applies unless the eligible Judge or nominated AAT member is satisfied that:

(a) the interception agency has exhausted all other practicable methods of identifying the individual carriage services used, or likely to be used, by the person involved in the serious category 2 offence or serious category 2 offences mentioned in paragraph (2)(g); or

(b) interception of communications carried by individual carriage services used or likely to be used by that person would not otherwise be possible.

(7) The eligible Judge or nominated AAT member must not issue an international production order under subclause (2) in a case where subparagraph (2)(h)(ii) applies unless the eligible Judge or nominated AAT member is satisfied that:

(a) the interception agency has exhausted all other practicable methods of identifying the individual message/call application services used, or likely to be used, by the person involved in the serious category 2 offence or serious category 2 offences mentioned in paragraph (2)(h); or

(b) interception of messages sent or received, voice calls made or received, or video calls made or received, using individual message/call application services used or likely to be used by that person would not otherwise be possible.
Content of international production order

Scope

(1) This clause applies to an international production order issued under clause 30 in response to an application made by an interception agency.

Content

(2) The order must be signed by the eligible Judge or nominated AAT member who issued it.

(3) The order must set out the following:
   (a) the date on which the order was issued;
   (b) the name of the interception agency;
   (c) the name of the designated communications provider to whom the order is directed;
   (d) the name of the designated international agreement nominated in the application for the order;
   (e) the applicable telecommunications identifiers:
      (i) in the case of an order that is in respect of one or more individual carriage services—to which those individual carriage services relate; or
      (ii) in the case of an order that is in respect of one or more individual message/call application services—to which those individual message/call application services relate;
   (f) short particulars of each serious category 2 offence in relation to which the eligible Judge or nominated AAT member issuing the order was satisfied, on the application for the order, as mentioned in paragraph 30(2)(g) or (h) of this Schedule (as the case requires).

(4) If the order directs a designated communications provider to intercept communications, the order may require the provider to:
   (a) intercept those communications in a specified way; and
   (b) make those intercepted communications available to the interception agency in a specified way.
(5) A requirement under subclause (4) may:
   (a) require that intercepted communications be made available to
       the interception agency directly; or
   (b) require that intercepted communications be made available to
       the interception agency indirectly via the Australian
       Designated Authority.

(6) If the order directs a designated communications provider to
    intercept messages, voice calls or video calls, the order may require
    the provider to:
    (a) intercept those messages, voice calls or video calls in a
        specified way; and
    (b) make those intercepted messages, voice calls or video calls
        available to the interception agency in a specified way.

(7) A requirement under subclause (6) may:
    (a) require that intercepted messages, voice calls or video calls
        be made available to the interception agency directly; or
    (b) require that intercepted messages, voice calls or video calls
        be made available to the interception agency indirectly via
        the Australian Designated Authority.

(8) If the order directs a designated communications provider to
    disclose telecommunications data to the interception agency, the
    order may require the provider to disclose that data to the agency in
    a specified way.

(9) A requirement under subclause (8) may:
    (a) require that the telecommunications data be disclosed to the
        interception agency directly; or
    (b) require that the telecommunications data be disclosed to the
        interception agency indirectly via the Australian Designated
        Authority.

(10) For the purposes of this clause, a specified way may deal with
     matters of timing.

Example: A requirement under subclause (4) may require that an intercepted
         communication be made available to the interception agency within 30
         minutes after the communication was completed.
32 Issue of further international production order

(1) If:

(a) an international production order (the *original order*) was issued under clause 30; and

(b) the original order was in respect of one or more individual carriage services; and

(c) the original order was directed to a designated communications provider;

this Schedule does not prevent the issue of a further international production order under clause 30 that is:

(d) in respect of any or all of those services; and

(e) directed to the provider;

so long as the period specified in the further order for the purposes of subparagraph 30(2)(i)(i) of this Schedule begins after the end of the period specified in the original order for the purposes of that subparagraph.

(2) If:

(a) an international production order (the *original order*) was issued under clause 30; and

(b) the original order was in respect of one or more individual message/call application services; and

(c) the original order was directed to a designated communications provider;

this Schedule does not prevent the issue of a further international production order under clause 30 that is:

(d) in respect of any or all of those services; and

(e) directed to the provider;

so long as the period specified in the further order for the purposes of subparagraph 30(2)(j)(i) of this Schedule begins after the end of the period specified in the original order for the purposes of that subparagraph.
Division 3—International production orders relating to stored communications: enforcement of the criminal law

Subdivision A—Applications

33 Application for international production order—enforcement of the criminal law

(1) A criminal law-enforcement agency may apply to an issuing authority for an international production order under clause 39 that:
   (a) is in respect of a particular person; and
   (b) is directed to a designated communications provider.

(2) The application must nominate a designated international agreement.

(3) The application must be made on the criminal law-enforcement agency’s behalf by:
   (a) if the agency is referred to in subclause 22(3)—a person referred to in that subclause in relation to the agency; or
   (b) otherwise:
      (i) the chief officer of the agency; or
      (ii) an officer of the agency (by whatever name called) who holds, or is acting in, an office or position in the agency nominated under subclause (4).

(4) The chief officer of the criminal law-enforcement agency may, in writing, nominate for the purposes of subparagraph (3)(b)(ii) an office or position in the agency that is involved in the management of the agency.

(5) A nomination under subclause (4) is not a legislative instrument.

34 Form of application

(1) An application under clause 33 must be in writing.
(2) However, a person making the application on the criminal law-enforcement agency’s behalf may make the application by telephone if the person:

(a) is the chief officer of the agency or a person in relation to whom an authorisation by the chief officer is in force under subclause (3); and

(b) thinks it necessary, because of urgent circumstances, to make the application by telephone.

Note: See also clause 172.

(3) The chief officer of a criminal law-enforcement agency may, in writing, authorise persons (including classes of persons) for the purposes of subclause (2). However, each person must be entitled under clause 33 to make applications on the agency’s behalf.

35 Contents of written application

An application under clause 33 must, if it is in writing, set out:

(a) the name of the criminal law-enforcement agency; and

(b) the name of the person making the application on the agency’s behalf.

36 Affidavits to accompany written application

(1) An application under clause 33 must, if it is in writing, be accompanied by an affidavit complying with this clause.

(2) The affidavit must set out the facts and other grounds on which the application is based.

(3) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.

37 Information to be given on telephone application

The information given to an issuing authority in connection with a telephone application under clause 33 to the issuing authority:

(a) must include particulars of the urgent circumstances because of which the person making the application on the criminal
38 Giving further information to issuing authority

(1) An issuing authority may require further information to be given in connection with an application under clause 33 to the issuing authority for an international production order.

(2) The further information:

(a) must be given on oath if the application was made in writing; and

(b) must be given orally or otherwise, as the issuing authority directs.

Subdivision B—International production orders relating to stored communications

39 Issue of international production order—enforcement of the criminal law

Scope

(1) This clause applies if a criminal law-enforcement agency applies, under clause 33, to an issuing authority for an international production order that:

(a) is in respect of a particular person (the relevant person); and

(b) is directed to a designated communications provider.

Issue of international production order

(2) If the issuing authority is satisfied, on the basis of the information given to the issuing authority under this Division in connection with the application, that:
(a) there are reasonable grounds for suspecting that the designated communications provider holds any of the following stored communications:

(i) stored communications that consist of communications that the relevant person has made using a telecommunications network owned or operated by the designated communications provider;

(ii) stored communications that consist of communications that another person has made using a telecommunications network owned or operated by the designated communications provider, and for which the relevant person is the intended recipient;

(iii) stored communications that consist of communications that the relevant person has made using a carriage service supplied by the designated communications provider;

(iv) stored communications that consist of communications that another person has made using a carriage service supplied by the designated communications provider, and for which the relevant person is the intended recipient;

(v) stored communications that consist of messages that the relevant person has sent or received using a message/call application service provided by the designated communications provider;

(vi) stored communications that consist of recordings of voice calls that the relevant person has made or received using a message/call application service provided by the designated communications provider;

(vii) stored communications that consist of recordings of video calls that the relevant person has made or received using a message/call application service provided by the designated communications provider;

(viii) stored communications that consist of material that the relevant person has uploaded for storage or back-up by a storage/back-up service provided by the designated communications provider;

(ix) stored communications that consist of material that the relevant person has posted to a general electronic
content service provided by the designated communications provider; and

(b) Subdivision A has been complied with in relation to the application; and

(c) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and

(d) information that would be likely to be obtained by making a copy, under an order issued under this clause, of the stored communications would be likely to assist in connection with the investigation by the criminal law-enforcement agency of a serious category 1 offence, or serious category 1 offences, in which the relevant person is involved;

the issuing authority may issue an order (to be known as an international production order) directing the designated communications provider to:

(e) make a copy of any such stored communications; and

(f) make the copy available to the criminal law-enforcement agency; and

(g) if the stored communications consist of communications carried by an individual carriage service—disclose to the agency:

(i) specified telecommunications data that relates to those communications; and

(ii) specified telecommunications data that relates to the individual carriage service; and

(h) if the stored communications consist of messages sent or received using an individual message/call application service—disclose to the agency:

(i) specified telecommunications data that relates to those messages; and

(ii) specified telecommunications data that relates to the individual message/call application service; and

(i) if the stored communications consist of recordings of voice calls made or received using an individual message/call application service—disclose to the agency:

(i) specified telecommunications data that relates to those voice calls; and
(ii) specified telecommunications data that relates to the individual message/call application service; and

(j) if the stored communications consist of recordings of video calls made or received using an individual message/call application service—disclose to the agency:
   (i) specified telecommunications data that relates to those video calls; and
   (ii) specified telecommunications data that relates to the individual message/call application service; and

(k) if the stored communications consist of material that has been uploaded by an end-user for storage or back-up by a storage/back-up service—disclose to the agency:
   (i) specified telecommunications data that relates to that material; and
   (ii) specified telecommunications data that relates to the end-user’s account with the storage/back-up service; and

(l) if the stored communications consist of material posted to a general electronic content service by an end-user—disclose to the agency:
   (i) specified telecommunications data that relates to that material; and
   (ii) specified telecommunications data that relates to the end-user’s account with the general electronic content service.

Matters to which issuing authority must have regard

(3) In deciding whether to issue an international production order under subclause (2), the issuing authority must have regard to the following matters:
   (a) how much the privacy of any person or persons would be likely to be interfered with by the criminal law-enforcement agency obtaining, under an international production order, a copy of the stored communications;
   (b) the gravity of the conduct constituting the serious category 1 offence or serious category 1 offences being investigated;
   (c) how much the information mentioned in paragraph (2)(d) would be likely to assist in connection with the investigation
by the criminal law-enforcement agency of the serious
category 1 offence or serious category 1 offences;
(d) to what extent methods of investigating the serious category
1 offence or serious category 1 offences that do not involve
so obtaining a copy of the stored communications have been
used by, or are available to, the criminal law-enforcement
agency;
(e) how much the use of such methods would be likely to assist
in connection with the investigation by the criminal
law-enforcement agency of the serious category 1 offence or
serious category 1 offences;
(f) how much the use of such methods would be likely to
prejudice the investigation by the criminal law-enforcement
agency of the serious category 1 offence or serious category
1 offences, whether because of delay or for any other reason;
(g) such other matters (if any) as the issuing authority considers
relevant.

40 Content of international production order

Scope

(1) This clause applies to an international production order issued
under clause 39 in response to an application made by a criminal
law-enforcement agency.

Content

(2) The order must be signed by the issuing authority who issued it.

(3) The order must set out the following:
(a) the date on which the order was issued;
(b) the name of the criminal law-enforcement agency;
(c) the name of the designated communications provider to
whom the order is directed;
(d) the name of the designated international agreement
nominated in the application for the order;
(e) short particulars of each serious category 1 offence in relation
to which the issuing authority issuing the order was satisfied,
56 Telecommunications Legislation Amendment (International Production Orders) Bill 2020

on the application for the order, as mentioned in paragraph 39(2)(d) of this Schedule.

(4) If the order directs a designated communications provider to make a copy of stored communications available to the criminal law-enforcement agency, the order may require the provider to make that copy available to the agency in a specified way.

(5) A requirement under subclause (4) may:
   (a) require that a copy of stored communications be made available to the criminal law-enforcement agency directly; or
   (b) require that a copy of stored communications be made available to the criminal law-enforcement agency indirectly via the Australian Designated Authority.

(6) If the order directs a designated communications provider to disclose telecommunications data to the criminal law-enforcement agency, the order may require the provider to disclose that data to the agency in a specified way.

(7) A requirement under subclause (6) may:
   (a) require that the telecommunications data be disclosed to the criminal law-enforcement agency directly; or
   (b) require that the telecommunications data be disclosed to the criminal law-enforcement agency indirectly via the Australian Designated Authority.

(8) For the purposes of this clause, a specified way may deal with matters of timing.

41 Issue of further international production order

   If:
   
   (a) an international production order (the original order) was issued under clause 39; and
   (b) the original order was in respect of a particular person; and
   (c) the original order was directed to a designated communications provider;

   this Schedule does not prevent the issue of a further international production order under clause 39 that:
   
   (d) is in respect of the person; and

56 Telecommunications Legislation Amendment (International Production Orders) Bill 2020
Division 4—International production orders relating to telecommunications data: enforcement of the criminal law

Subdivision A—Applications

42 Application for international production order—enforcement of the criminal law

(1) An enforcement agency may apply to an issuing authority for an international production order under clause 48 that is directed to a designated communications provider.

(2) The application must nominate a designated international agreement.

(3) The application must be made on the enforcement agency’s behalf by an authorised officer of the agency.

43 Form of application

(1) An application under clause 42 must be in writing.

(2) However, a person making the application on the enforcement agency’s behalf may make the application by telephone if the person:

   (a) is the chief officer of the agency or a person in relation to whom an authorisation by the chief officer is in force under subclause (3); and

   (b) thinks it necessary, because of urgent circumstances, to make the application by telephone.

Note: See also clause 172.

(3) The chief officer of an enforcement agency may, in writing, authorise persons (including classes of persons) for the purposes of subclause (2). However, each person must be entitled under clause 42 to make applications on the agency’s behalf.
44 Contents of written application

An application under clause 42 must, if it is in writing, set out:

(a) the name of the enforcement agency; and

(b) the name of the person making the application on the agency’s behalf.

45 Affidavits to accompany written application

(1) An application under clause 42 must, if it is in writing, be accompanied by an affidavit complying with this clause.

(2) The affidavit must set out the facts and other grounds on which the application is based.

(3) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.

46 Information to be given on telephone application

The information given to an issuing authority in connection with a telephone application under clause 42 to the issuing authority:

(a) must include particulars of the urgent circumstances because of which the person making the application on the enforcement agency’s behalf thinks it necessary to make the application by telephone; and

(b) must include each matter that, if the application had been made in writing, clause 44 or 45 would have required the application, or an affidavit accompanying it, to set out; and

(c) must be given orally or in writing, as the issuing authority directs.

47 Giving further information to issuing authority

(1) An issuing authority may require further information to be given in connection with an application under clause 42 to the issuing authority for an international production order.

(2) The further information:
(a) must be given on oath if the application was made in writing;
and
(b) must be given orally or otherwise, as the issuing authority
directs.

Subdivision B—International production orders relating to
telecommunications data

48 Issue of international production order—enforcement of the
criminal law

Scope

(1) This clause applies if an enforcement agency applies, under clause
42, to an issuing authority for an international production order that
is directed to a designated communications provider.

Issue of international production order

(2) If the issuing authority is satisfied, on the basis of the information
given to the issuing authority under this Division in connection
with the application, that:
(a) there are reasonable grounds for suspecting that the
designated communications provider holds, or is likely to
commence to hold, any of the following telecommunications
data:
(i) telecommunications data that relates to communications
carried by an individual carriage service supplied using
a telecommunications network owned or operated by
the designated communications provider;
(ii) telecommunications data that relates to an individual
carriage service supplied using a telecommunications
network owned or operated by the designated
communications provider;
(iii) telecommunications data that relates to communications
carried by an individual carriage service supplied by the
designated communications provider;
(iv) telecommunications data that relates to an individual
carriage service supplied by the designated
communications provider;
(v) telecommunications data that relates to messages sent or received using an individual message/call application service provided by the designated communications provider;

(vi) telecommunications data that relates to voice calls made or received using an individual message/call application service provided by the designated communications provider;

(vii) telecommunications data that relates to video calls made or received using an individual message/call application service provided by the designated communications provider;

(viii) telecommunications data that relates to an individual message/call application service provided by the designated communications provider;

(ix) telecommunications data that relates to material that has been uploaded by an end-user for storage or back-up by a storage/back-up service provided by the designated communications provider;

(x) telecommunications data that relates to material that has been posted on a general electronic content service provided by the designated communications provider;

(b) Subdivision A has been complied with in relation to the application; and

(c) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and

(d) disclosing the telecommunications data to the enforcement agency, under an order issued under this clause, would be likely to assist in connection with the investigation by the enforcement agency of a serious category 1 offence, or serious category 1 offences;

the issuing authority may issue an order (to be known as an international production order) directing the designated communications provider to do either or both of the following:

(e) so far as the telecommunications data is held by the designated communications provider when the international
production order comes into force—disclose any such telecommunications data to the agency;

(f) so far as the telecommunications data commences to be held by the designated communications provider during a specified period—disclose any such telecommunications data to the agency.

**Period specified in international production order**

(3) A period specified in an international production order for the purposes of paragraph (2)(f) must not begin before the time when the order is given to the designated communications provider.

Note: International production orders are given under clause 111.

(4) A period specified in an international production order for the purposes of paragraph (2)(f) must not be longer than 90 days.

**Matters to which issuing authority must have regard**

(5) In deciding whether to issue an international production order under subclause (2), the issuing authority must have regard to the following matters:

(a) how much the privacy of any person or persons would be likely to be interfered with by disclosing, under an international production order, the telecommunications data;

(b) the gravity of the conduct constituting the serious category 1 offence or serious category 1 offences being investigated;

(c) how much the telecommunications data would be likely to assist in connection with the investigation by the enforcement agency of the serious category 1 offence or serious category 1 offences;

(d) to what extent methods of investigating the serious category 1 offence or serious category 1 offences that do not involve so disclosing the telecommunications data have been used by, or are available to, the enforcement agency;

(e) how much the use of such methods would be likely to assist in connection with the investigation by the enforcement agency of the serious category 1 offence or serious category 1 offences;
Schedule 1  Amendments
Part 1  General amendments

(f) how much the use of such methods would be likely to
prejudice the investigation by the enforcement agency of the
serious category 1 offence or serious category 1 offences,
whether because of delay or for any other reason;
(g) such other matters (if any) as the issuing authority considers
relevant.

49 Content of international production order

Scope

(1) This clause applies to an international production order issued
under clause 48 in response to an application made by an
enforcement agency.

Content

(2) The order must be signed by the issuing authority who issued it.

(3) The order must set out the following:
(a) the date on which the order was issued;
(b) the name of the enforcement agency;
(c) the name of the designated communications provider to
whom the order is
directed;
(d) the name of the designated international agreement
nominated in the application for the order;
(e) short particulars of each serious category 1 offence in relation
to which the issuing authority issuing the order was satisfied,
on the application for the order, as mentioned in paragraph
48(2)(d) of this Schedule.

(4) If the order directs a designated communications provider to
disclose telecommunications data to the enforcement agency, the
order may require the provider to disclose that data to the agency in
a specified way.

(5) A requirement under subclause (4) may:
(a) require that the telecommunications data be disclosed to the
enforcement agency directly; or
(b) require that the telecommunications data be disclosed to the enforcement agency indirectly via the Australian Designated Authority.

(6) For the purposes of this clause, a specified way may deal with matters of timing.

Example: If a requirement under subclause (4) relates to telecommunications data that commences to be held by a designated communications provider during a specified period, the requirement may require that the telecommunications data be disclosed to the enforcement agency within 30 minutes after the telecommunications data commences to be held.

50 Issue of further international production order

If:

(a) an international production order (the original order) was issued under clause 48; and
(b) the original order was directed to a designated communications provider; and
(c) the original order relates to the investigation by an enforcement agency of a serious category 1 offence, or serious category 1 offences;

this Schedule does not prevent the issue of a further international production order under clause 48 that:
(d) is directed to the provider; and
(e) relates to the investigation by the enforcement agency of that offence or those offences.

Part 3—International production orders relating to control orders

Division 1—Introduction

51 Simplified outline of this Part

- If a control order is in force in relation to a person, an international production order may be issued for purposes in connection with the monitoring of the person, so as to protect
the public from terrorist acts, prevent support for terrorist acts and hostile acts overseas and detect breaches of the control order.

- There are 3 types of international production orders:
  (a) international production orders relating to interception; and
  (b) international production orders relating to stored communications; and
  (c) international production orders relating to telecommunications data.

- An international production order is directed to a designated communications provider.

- An international production order may be issued in response to an application made by a control order IPO agency.

- An application for an international production order must nominate a designated international agreement.

- If an international production order is issued in relation to an application made by a control order IPO agency, the agency must notify the international production order to the Ombudsman.

Note: An international production order comes into force when it is given to a designated communications provider under clause 111.

Division 2—International production orders relating to interception: control orders

Subdivision A—Applications

52 Application for international production order—control order

(1) A control order IPO agency may apply to an eligible Judge or nominated AAT member for an international production order under clause 60 that:
   (a) is in respect of:
(i) one or more individual carriage services; or
(ii) one or more individual message/call application
services; and
(b) is directed to a designated communications provider.

(2) The application must nominate a designated international
agreement.

(3) The application must be made on the control order IPO agency’s
behalf by:
(a) if the agency is referred to in subclause 22(3)—a person
referred to in that subclause in relation to the agency; or
(b) otherwise:
(i) the chief officer of the agency; or
(ii) an officer of the agency (by whatever name called) who
holds, or is acting in, an office or position in the agency
nominated under subclause (4).

(4) The chief officer of the control order IPO agency may, in writing,
nominate for the purposes of subparagraph (3)(b)(ii) an office or
position in the agency that is involved in the management of the
agency.

53 Form of application

(1) Subject to subclause (2), an application under clause 52 for an
international production order must be in writing.

(2) If the person making an application under clause 52 for an
international production order on a control order IPO agency’s
behalf:
(a) is the chief officer of the agency or a person in relation to
whom an authorisation by the chief officer is in force under
subclause (3); and
(b) thinks it necessary, because of urgent circumstances, to make
the application by telephone;
the person may make the application by telephone.

Note: See also clause 172.
(3) The chief officer of a control order IPO agency may authorise in writing, for the purposes of subclause (2), persons who, or classes of persons who, are entitled under clause 52 to make applications on the agency’s behalf.

54 Contents of application

A written application under clause 52 by a control order IPO agency for an international production order must set out:

(a) the name of the agency; and
(b) the name of the person making the application on the agency’s behalf.

55 Affidavits to accompany written application

(1) A written application under clause 52 by a control order IPO agency for an international production order must be accompanied by an affidavit complying with this clause.

(2) The affidavit must set out the facts and other grounds on which the application is based.

(3) If the application is for an international production order in respect of one or more individual carriage services, the affidavit must set out the following information, so far as it can be derived from the control order IPO agency’s records:

(a) the number of previous applications (if any) for international production orders that the agency has made under clause 52 in relation to those individual carriage services;
(b) the number of international production orders (if any) previously issued in response to such applications;
(c) particulars of the use made by the agency of intercepted communications made available to the agency under such orders.

(4) If the application is for an international production order in respect of one or more individual message/call application services, the affidavit must set out the following information, so far as it can be derived from the control order IPO agency’s records:

(a) the number of previous applications (if any) for international production orders that the agency has made under clause 52
in relation to those individual message/call application
services;
(b) the number of international production orders (if any)
previously issued in response to such applications;
(c) particulars of the use made by the agency of intercepted
messages, voice calls or video calls made available to the
agency under such orders.

(5) Despite subclause (1), a written application may be accompanied
by 2 or more affidavits that together set out each matter that, apart
from this subclause, this clause would have required an affidavit
accompanying the application to set out.

56 Information to be given on telephone application

The information given to an eligible Judge or nominated AAT
member in connection with a telephone application under clause 52
to the eligible Judge or nominated AAT member:
(a) must include particulars of the urgent circumstances because
of which the person making the application on the control
order IPO agency’s behalf thinks it necessary to make the
application by telephone; and
(b) must include each matter that, if the application had been
made in writing, clause 54 or 55 would have required the
application, or an affidavit accompanying it, to set out; and
(c) must be given orally or in writing, as the eligible Judge or
nominated AAT member directs.

57 Giving further information to eligible Judge or nominated AAT
member

(1) An eligible Judge or nominated AAT member may require further
information to be given in connection with an application under
clause 52 to the eligible Judge or nominated AAT member for an
international production order.

(2) The further information:
(a) must be given on oath if the application was made in writing; and
(b) must be given orally or otherwise, as the eligible Judge or nominated AAT member directs.

58 Application by control order IPO agency of Victoria

Scope

(1) This clause applies if a control order IPO agency of Victoria applies, under clause 52, to an eligible Judge or nominated AAT member for an international production order under clause 60 that is in respect of:

(a) one or more individual carriage services; or

(b) one or more individual message/call application services.

PIM may make submissions

(2) A Victorian PIM may, orally or in writing, make submissions to the eligible Judge or nominated AAT member about the following matters:

(a) in the case of an application for an international production order that is in respect of one or more individual carriage services—the matters mentioned in paragraphs 60(5)(a) to (g);

(b) in the case of an application for an international production order that is in respect of one or more individual message/call application services—the matters mentioned in paragraphs 60(6)(a) to (g).

PIM may question certain persons

(3) The Victorian PIM may, for the purpose of making submissions under subclause (2), question:

(a) the person making the application for the international production order on the control order IPO agency’s behalf; or

(b) a person who, under clause 57, is required by the eligible Judge or nominated AAT member to give further information to the eligible Judge or nominated AAT member in connection with the application.

However, the Victorian PIM may only do so in the presence of the eligible Judge or nominated AAT member.
59 Application by control order IPO agency of Queensland

Scope

(1) This clause applies if a control order IPO agency of Queensland applies, under clause 52, to an eligible Judge or nominated AAT member for an international production order under clause 60 that is in respect of:
   (a) one or more individual carriage services; or
   (b) one or more individual message/call application services.

PIM may make submissions

(2) A Queensland PIM may, orally or in writing, make submissions to the eligible Judge or nominated AAT member about the following matters:
   (a) in the case of an application for an international production order that is in respect of one or more individual carriage services—the matters mentioned in paragraphs 60(5)(a) to (g);
   (b) in the case of an application for an international production order that is in respect of one or more individual message/call application services—the matters mentioned in paragraphs 60(6)(a) to (g).

PIM may question certain persons

(3) The Queensland PIM may, for the purpose of making submissions under subclause (2), question:
   (a) the person making the application for the international production order on the control order IPO agency’s behalf; or
   (b) a person who, under clause 57, is required by the eligible Judge or nominated AAT member to give further information to the eligible Judge or nominated AAT member in connection with the application.

However, the Queensland PIM may only do so in the presence of the eligible Judge or nominated AAT member.

(4) A Queensland PIM may, by writing, delegate to a Queensland deputy PIM the Queensland PIM’s power under subclause (2) or (3), or both.
(5) In exercising powers under the delegation, the Queensland deputy PIM must comply with any directions of the Queensland PIM.

Subdivision B—International production orders relating to interception

60 Issue of international production order—control order

Scope

(1) This clause applies if a control order IPO agency applies, under clause 52, to an eligible Judge or nominated AAT member for an international production order that:
   (a) is in respect of:
       (i) one or more individual carriage services; or
       (ii) one or more individual message/call application services; and
   (b) is directed to a designated communications provider.

Issue of international production order

(2) If the eligible Judge or nominated AAT member is satisfied, on the basis of the information given to the eligible Judge or nominated AAT member under this Division in connection with the application, that:
   (a) in the case of an application for an international production order that is in respect of one or more individual carriage services—there are reasonable grounds for suspecting that:
       (i) the designated communications provider owns or operates a telecommunications network that is, or is likely to be, used to supply those individual carriage services; or
       (ii) the designated communications provider supplies those individual carriage services; and
   (b) in the case of an application for an international production order that is in respect of one or more individual message/call application services—there are reasonable grounds for suspecting that the designated communications provider
provides those individual message/call application services;
and

(c) Subdivision A has been complied with in relation to the
application; and

(d) in the case of a telephone application—because of urgent
circumstances, it was necessary to make the application by
telephone; and

(e) in the case of an application for an international production
order that is in respect of one or more individual carriage
services—there are reasonable grounds for suspecting that a
particular person is using, or is likely to use, those individual
carriage services; and

(f) in the case of an application for an international production
order that is in respect of one or more individual message/call
application services—there are reasonable grounds for
suspecting that a particular person is using, or is likely to use,
those individual message/call application services; and

(g) in the case of an application for an international production
order that is in respect of one or more individual message/call
services:

(i) a control order is in force in relation to the particular
person; or

(ii) a control order is in force in relation to another person,
and the particular person is likely to communicate with
the other person using those individual carriage
services; and

(h) in the case of an application for an international production
order that is in respect of one or more individual message/call
application services:

(i) a control order is in force in relation to the particular
person; or

(ii) a control order is in force in relation to another person,
and the particular person is likely to communicate with
the other person using those individual message/call
application services; and

(i) in the case of an application for an international production
order that is in respect of one or more individual carriage
services—information that would be likely to be obtained by
intercepting, under an order issued under this clause,
communications that are being carried by those individual carriage services would be likely to substantially assist in connection with:
(i) the protection of the public from a terrorist act; or
(ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
(iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
(iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with; and

(j) in the case of an application for an international production order that is in respect of one or more individual message/call application services—information that would be likely to be obtained by intercepting, under an order issued under this clause, messages sent or received, voice calls made or received, or video calls made or received, using those individual message/call application services would be likely to substantially assist in connection with:
(i) the protection of the public from a terrorist act; or
(ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
(iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
(iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;

the eligible Judge or nominated AAT member may issue an order (to be known as an international production order) directing the designated communications provider to:
(k) in the case of an application for an international production order that is in respect of one or more individual carriage services:
(i) intercept communications carried by those individual carriage services during a specified period; and
(ii) make those intercepted communications available to the control order IPO agency; and
(iii) disclose to the control order IPO agency specified telecommunications data that relates to those intercepted communications; and
(iv) disclose to the control order IPO agency specified telecommunications data that relates to those individual carriage services; or
(l) in the case of an application for an international production order that is in respect of one or more individual message/call application services:
   (i) intercept messages sent or received, voice calls made or received, or video calls made or received, using those individual message/call application services during a specified period; and
   (ii) make those intercepted messages, voice calls or video calls available to the control order IPO agency; and
   (iii) disclose to the control order IPO agency specified telecommunications data that relates to those intercepted messages, voice calls or video calls; and
   (iv) disclose to the control order IPO agency specified telecommunications data that relates to those individual message/call application services.

Note 1: Part 5.3 of the Criminal Code creates offences relating to terrorist acts.
Note 2: Part 5.5 of the Criminal Code creates offences relating to engaging in a hostile activity in a foreign country.
Note 3: Section 104.27 of the Criminal Code creates an offence of contravening a control order.
Note 4: Subclauses (7) and (8) restrict the issuing of international production orders if subparagraph (2)(g)(ii) or (h)(ii) applies.

**Period specified in international production order**

(3) A period specified in an international production order for the purposes of subparagraph (2)(k)(i) or (l)(i) must not begin before the time when the order is given to the designated communications provider.

Note: International production orders are given under clause 111.
Schedule 1 Amendments
Part 1 General amendments

(4) The period specified in an international production order for the purposes of subparagraph (2)(k)(i) or (l)(i) must not be longer than:
(a) if subparagraph (2)(g)(ii) or (h)(ii) applies (as the case requires)—45 days; or
(b) otherwise—90 days.

Matters to which eligible Judge or nominated AAT member must have regard

(5) In deciding whether to issue an international production order under subclause (2) (in the case of an application for an international production order that is in respect of one or more individual carriage services), the eligible Judge or nominated AAT member must have regard to the following matters:
(a) how much the privacy of any person or persons would be likely to be interfered with by intercepting, under an international production order, communications that are being carried by those individual carriage services;
(b) how much the information referred to in paragraph (2)(i) would be likely to assist in connection with:
   (i) the protection of the public from a terrorist act; or
   (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
   (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
   (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;
(c) to what extent methods for:
   (i) the protection of the public from a terrorist act; or
   (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
   (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
   (iv) determining whether the control order, or any succeeding control 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;
(d) how much the use of such methods would be likely to assist
in connection with:
   (i) the protection of the public from a terrorist act; or
   (ii) preventing the provision of support for, or the
        facilitation of, a terrorist act; or
   (iii) preventing the provision of support for, or the
        facilitation of, the engagement in a hostile activity in a
        foreign country; or
   (iv) determining whether the control order, or any
        succeeding control order, has been, or is being,
        complied with;
(e) how much the use of such methods would be likely to
   prejudice:
   (i) the protection of the public from a terrorist act; or
   (ii) preventing the provision of support for, or the
        facilitation of, a terrorist act; or
   (iii) preventing the provision of support for, or the
        facilitation of, the engagement in a hostile activity in a
        foreign country; or
   (iv) determining whether the control order, or any
        succeeding control order, has been, or is being,
        complied with;
whether because of delay or for any other reason;
(f) whether intercepting, under an international production order,
communications carried by those individual carriage services
would be the method that is likely to have the least
interference with any person’s privacy;
(g) the possibility that the person in relation to whom the control
order is in force:
   (i) has engaged, is engaging, or will engage, in a terrorist
       act; or
   (ii) has provided, is providing, or will provide, support for a
        terrorist act; or
   (iii) has facilitated, is facilitating, or will facilitate, a terrorist
        act; or
Schedule 1 Amendments
Part 1 General amendments

(ii) has provided, is providing, or will provide, support for
the engagement in a hostile activity in a foreign country;
or

(i) has facilitated, is facilitating, or will facilitate, the
engagement in a hostile activity in a foreign country;
or

(iii) has contravened, is contravening, or will contravene, the
control order; or

(iv) will contravene a succeeding control order;

(h) in relation to an application by a control order IPO agency of
Victoria—any submissions made by a Victorian PIM under
clause 58 to the eligible Judge or nominated AAT member;

(i) in relation to an application by a control order IPO agency of
Queensland—any submissions made by a Queensland PIM
under clause 59 to the eligible Judge or nominated AAT
member;

(j) such other matters (if any) as the eligible Judge or nominated
AAT member considers relevant.

(6) In deciding whether to issue an international production order
under subclause (2) (in the case of an application for an
international production order that is in respect of one or more
individual message/call application services), the eligible Judge or
nominated AAT member must have regard to the following
matters:

(a) how much the privacy of any person or persons would be
likely to be interfered with by intercepting, under an
international production order, messages sent or received,
voice calls made or received, or video calls made or received,
using those individual message/call application services;

(b) how much the information referred to in paragraph (2)(j)
would be likely to assist in connection with:

(i) the protection of the public from a terrorist act; or
(ii) preventing the provision of support for, or the
facilitation of, a terrorist act; or
(iii) preventing the provision of support for, or the
facilitation of, the engagement in a hostile activity in a
foreign country; or
(iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;

(c) to what extent methods for:

(i) the protection of the public from a terrorist act; or
(ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
(iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
(iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;

that do not involve so intercepting messages, voice calls or video calls have been used by, or are available to, the agency;

(d) how much the use of such methods would be likely to assist in connection with:

(i) the protection of the public from a terrorist act; or
(ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
(iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
(iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;

(e) how much the use of such methods would be likely to prejudice:

(i) the protection of the public from a terrorist act; or
(ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
(iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
(iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;

whether because of delay or for any other reason;
Schedule 1 Amendments
Part 1 General amendments

(f) whether intercepting, under an international production order, messages sent or received, voice calls made or received, or video calls made or received, using those individual message/call application services would be the method that is likely to have the least interference with any person’s privacy;

(g) the possibility that the person in relation to whom the control order is in force:
   (i) has engaged, is engaging, or will engage, in a terrorist act; or
   (ii) has provided, is providing, or will provide, support for a terrorist act; or
   (iii) has facilitated, is facilitating, or will facilitate, a terrorist act; or
   (iv) has provided, is providing, or will provide, support for the engagement in a hostile activity in a foreign country; or
   (v) has facilitated, is facilitating, or will facilitate, the engagement in a hostile activity in a foreign country; or
   (vi) has contravened, is contravening, or will contravene, the control order; or
   (vii) will contravene a succeeding control order;

(h) in relation to an application by a control order IPO agency of Victoria—any submissions made by a Victorian PIM under clause 58 to the eligible Judge or nominated AAT member; and

(i) in relation to an application by a control order IPO agency of Queensland—any submissions made by a Queensland PIM under clause 59 to the eligible Judge or nominated AAT member;

(j) such other matters (if any) as the eligible Judge or nominated AAT member considers relevant.

Restriction on issuing order

(7) The eligible Judge or nominated AAT member must not issue an international production order under subclause (2) in a case where subparagraph (2)(g)(ii) applies, unless the eligible Judge or nominated AAT member is satisfied that:
(a) the control order IPO agency has exhausted all other practicable methods of identifying the individual carriage services used, or likely to be used, by the person to whom the control order referred to in subparagraph (2)(g)(ii) relates; or
(b) interception of communications carried by individual carriage services used or likely to be used by that person would not otherwise be possible.

(8) The eligible Judge or nominated AAT member must not issue an international production order under subclause (2) in a case where: subparagraph (2)(h)(ii) applies, unless the eligible Judge or nominated AAT member is satisfied that:
(a) the control order IPO agency has exhausted all other practicable methods of identifying the individual message/call application services used, or likely to be used, by the person the person to whom the control order referred to in subparagraph (2)(h)(ii) relates; or
(b) interception of messages sent or received, voice calls made or received, or video calls made or received, using individual message/call application services used or likely to be used by that person would not otherwise be possible.

61 Content of international production order

Scope

(1) This clause applies to an international production order issued under clause 60 in response to an application made by a control order IPO agency.

Content

(2) The order must be signed by the eligible Judge or nominated AAT member who issued it.

(3) The order must set out the following:
(a) the date on which the order was issued;
(b) the name of the control order IPO agency;
(c) the name of the designated communications provider to whom the order is directed;
(d) the name of the designated international agreement nominated in the application for the order;

(e) the applicable telecommunications identifiers:
   (i) in the case of an order that is in respect of one or more individual carriage services—to which those individual carriage services relate; or
   (ii) in the case of an order that is in respect of one or more individual message/call application services—to which those individual message/call application services relate;

(f) a statement to the effect that the order is issued on the basis of a control order made in relation to a person;

(g) the name of the person;

(h) either:
   (i) a statement to the effect that the control order is an interim control order; or
   (ii) a statement to the effect that the control order is a confirmed control order.

(4) If the order directs a designated communications provider to intercept communications, the order may require the provider to:
   (a) intercept those communications in a specified way; and
   (b) make those intercepted communications available to the control order IPO agency in a specified way.

(5) A requirement under subclause (4) may:
   (a) require that intercepted communications be made available to the control order IPO agency directly; or
   (b) require that intercepted communications be made available to the control order IPO agency indirectly via the Australian Designated Authority.

(6) If the order directs a designated communications provider to intercept messages, voice calls or video calls, the order may require the provider to:
   (a) intercept those messages, voice calls or video calls in a specified way; and
   (b) make those intercepted messages, voice calls or video calls available to the control order IPO agency in a specified way.
(7) A requirement under subclause (6) may:
   (a) require that intercepted messages, voice calls or video calls
       be made available to the control order IPO agency directly;
       or
   (b) require that intercepted messages, voice calls or video calls
       be made available to the control order IPO agency indirectly
       via the Australian Designated Authority.

(8) If the order directs a designated communications provider to
disclose telecommunications data to the control order IPO agency,
the order may require the provider to disclose that data to the
agency in a specified way.

(9) A requirement under subclause (8) may:
   (a) require that the telecommunications data be disclosed to the
       control order IPO agency directly; or
   (b) require that the telecommunications data be disclosed to the
       control order IPO agency indirectly via the Australian
       Designated Authority.

(10) For the purposes of this clause, a specified way may deal with
matters of timing.

Example: A requirement under subclause (4) may require that an intercepted
communication be made available to the control order IPO agency
within 30 minutes after the communication was completed.

62 Issue of further international production order

(1) If:
   (a) an international production order (the *original order*) was
       issued under clause 60; and
   (b) the original order was in respect of one or more individual
       carriage services; and
   (c) the original order was directed to a designated
       communications provider;
       this Schedule does not prevent the issue of a further international
production order under clause 60 that is:
   (d) in respect of any or all of those services; and
   (e) directed to the provider;
so long as the period specified in the further order for the purposes
of subparagraph 60(2)(k)(i) of this Schedule begins after the end of
the period specified in the original order for the purposes of that
subsection.

(2) If:

(a) an international production order (the original order) was
    issued under clause 60; and
(b) the original order was in respect of one or more individual
    message/call application services; and
(c) the original order was directed to a designated
    communications provider;
this Schedule does not prevent the issue of a further international
production order under clause 60 that is:
(d) in respect of any or all of those services; and
(e) directed to the provider;
so long as the period specified in the further order for the purposes
of subparagraph 60(2)(l)(i) of this Schedule begins after the end of
the period specified in the original order for the purposes of that
subsection.

Division 3—International production orders relating to
stored communications: control orders

Subdivision A—Applications

63 Application for international production order—control order

(1) A control order IPO agency may apply to an issuing authority for
   an international production order under clause 69 that:
   (a) is in respect of a particular person; and
   (b) is directed to a designated communications provider.

(2) The application must nominate a designated international
    agreement.

(3) The application must be made on the control order IPO agency’s
    behalf by:
(a) if the agency is referred to in subclause 22(3)—a person referred to in that subclause in relation to the agency; or
(b) otherwise:
   (i) the chief officer of the agency; or
   (ii) an officer of the agency (by whatever name called) who
        holds, or is acting in, an office or position in the agency
        nominated under subclause (4).

(4) The chief officer of the control order IPO agency may, in writing,
    nominate for the purposes of subparagraph (3)(b)(ii) an office or
    position in the agency that is involved in the management of the
    agency.

(5) A nomination under subclause (4) is not a legislative instrument.

64 Form of application

(1) An application under clause 63 must be in writing.

(2) However, a person making the application on the control order IPO agency’s behalf may make the application by telephone if the person:
   (a) is the chief officer of the agency or a person in relation to whom an authorisation by the chief officer is in force under subclause (3); and
   (b) thinks it necessary, because of urgent circumstances, to make the application by telephone.

Note: See also clause 172.

(3) The chief officer of a control order IPO agency may, in writing,
    authorise persons (including classes of persons) for the purposes of subclause (2). However, each person must be entitled under clause 63 to make applications on the agency’s behalf.

65 Contents of written application

An application under clause 63 must, if it is in writing, set out:
(a) the name of the control order IPO agency; and
(b) the name of the person making the application on the agency’s behalf.
66 Affidavits to accompany written application

(1) An application under clause 63 must, if it is in writing, be accompanied by an affidavit complying with this clause.

(2) The affidavit must set out the facts and other grounds on which the application is based.

(3) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.

67 Information to be given on telephone application

The information given to an issuing authority in connection with a telephone application under clause 63 to the issuing authority:

(a) must include particulars of the urgent circumstances because of which the person making the application on the control order IPO agency’s behalf thinks it necessary to make the application by telephone; and

(b) must include each matter that, if the application had been made in writing, clause 65 or 66 would have required the application, or an affidavit accompanying it, to set out; and

(c) must be given orally or in writing, as the issuing authority directs.

68 Giving further information to issuing authority

(1) An issuing authority may require further information to be given in connection with an application under clause 63 to the issuing authority for an international production order.

(2) The further information:

(a) must be given on oath if the application was made in writing; and

(b) must be given orally or otherwise, as the issuing authority directs.
Subdivision B—International production orders relating to stored communications

69 Issue of international production order—control order

Scope

(1) This clause applies if a control order IPO agency applies, under clause 63, to an issuing authority for an international production order that:

(a) is in respect of a particular person (the relevant person); and

(b) is directed to a designated communications provider.

Issue of international production order

(2) If the issuing authority is satisfied, on the basis of the information given to the issuing authority under this Division in connection with the application, that:

(a) a control order is in force in relation to the relevant person; and

(b) there are reasonable grounds for suspecting that the designated communications provider holds any of the following stored communications:

(i) stored communications that consist of communications that the relevant person has made using a telecommunications network owned or operated by the designated communications provider;

(ii) stored communications that consist of communications that another person has made using a telecommunications network owned or operated by the designated communications provider, and for which the relevant person is the intended recipient;

(iii) stored communications that consist of communications that the relevant person has made using a carriage service supplied by the designated communications provider;

(iv) stored communications that consist of communications that another person has made using a carriage service supplied by the designated communications provider,
and for which the relevant person is the intended recipient;

(v) stored communications that consist of messages that the relevant person has sent or received using a message/call application service provided by the designated communications provider;

(vi) stored communications that consist of recordings of voice calls that the relevant person has made or received using a message/call application service provided by the designated communications provider;

(vii) stored communications that consist of recordings of video calls that the relevant person has made or received using a message/call application service provided by the designated communications provider;

(viii) stored communications that consist of material that the relevant person has uploaded for storage or back-up by a storage/back-up service provided by the designated communications provider;

(ix) stored communications that consist of material that the relevant person has posted to a general electronic content service provided by the designated communications provider; and

(c) Subdivision A has been complied with in relation to the application; and

(d) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and

(e) information that would be likely to be obtained by making a copy, under an order issued under this clause, of the stored communications would be likely to substantially assist in connection with:

(i) the protection of the public from a terrorist act; or

(ii) preventing the provision of support for, or the facilitation of, a terrorist act; or

(iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or

(iv) determining whether the control order has been, or is being, complied with;
the issuing authority may issue an order (to be known as an
international production order) directing the designated
communications provider to:

(f) make a copy of any such stored communications; and
(g) make the copy available to the control order IPO agency; and
(h) if the stored communications consist of communications
carried by an individual carriage service—disclose to the
agency:
   (i) specified telecommunications data that relates to those
       communications; and
   (ii) specified telecommunications data that relates to the
        individual carriage service; and
   (i) if the stored communications consist of messages sent or
       received using an individual message/call application
       service—disclose to the agency:
       (i) specified telecommunications data that relates to those
           messages; and
       (ii) specified telecommunications data that relates to the
           individual message/call application service; or
   (j) if the stored communications consist of recordings of voice
calls made or received using an individual message/call
       application service—disclose to the agency:
       (i) specified telecommunications data that relates to those
           voice calls; and
       (ii) specified telecommunications data that relates to the
           individual message/call application service; and
   (k) if the stored communications consist of recordings of video
calls made or received using an individual message/call
       application service—disclose to the agency:
       (i) specified telecommunications data that relates to those
           video calls; and
       (ii) specified telecommunications data that relates to the
           individual message/call application service; and
   (l) if the stored communications consist of material that has been
       uploaded by an end-user for storage or back-up by a
       storage/back-up service—disclose to the agency:
       (i) specified telecommunications data that relates to that
           material; and
(ii) specified telecommunications data that relates to the end-user’s account with the storage/back-up service; and

(m) if the stored communications consist of material posted to a general electronic content service by an end-user—disclose to the agency:
   (i) specified telecommunications data that relates to that material; and
   (ii) specified telecommunications data that relates to the end-user’s account with the general electronic content service.

Matters to which issuing authority must have regard

(3) In deciding whether to issue an international production order under subclause (2), the issuing authority must have regard to the following matters:
   (a) how much the privacy of any person or persons would be likely to be interfered with by the control order IPO agency obtaining, under an international production order, a copy of the stored communications;
   (b) how much the information mentioned in paragraph (2)(e) would be likely to assist in connection with:
      (i) the protection of the public from a terrorist act; or
      (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
      (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
      (iv) determining whether the control order has been, or is being, complied with;
   (c) to what extent methods for:
      (i) the protection of the public from a terrorist act; or
      (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
      (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
(iv) determining whether the control order has been, or is being, complied with;

that do not involve so obtaining a copy of the stored communications have been used by, or are available to, the control order IPO agency;

(d) how much the use of such methods would be likely to assist in connection with:

   (i) the protection of the public from a terrorist act; or
   (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
   (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
   (iv) determining whether the control order has been, or is being, complied with;

(e) how much the use of such methods would be likely to prejudice:

   (i) the protection of the public from a terrorist act; or
   (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
   (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
   (iv) determining whether the control order has been, or is being, complied with;

   whether because of delay or for any other reason;

(f) such other matters (if any) as the issuing authority considers relevant.

70 Content of international production order

Scope

(1) This clause applies to an international production order issued under clause 69 in response to an application made by a control order IPO agency.
(2) The order must be signed by the issuing authority who issued it.

(3) The order must set out the following:
   (a) the date on which the order was issued;
   (b) the name of the control order IPO agency;
   (c) the name of the designated communications provider to whom the order is directed;
   (d) the name of the designated international agreement nominated in the application for the order;
   (e) a statement to the effect that the order is issued on the basis of a control order made in relation to a person;
   (f) the name of the person;
   (g) either:
      (i) a statement to the effect that the control order is an interim control order; or
      (ii) a statement to the effect that the control order is a confirmed control order.

(4) If the order directs a designated communications provider to make a copy of stored communications available to the control order IPO agency, the order may require the provider to make that copy available to the agency in a specified way.

(5) A requirement under subclause (4) may:
   (a) require that a copy of stored communications be made available to the control order IPO agency directly; or
   (b) require that a copy of stored communications be made available to the control order IPO agency indirectly via the Australian Designated Authority.

(6) If the order directs a designated communications provider to disclose telecommunications data to the control order IPO agency, the order may require the provider to disclose that data to the agency in a specified way.

(7) A requirement under subclause (6) may:
   (a) require that the telecommunications data be disclosed to the control order IPO agency directly; or
(b) require that the telecommunications data be disclosed to the control order IPO agency indirectly via the Australian Designated Authority.

(8) For the purposes of this clause, a specified way may deal with matters of timing.

71 Issue of further international production order

If:

(a) an international production order (the original order) was issued under clause 69; and
(b) the original order was in respect of a particular person; and
(c) the original order was directed to a designated communications provider;

this Schedule does not prevent the issue of a further international production order under clause 69 that:
(d) is in respect of the person; and
(e) is directed to the provider.

Division 4—International production orders relating to telecommunications data: control orders

Subdivision A—Applications

72 Application for international production order—control order

(1) A control order IPO agency may apply to an issuing authority for an international production order under clause 78 that:
(a) is in respect of a particular person; and
(b) is directed to a designated communications provider.

(2) The application must nominate a designated international agreement.

(3) The application must be made on the control order IPO agency’s behalf by an authorised officer of the agency.
73 Form of application

(1) An application under clause 72 must be in writing.

(2) However, a person making the application on the control order IPO agency’s behalf may make the application by telephone if the person:
   (a) is the chief officer of the agency or a person in relation to whom an authorisation by the chief officer is in force under subclause (3); and
   (b) thinks it necessary, because of urgent circumstances, to make the application by telephone.

Note: See also clause 172.

(3) The chief officer of a control order IPO agency may, in writing, authorise persons (including classes of persons) for the purposes of subclause (2). However, each person must be entitled under clause 72 to make applications on the agency’s behalf.

74 Contents of written application

An application under clause 72 must, if it is in writing, set out:
   (a) the name of the control order IPO agency; and
   (b) the name of the person making the application on the agency’s behalf.

75 Affidavits to accompany written application

(1) An application under clause 72 must, if it is in writing, be accompanied by an affidavit complying with this clause.

(2) The affidavit must set out the facts and other grounds on which the application is based.

(3) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.
76 Information to be given on telephone application

The information given to an issuing authority in connection with a telephone application under clause 72 to the issuing authority:
   (a) must include particulars of the urgent circumstances because of which the person making the application on the control order IPO agency’s behalf thinks it necessary to make the application by telephone; and
   (b) must include each matter that, if the application had been made in writing, clause 74 or 75 would have required the application, or an affidavit accompanying it, to set out; and
   (c) must be given orally or in writing, as the issuing authority directs.

77 Giving further information to issuing authority

(1) An issuing authority may require further information to be given in connection with an application under clause 72 to the issuing authority for an international production order.

(2) The further information:
   (a) must be given on oath if the application was made in writing;
   and
   (b) must be given orally or otherwise, as the issuing authority directs.

Subdivision B—International production orders relating to telecommunications data

78 Issue of international production order—control order

Scope

(1) This clause applies if a control order IPO agency applies, under clause 72, to an issuing authority for an international production order that:
   (a) is in respect of a particular person (the relevant person); and
   (b) is directed to a designated communications provider.
Issue of international production order

(2) If the issuing authority is satisfied, on the basis of the information given to the issuing authority under this Division in connection with the application, that:

(a) a control order is in force in relation to the relevant person; and

(b) there are reasonable grounds for suspecting that the designated communications provider holds, or is likely to commence to hold, any of the following telecommunications data:

(i) telecommunications data that relates to communications that the relevant person has made using an individual carriage service supplied by the designated communications provider;

(ii) telecommunications data that relates to an individual carriage service supplied using a telecommunications network owned or operated by the designated communications provider, where the individual carriage service is used, or is likely to be used, by the relevant person;

(iii) telecommunications data that relates to an individual carriage service supplied by the designated communications provider, where the individual carriage service is used, or is likely to be used, by the relevant person;

(iv) telecommunications data that relates to messages sent or received by the relevant person using an individual message/call application service provided by the designated communications provider;

(v) telecommunications data that relates to voice calls made or received by the relevant person using an individual message/call application service provided by the designated communications provider;

(vi) telecommunications data that relates to video calls made or received by the relevant person using an individual message/call application service provided by the designated communications provider;
(vii) telecommunications data that relates to an individual message/call application service provided by the designated communications provider, where the individual message/call application service is used, or is likely to be used, by the relevant person;

(viii) telecommunications data that relates to material that has been uploaded by the relevant person for storage or back-up by a storage/back-up service provided by the designated communications provider;

(ix) telecommunications data that relates to material that has been posted by the relevant person on a general electronic content service provided by the designated communications provider; and

(c) Subdivision A has been complied with in relation to the application; and

(d) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and

(e) disclosing the telecommunications data to the agency, under an order issued under this clause, would be likely to substantially assist in connection with:

(i) the protection of the public from a terrorist act; or

(ii) preventing the provision of support for, or the facilitation of, a terrorist act; or

(iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or

(iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;

the issuing authority may issue an order (to be known as an international production order) directing the designated communications provider to do either or both of the following:

(f) so far as the telecommunications data is held by the designated communications provider when the international production order comes into force—disclose any such telecommunications data to the agency;

(g) so far as the telecommunications data commences to be held by the designated communications provider during a
specified period—disclose any such telecommunications data to the agency.

Period specified in international production order

(3) A period specified in an international production order for the purposes of paragraph (2)(g) must not begin before the time when the order is given to the designated communications provider.

Note: International production orders are given under clause 111.

(4) A period specified in an international production order for the purposes of paragraph (2)(g) must not be longer than 90 days.

(5) In deciding whether to issue an international production order under subclause (2), the issuing authority must have regard to the following matters:

(a) how much the privacy of any person or persons would be likely to be interfered with by obtaining, under an international production order, the telecommunications data;

(b) how much the telecommunications data would be likely to assist in connection with:

(i) the protection of the public from a terrorist act; or

(ii) preventing the provision of support for, or the facilitation of, a terrorist act; or

(iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or

(iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;

(c) to what extent methods for:

(i) the protection of the public from a terrorist act; or

(ii) preventing the provision of support for, or the facilitation of, a terrorist act; or

(iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
(iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;
that do not involve so obtaining the telecommunications data have been used by, or are available to, the control order IPO agency;
(d) how much the use of such methods would be likely to assist in connection with:
   (i) the protection of the public from a terrorist act; or
   (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
   (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
   (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;
(e) how much the use of such methods would be likely to prejudice:
   (i) the protection of the public from a terrorist act; or
   (ii) preventing the provision of support for, or the facilitation of, a terrorist act; or
   (iii) preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country; or
   (iv) determining whether the control order, or any succeeding control order, has been, or is being, complied with;
whether because of delay or for any other reason;
(f) such other matters (if any) as the issuing authority considers relevant.

79  Content of international production order

Scope

(1) This clause applies to an international production order issued under clause 78 in response to an application made by a control order IPO agency.
Schedule 1 Amendments
Part 1 General amendments

1

Content

(2) The order must be signed by the issuing authority who issued it.

(3) The order must set out the following:

(a) the date on which the order was issued;

(b) the name of the control order IPO agency;

(c) the name of the designated communications provider to whom the order is directed;

(d) the name of the designated international agreement nominated in the application for the order;

(e) a statement to the effect that the order is issued on the basis of a control order made in relation to a person;

(f) the name of the person;

(g) either:

(i) a statement to the effect that the control order is an interim control order; or

(ii) a statement to the effect that the control order is a confirmed control order.

(4) If the order directs a designated communications provider to disclose telecommunications data to the control order IPO agency, the order may require the provider to disclose that data to the agency in a specified way.

(5) A requirement under subclause (4) may:

(a) require that the telecommunications data be disclosed to the control order IPO agency directly; or

(b) require that the telecommunications data be disclosed to the control order IPO agency indirectly via the Australian Designated Authority.

(6) For the purposes of this clause, a specified way may deal with matters of timing.

Example: If a requirement under subclause (4) relates to telecommunications data that commences to be held by a designated communications provider during a specified period, the requirement may require that the telecommunications data be disclosed to the control order IPO agency within 30 minutes after the telecommunications data commences to be held.
80 Issue of further international production order

If:

(a) an international production order (the original order) was issued under clause 78; and
(b) the original order was in respect of a particular person; and
(c) the original order was directed to a designated communications provider;
this Schedule does not prevent the issue of a further international production order under clause 78 that:
(d) is in respect of the person; and
(e) is directed to the provider.

Division 5—Notification to Ombudsman by control order IPO agencies in relation to international production orders

81 Notification to Ombudsman by control order IPO agencies in relation to international production orders

(1) Within 3 months after an international production order is issued under this Part in response to an application by a control order IPO agency, the chief officer of the agency must:
(a) notify the Ombudsman that the order has been issued; and
(b) give to the Ombudsman a copy of the order.

(2) If the chief officer of a control order IPO agency contravenes paragraph 114(1)(d) of this Schedule (so far as that paragraph relates to an international production order issued under this Part), the chief officer must:
(a) notify the Ombudsman of the contravention; and
(b) do so as soon as practicable after the contravention.

(3) A failure to comply with subclause (1) or (2) does not affect the validity of an international production order.
Part 4—International production orders relating to national security

Division 1—Introduction

82 Simplified outline of this Part

- International production orders may be issued for purposes in connection with the carrying out by the Organisation of its functions.

- There are 3 types of international production orders:
  (a) international production orders relating to interception; and
  (b) international production orders relating to stored communications; and
  (c) international production orders relating to telecommunications data.

- An international production order is directed to a designated communications provider.

- An international production order may be issued in response to an application made by the Organisation.

- An application for an international production order must nominate a designated international agreement.

Note: An international production order comes into force when it is given to a designated communications provider under clause 112.
Division 2—International production orders relating to interception: national security

Subdivision A—Applications

83 Application for international production order—national security

(1) The Organisation may apply to a nominated AAT Security Division member for an international production order under clause 89 that:
   (a) is in respect of:
       (i) one or more individual carriage services; or
       (ii) one or more individual message/call application services; and
   (b) is directed to a designated communications provider.

(2) The application must nominate a designated international agreement.

(3) The application must be made on the Organisation’s behalf by:
   (a) the Director-General of Security; or
   (b) a Deputy Director-General of Security; or
   (c) an ASIO employee in relation to whom an authorisation is in force under subclause (4).

(4) The Director-General of Security may authorise in writing, for the purposes of subclause (3), ASIO employees who, or classes of ASIO employees who, are entitled under subclause (1) to make applications on the Organisation’s behalf.

Attorney-General’s consent to the making of an application

(5) The Organisation must not make an application under subclause (1) unless the Attorney-General has consented to the making of the application.

(6) The Attorney-General must not consent to the making of an application under subclause (1) for an international production
order that is in respect of one or more individual carriage services
unless the Attorney-General is satisfied that:

(a) there are reasonable grounds for suspecting that those
individual carriage services are being, or are likely to be:

(i) used by a person engaged in, or reasonably suspected of
being engaged in, or of being likely to engage in,
activities prejudicial to security; or

(ii) the means by which a person receives or sends a
communication from or to another person who is
engaged in, or reasonably suspected of being engaged
in, or of being likely to engage in, activities prejudicial
to security; or

(iii) used for purposes prejudicial to security; and

(b) information that would be likely to be obtained by
intercepting, under an order issued in response to the
application, communications that are being carried by those
individual carriage services would be likely to assist the
Organisation in carrying out its function of obtaining
intelligence relating to security.

(7) The Attorney-General must not consent to the making of an
application under subclause (1) for an international production
order that is in respect of one or more individual message/call
application services unless the Attorney-General is satisfied that:

(a) there are reasonable grounds for suspecting that those
individual message/call application services are being, or are
likely to be:

(i) used by a person engaged in, or reasonably suspected of
being engaged in, or of being likely to engage in,
activities prejudicial to security; or

(ii) the means by which a person receives or sends a
message, or receives or makes a voice call or video call,
from or to another person who is engaged in, or
reasonably suspected of being engaged in, or of being
likely to engage in, activities prejudicial to security; or

(iii) used for purposes prejudicial to security; and

(b) information that would be likely to be obtained by
intercepting, under an order issued in response to the
application, messages sent or received, voice calls made or
received, or video calls made or received, using those individual message/call application services would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security.

*Form of Attorney-General’s consent to the making of an application*

(8) Subject to subclause (9), a consent given by the Attorney-General under subclause (5) must be in writing.

(9) If the person who proposes to make an application under subclause (1) on the Organisation’s behalf thinks it necessary, because of urgent circumstances, for the Attorney-General to consent orally to the making of the application:

(a) the person may request the Attorney-General to consent orally to the making of the application; and

(b) if the person makes such a request—the Attorney-General may consent orally to the making of the application.

(10) If, in response to a request made by a person under subclause (9), the Attorney-General consents orally to the making of an application, the person must:

(a) give the Attorney-General a written report that sets out:

(i) particulars of the urgent circumstances because of which the person thought it necessary for the Attorney-General to consent orally; and

(ii) whether the application was granted, withdrawn or refused; and

(b) do so within 3 working days after the day on which the application was granted, withdrawn or refused.

(11) If, in response to a request made by a person under subclause (9), the Attorney-General consents orally to the making of an application, the Organisation must:

(a) give the Inspector-General of Intelligence and Security a copy of the relevant report under subclause (10); and

(b) do so within 3 working days after the day on which the application was granted, withdrawn or refused.
84 Form of application

(1) Subject to subclause (2), an application under clause 83 for an international production order must be in writing.

(2) If the person making an application under clause 83 for an international production order on the Organisation’s behalf thinks it necessary, because of urgent circumstances, to make the application by telephone, the person may make the application by telephone.

Note: See also clause 172.

85 Contents of application

A written application under clause 83 for an international production order must set out:

(a) a statement to the effect that the application is made by the Organisation; and

(b) the name of the person making the application on the Organisation’s behalf.

86 Affidavits to accompany written application

(1) A written application under clause 83 for an international production order must be accompanied by an affidavit complying with this clause.

(2) The affidavit must set out the facts and other grounds on which the application is based.

(3) If the application is for an international production order in respect of one or more individual carriage services, the affidavit must set out the following information, so far as it can be derived from the Organisation’s records:

(a) the number of previous applications (if any) for international production orders that the Organisation has made under clause 83 in relation to those individual carriage services;

(b) the number of international production orders (if any) previously issued in response to such applications;
(c) particulars of the use made by the Organisation of intercepted communications made available to the Organisation under such orders.

(4) If the application is for an international production order in respect of one or more individual message/call application services, the affidavit must set out the following information, so far as it can be derived from the Organisation’s records:
   (a) the number of previous applications (if any) for international production orders that the Organisation has made under clause 83 in relation to those individual message/call application services;
   (b) the number of international production orders (if any) previously issued in response to such applications;
   (c) particulars of the use made by the Organisation of intercepted messages, voice calls or video calls made available to the Organisation under such orders.

(5) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.

87 Information to be given on telephone application

The information given to a nominated AAT Security Division member in connection with a telephone application under clause 83 to the nominated AAT Security Division member:
   (a) must include particulars of the urgent circumstances because of which the person making the application on the Organisation’s behalf thinks it necessary to make the application by telephone; and
   (b) must include each matter that, if the application had been made in writing, clause 85 or 86 would have required the application, or an affidavit accompanying it, to set out; and
   (c) must be given orally or in writing, as the nominated AAT Security Division member directs.
88 Giving further information to nominated AAT Security Division member

(1) A nominated AAT Security Division member may require further information to be given in connection with an application under clause 83 to the nominated AAT Security Division member for an international production order.

(2) The further information:
   (a) must be given on oath if the application was made in writing; and
   (b) must be given orally or otherwise, as the nominated AAT Security Division member directs.

Subdivision B—International production orders relating to interception

89 Issue of international production order—national security

Scope

(1) This clause applies if the Organisation applies, under clause 83, to a nominated AAT Security Division member for an international production order that:
   (a) is in respect of:
      (i) one or more individual carriage services; or
      (ii) one or more individual message/call application services; and
   (b) is directed to a designated communications provider.

Issue of international production order

(2) If the nominated AAT Security Division member is satisfied, on the basis of the information given to the nominated AAT Security Division member under this Division in connection with the application, that:
   (a) in the case of an application for an international production order that is in respect of one or more individual carriage services—there are reasonable grounds for suspecting that:
(i) the designated communications provider owns or
operates a telecommunications network that is, or is
likely to be, used to supply those individual carriage
services; or
(ii) the designated communications provider supplies those
individual carriage services; and

(b) in the case of an application for an international production
order that is in respect of one or more individual message/call
application services—there are reasonable grounds for
suspecting that the designated communications provider
provides those individual message/call application services;
and

(c) Subdivision A has been complied with in relation to the
application; and

(d) in the case of a telephone application—because of urgent
circumstances, it was necessary to make the application by
telephone; and

(e) in the case of an application for an international production
order that is in respect of one or more individual carriage
services—there are reasonable grounds for suspecting that
those services are being, or are likely to be:

(i) used by a person engaged in, or reasonably suspected of
being engaged in, or of being likely to engage in,
activities prejudicial to security; or

(ii) the means by which a person receives or sends a
communication from or to another person who is
engaged in, or reasonably suspected of being engaged
in, or of being likely to engage in, activities prejudicial
to security; or

(iii) used for purposes prejudicial to security; and

(f) in the case of an application for an international production
order that is in respect of one or more individual message/call
application services—there are reasonable grounds for
suspecting that those services are being, or are likely to be:

(i) used by a person engaged in, or reasonably suspected of
being engaged in, or of being likely to engage in,
activities prejudicial to security; or

(ii) the means by which a person receives or sends a
message, or receives or makes a voice call or video call,
from or to another person who is engaged in, or reasonably suspected of being engaged in, or of being likely to engage in, activities prejudicial to security; or (iii) used for purposes prejudicial to security; and (g) in the case of an application for an international production order that is in respect of one or more individual carriage services—there are reasonable grounds for suspecting that information that would be likely to be obtained by intercepting, under an order issued under this clause, communications that are being carried by those individual carriage services would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security; and (h) in the case of an application for an international production order that is in respect of one or more individual message/call application services—there are reasonable grounds for suspecting that information that would be likely to be obtained by intercepting, under an order issued under this clause, messages sent or received, voice calls made or received, or video calls made or received, using those individual message/call application services would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security; the nominated AAT Security Division member may issue an order (to be known as an international production order) directing the designated communications provider to: (i) in the case of an application for an international production order that is in respect of one or more individual carriage services: (i) intercept communications carried by those individual carriage services during a specified period; and (ii) make those intercepted communications available to the Organisation; and (iii) disclose to the Organisation specified telecommunications data that relates to those intercepted communications; and (iv) disclose to the Organisation specified telecommunications data that relates to those individual carriage services; or
Amendments Schedule 1
General amendments Part 1

(j) in the case of an application for an international production
order that is in respect of one or more individual message/call
application services:
   (i) intercept messages sent or received, voice calls made or
   received, or video calls made or received, using those
   individual message/call application services during a
   specified period; and
   (ii) make those intercepted messages, voice calls or video
   calls available to the Organisation; and
   (iii) disclose to the Organisation specified
   telecommunications data that relates to those intercepted
   messages, voice calls or video calls; and
   (iv) disclose to the Organisation specified
   telecommunications data that relates to those individual
   message/call application services.

Note: Subclauses (6) and (7) restrict the issuing of international production
orders if subparagraph (2)(e)(ii) or (f)(ii) applies.

Period specified in international production order

(3) A period specified in an international production order for the
purposes of subparagraph (2)(i)(i) or (j)(i) must not begin before
the time when the order is given to the designated communications
provider.

Note: International production orders are given under clause 112.

(4) The period specified in an international production order for the
purposes of subparagraph (2)(i)(i) or (j)(i) must not be longer than:
   (a) if subparagraph (2)(e)(ii) or (f)(ii) applies (as the case
       requires)—3 months; or
   (b) otherwise—6 months.

Matters to which nominated AAT Security Division member must have regard

(5) In deciding whether to issue an international production order
under subclause (2), the nominated AAT Security Division
member must have regard to the following matters:
(a) in the case of an application for an international production order that is in respect of one or more individual carriage services:
   (i) to what extent methods of carrying out the Organisation’s function of obtaining intelligence relating to security (so far as carrying out that function relates to the target) that are less intrusive than intercepting, under such an order, communications being carried by those individual carriage services have been used by, or are available to, the Organisation; and
   (ii) how much the use of such methods would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security (so far as carrying out that function relates to the target); and
   (iii) how much the use of such methods would be likely to prejudice the Organisation in carrying out its function of obtaining intelligence relating to security (so far as carrying out that function relates to the target), whether because of delay or for any other reason; and
   (iv) such other matters (if any) as the nominated AAT Security Division member considers relevant;
(b) in the case of an application for an international production order that is in respect of one or more individual message/call application services:
   (i) to what extent methods of carrying out the Organisation’s function of obtaining intelligence relating to security (so far as carrying out that function relates to the target) that are less intrusive than intercepting, under such an order, messages sent or received, voice calls made or received, or video calls made or received, using those individual message/call application services have been used by, or are available to, the Organisation; and
   (ii) how much the use of such methods would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security (so far as carrying out that function relates to the target); and
   (iii) how much the use of such methods would be likely to prejudice the Organisation in carrying out its function of

110  

Telecommunications Legislation Amendment (International Production Orders) Bill 2020
obtaining intelligence relating to security (so far as
carrying out that function relates to the target), whether
because of delay or for any other reason; and
(iv) such other matters (if any) as the nominated AAT
Security Division member considers relevant.

Note: For target, see subclause (8).

Restriction on issuing order

(6) The nominated AAT Security Division member must not issue an
international production order under subclause (2) in a case where
subparagraph (2)(e)(ii) applies unless the nominated AAT Security
Division member is satisfied that:
(a) the Organisation has exhausted all other practicable methods
of identifying the individual carriage services used, or likely
to be used, by the other person mentioned in
subparagraph (2)(e)(ii); or
(b) interception of communications carried by individual
carriage services used or likely to be used by that other
person would not otherwise be possible.

(7) The nominated AAT Security Division member must not issue an
international production order under subclause (2) in a case where
subparagraph (2)(f)(ii) applies unless the nominated AAT Security
Division member is satisfied that:
(a) the Organisation has exhausted all other practicable methods
of identifying the individual message/call application
services used, or likely to be used, by the other person
mentioned in subparagraph (2)(f)(ii); or
(b) interception of messages sent or received, voice calls made or
received, or video calls made or received, using individual
message/call application services used or likely to be used by
that other person would not otherwise be possible.

Target

(8) For the purposes of this clause, target means:
(a) if subparagraph (2)(e)(i) or (f)(i) applies—the person referred
to in that subparagraph; or
Schedule 1 Amendments
Part 1 General amendments

1 (b) if subparagraph (2)(e)(ii) or (f)(ii) applies—the other person referred to in that subparagraph; or
2 (c) if subparagraph (2)(e)(iii) or (f)(iii) applies—the purposes referred to in that subparagraph.

90 Content of international production order

Scope
(1) This clause applies to an international production order issued under clause 89.

Content
(2) The order must be signed by the nominated AAT Security Division member who issued it.
(3) The order must set out the following:
   (a) the date on which the order was issued;
   (b) the name of the designated communications provider to whom the order is directed;
   (c) the name of the designated international agreement nominated in the application for the order;
   (d) the applicable telecommunications identifiers:
      (i) in the case of an order that is in respect of one or more individual carriage services—to which those individual carriage services relate; or
      (ii) in the case of an order that is in respect of one or more individual message/call application services—to which those individual message/call application services relate.
(4) If the order directs a designated communications provider to intercept communications, the order may require the provider to:
   (a) intercept those communications in a specified way; and
   (b) make those intercepted communications available to the Organisation in a specified way.
(5) A requirement under subclause (4) may:
   (a) require that intercepted communications be made available to the Organisation directly; or
(b) require that intercepted communications be made available to
the Organisation indirectly via the Australian Designated
Authority.

(6) If the order directs a designated communications provider to
intercept messages, voice calls or video calls, the order may require
the provider to:
(a) intercept those messages, voice calls or video calls in a
specified way; and
(b) make those intercepted messages, voice calls or video calls
available to the Organisation in a specified way.

(7) A requirement under subclause (6) may:
(a) require that intercepted messages, voice calls or video calls
be made available to the Organisation directly; or
(b) require that intercepted messages, voice calls or video calls
be made available to the Organisation indirectly via the
Australian Designated Authority.

(8) If the order directs a designated communications provider to
disclose telecommunications data to the Organisation, the order
may require the provider to disclose that data to the Organisation in
a specified way.

(9) A requirement under subclause (8) may:
(a) require that the telecommunications data be disclosed to the
Organisation directly; or
(b) require that the telecommunications data be disclosed to the
Organisation indirectly via the Australian Designated
Authority.

(10) For the purposes of this clause, a specified way may deal with
matters of timing.

Example: A requirement under subclause (4) may require that an intercepted
communication be made available to the Organisation within 30
minutes after the communication was completed.

91 Issue of further international production order

(1) If:
(a) an international production order (the *original order*) was issued under clause 89; and
(b) the original order was in respect of one or more individual carriage services; and
(c) the original order was directed to a designated communications provider;
this Schedule does not prevent the issue of a further international production order under clause 89 that is:
(d) in respect of any or all of those services; and
(e) directed to the provider;
so long as the period specified in the further order for the purposes of subparagraph 89(2)(i)(i) of this Schedule begins after the end of the period specified in the original order for the purposes of that subparagraph.

(2) If:
(a) an international production order (the *original order*) was issued under clause 89; and
(b) the original order was in respect of one or more individual message/call application services; and
(c) the original order was directed to a designated communications provider;
this Schedule does not prevent the issue of a further international production order under clause 89 that is:
(d) in respect of any or all of those services; and
(e) directed to the provider;
so long as the period specified in the further order for the purposes of subparagraph 89(2)(j)(i) of this Schedule begins after the end of the period specified in the original order for the purposes of that subparagraph.
Division 3—International production orders relating to stored communications: national security

Subdivision A—Applications

92 Application for international production order—national security

(1) The Organisation may apply to a nominated AAT Security Division member for an international production order under clause 98 that:
   (a) is in respect of a particular person; and
   (b) is directed to a designated communications provider.

(2) The application must nominate a designated international agreement.

(3) The application must be made on the Organisation’s behalf by:
   (a) the Director-General of Security; or
   (b) a Deputy Director-General of Security; or
   (c) an ASIO employee in relation to whom an authorisation is in force under subclause (4).

(4) The Director-General of Security may authorise in writing, for the purposes of subclause (3), ASIO employees who, or classes of ASIO employees who, are entitled under subclause (1) to make applications on the Organisation’s behalf.

   Attorney-General’s consent to the making of an application

(5) The Organisation must not make an application under subclause (1) unless the Attorney-General has consented to the making of the application.

(6) The Attorney-General must not consent to the making of an application under subclause (1) for an international production order that is in respect of a particular person unless the Attorney-General is satisfied that:
(a) there are reasonable grounds for suspecting that the person is engaged in, or is likely to engage in, activities prejudicial to security; and
(b) information that would be likely to be obtained by making a copy, under an international production order issued in response to the application, of the stored communications covered by the application would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security.

*Form of Attorney-General’s consent to the making of an application*

(7) Subject to subclause (8), a consent given by the Attorney-General under subclause (5) must be in writing.

(8) If the person who proposes to make an application under subclause (1) on the Organisation’s behalf thinks it necessary, because of urgent circumstances, for the Attorney-General to consent orally to the making of the application:
   (a) the person may request the Attorney-General to consent orally to the making of the application; and
   (b) if the person makes such a request—the Attorney-General may consent orally to the making of the application.

(9) If, in response to a request made by a person under subclause (8), the Attorney-General consents orally to the making of an application, the person must:
   (a) give the Attorney-General a written report that sets out:
       (i) particulars of the urgent circumstances because of which the person thought it necessary for the Attorney-General to consent orally; and
       (ii) whether the application was granted, withdrawn or refused; and
   (b) do so within 3 working days after the day on which the application was granted, withdrawn or refused.

(10) If, in response to a request made by a person under subclause (8), the Attorney-General consents orally to the making of an application, the Organisation must:
(a) give the Inspector-General of Intelligence and Security a
copy of the relevant report under subclause (9); and
(b) do so within 3 working days after the day on which the
application was granted, withdrawn or refused.

93 Form of application

(1) An application under clause 92 must be in writing.
(2) If the person making an application under clause 92 for an
international production order on the Organisation’s behalf thinks
it necessary, because of urgent circumstances, to make the
application by telephone, the person may make the application by
telephone.

Note: See also clause 172.

94 Contents of written application

An application under clause 92 must, if it is in writing, set out:
(a) a statement to the effect that the application is made by the
    Organisation; and
(b) the name of the person making the application on the
    Organisation’s behalf.

95 Affidavits to accompany written application

(1) An application under clause 92 must, if it is in writing, be
    accompanied by an affidavit complying with this clause.
(2) The affidavit must set out the facts and other grounds on which the
    application is based.
(3) Despite subclause (1), a written application may be accompanied
    by 2 or more affidavits that together set out each matter that, apart
    from this subclause, this clause would have required an affidavit
    accompanying the application to set out.
96 Information to be given on telephone application

The information given to a nominated AAT Security Division member in connection with a telephone application under clause 92 to the nominated AAT Security Division member:

(a) must include particulars of the urgent circumstances because of which the person making the application on the Organisation’s behalf thinks it necessary to make the application by telephone; and

(b) must include each matter that, if the application had been made in writing, clause 94 or 95 would have required the application, or an affidavit accompanying it, to set out; and

(c) must be given orally or in writing, as the nominated AAT Security Division member directs.

97 Giving further information to nominated AAT Security Division member

(1) A nominated AAT Security Division member may require further information to be given in connection with an application under clause 92 to the nominated AAT Security Division member for an international production order.

(2) The further information:

(a) must be given on oath if the application was made in writing; and

(b) must be given orally or otherwise, as the nominated AAT Security Division member directs.

Subdivision B—International production orders relating to stored communications

98 Issue of international production order—national security

Scope

(1) This clause applies if the Organisation applies, under clause 92, to a nominated AAT Security Division member for an international production order that:

(a) is in respect of a particular person (the relevant person); and

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118 Telecommunications Legislation Amendment (International Production Orders) Bill 2020 No. , 2020
(b) is directed to a designated communications provider.

**Issue of international production order**

(2) If the nominated AAT Security Division member is satisfied, on the basis of the information given to the nominated AAT Security Division member under this Division in connection with the application, that:

(a) there are reasonable grounds for suspecting that the relevant person is engaged in, or is likely to engage in, activities prejudicial to security; and

(b) there are reasonable grounds for suspecting that the designated communications provider holds any of the following stored communications:

(i) stored communications that consist of communications that the relevant person has made using a telecommunications network owned or operated by the designated communications provider;

(ii) stored communications that consist of communications that another person has made using a telecommunications network owned or operated by the designated communications provider, and for which the relevant person is the intended recipient;

(iii) stored communications that consist of communications that the relevant person has made using a carriage service supplied by the designated communications provider;

(iv) stored communications that consist of communications that another person has made using a carriage service supplied by the designated communications provider, and for which the relevant person is the intended recipient;

(v) stored communications that consist of messages that the relevant person has sent or received using a message/call application service provided by the designated communications provider;

(vi) stored communications that consist of recordings of voice calls that the relevant person has made or received using a message/call application service provided by the designated communications provider;
(vii) stored communications that consist of recordings of video calls that the relevant person has made or received using a message/call application service provided by the designated communications provider;
(viii) stored communications that consist of material that the relevant person has uploaded for storage or back-up by a storage/back-up service provided by the designated communications provider;
(ix) stored communications that consist of material that the relevant person has posted to a general electronic content service provided by the designated communications provider; and
(c) Subdivision A has been complied with in relation to the application; and
(d) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and
(e) information that would be likely to be obtained by making a copy, under an order issued under this clause, of the stored communications would be likely to assist the Organisation in carrying out its function of obtaining intelligence relating to security;
the nominated AAT Security Division member may issue an order (to be known as an international production order) directing the designated communications provider to:
(f) make a copy of any such stored communications; and
(g) make the copy available to the Organisation; and
(h) if the stored communications consist of communications carried by an individual carriage service—disclose to the Organisation:
  (i) specified telecommunications data that relates to those communications; and
  (ii) specified telecommunications data that relates to the individual carriage service; and
(i) if the stored communications consist of messages sent or received using an individual message/call application service—disclose to the Organisation:
Amendments Schedule 1
General amendments Part 1

(i) specified telecommunications data that relates to those messages; and
(ii) specified telecommunications data that relates to the individual message/call application service; and
(j) if the stored communications consist of recordings of voice calls made or received using an individual message/call application service—disclose to the Organisation:
   (i) specified telecommunications data that relates to those voice calls; and
   (ii) specified telecommunications data that relates to the individual message/call application service; and
(k) if the stored communications consist of recordings of video calls made or received using an individual message/call application service—disclose to the Organisation:
   (i) specified telecommunications data that relates to those video calls; and
   (ii) specified telecommunications data that relates to the individual message/call application service; and
(l) if the stored communications consist of material that has been uploaded by an end-user for storage or back-up by a storage/back-up service—disclose to the Organisation:
   (i) specified telecommunications data that relates to that material; and
   (ii) specified telecommunications data that relates to the end-user’s account with the storage/back-up service; and
(m) if the stored communications consist of material posted to a general electronic content service by an end-user—disclose to the Organisation:
   (i) specified telecommunications data that relates to that material; and
   (ii) specified telecommunications data that relates to the end-user’s account with the general electronic content service.
Matters to which nominated AAT Security Division member must have regard

(3) In deciding whether to issue an international production order
under subclause (2), the nominated AAT Security Division
member must have regard to the following matters:

(a) to what extent methods of carrying out the Organisation’s
function of obtaining intelligence relating to security (so far
as carrying out that function relates to the relevant person)
that are less intrusive than obtaining, under such an order, a
copy of the stored communications have been used by, or are
available to, the Organisation;

(b) how much the use of such methods would be likely to assist
the Organisation in carrying out its function of obtaining
intelligence relating to security (so far as carrying out that
function relates to the relevant person);

(c) how much the use of such methods would be likely to
prejudice the Organisation in carrying out its function of
obtaining intelligence relating to security (so far as carrying
out that function relates to the relevant person);

(d) such other matters (if any) as the nominated AAT Security
Division member considers relevant.

99 Content of international production order

Scope

(1) This clause applies to an international production order issued
under clause 98.

Content

(2) The order must be signed by the nominated AAT Security Division
member who issued it.

(3) The order must set out the following:

(a) the date on which the order was issued;

(b) the name of the designated communications provider to
whom the order is directed;
Amendments Schedule 1
General amendments Part 1

(c) the name of the designated international agreement nominated in the application for the order.

(4) If the order directs a designated communications provider to make a copy of stored communications available to the Organisation, the order may require the provider to make that copy available to the Organisation in a specified way.

(5) A requirement under subclause (4) may:
   (a) require that a copy of stored communications be made available to the Organisation directly; or
   (b) require that a copy of stored communications be made available to the Organisation indirectly via the Australian Designated Authority.

(6) If the order directs a designated communications provider to disclose telecommunications data to the Organisation, the order may require the provider to disclose that data to the Organisation in a specified way.

(7) A requirement under subclause (6) may:
   (a) require that the telecommunications data be disclosed to the Organisation directly; or
   (b) require that the telecommunications data be disclosed to the Organisation indirectly via the Australian Designated Authority.

(8) For the purposes of this clause, a specified way may deal with matters of timing.

100 Issue of further international production order

If:
   (a) an international production order (the original order) was issued under clause 98; and
   (b) the original order was in respect of a particular person; and
   (c) the original order was directed to a designated communications provider;

this Schedule does not prevent the issue of a further international production order under clause 98 that:
   (d) is in respect of the person; and
Schedule 1 Amendments
Part 1 General amendments

1 (e) is directed to the provider.

Division 4—International production orders relating to telecommunications data: national security

Subdivision A—Applications

101 Application for international production order—national security

(1) The Organisation may apply to a nominated AAT Security Division member for an international production order under clause 107 that:

(a) is in respect of a particular person; and
(b) is directed to a designated communications provider.

(2) The application must nominate a designated international agreement.

(3) The application must be made on the Organisation’s behalf by:

(a) the Director-General of Security; or
(b) a Deputy Director-General of Security; or
(c) an ASIO employee in relation to whom an authorisation is in force under subclause (4).

(4) The Director-General of Security may authorise in writing, for the purposes of subclause (3), ASIO employees who, or classes of ASIO employees who, are entitled under subclause (1) to make applications on the Organisation’s behalf.

102 Form of application

(1) An application under clause 101 must be in writing.

(2) If the person making an application under clause 101 for an international production order on the Organisation’s behalf thinks it necessary, because of urgent circumstances, to make the application by telephone, the person may make the application by telephone.

Note: See also clause 172.
103 Contents of written application

An application under clause 101 must, if it is in writing, set out:
(a) a statement to the effect that the application is made by the Organisation; and
(b) the name of the person making the application on the Organisation’s behalf.

104 Affidavits to accompany written application

(1) An application under clause 101 must, if it is in writing, be accompanied by an affidavit complying with this clause.

(2) The affidavit must set out the facts and other grounds on which the application is based.

(3) Despite subclause (1), a written application may be accompanied by 2 or more affidavits that together set out each matter that, apart from this subclause, this clause would have required an affidavit accompanying the application to set out.

105 Information to be given on telephone application

The information given to a nominated AAT Security Division member in connection with a telephone application under clause 101 to the nominated AAT Security Division member:
(a) must include particulars of the urgent circumstances because of which the person making the application on the Organisation’s behalf thinks it necessary to make the application by telephone; and
(b) must include each matter that, if the application had been made in writing, clause 103 or 104 would have required the application, or an affidavit accompanying it, to set out; and
(c) must be given orally or in writing, as the nominated AAT Security Division member directs.

106 Giving further information to nominated AAT Security Division member

(1) A nominated AAT Security Division member may require further information to be given in connection with an application under
Schedule 1 Amendments
Part 1 General amendments

clause 101 to the nominated AAT Security Division member for an international production order.

(2) The further information:
   (a) must be given on oath if the application was made in writing; and
   (b) must be given orally or otherwise, as the nominated AAT Security Division member directs.

Subdivision B—International production orders relating to telecommunications data

107 Issue of international production order—national security

Scope

(1) This clause applies if the Organisation applies, under clause 101, to a nominated AAT Security Division member for an international production order that:
   (a) is in respect of a particular person (the relevant person); and
   (b) is directed to a designated communications provider.

Issue of international production order

(2) If the nominated AAT Security Division member is satisfied, on the basis of the information given to the nominated AAT Security Division member under this Division in connection with the application, that:
   (a) there are reasonable grounds for suspecting that the designated communications provider holds, or is likely to commence to hold, any of the following telecommunications data:
       (i) telecommunications data that relates to communications that the relevant person has made using an individual carriage service supplied by the designated communications provider;
       (ii) telecommunications data that relates to an individual carriage service supplied using a telecommunications network owned or operated by the designated communications provider, where the individual carriage
service is used, or is likely to be used, by the relevant person;

(iii) telecommunications data that relates to an individual carriage service supplied by the designated communications provider, where the individual carriage service is used, or is likely to be used, by the relevant person;

(iv) telecommunications data that relates to messages sent or received by the relevant person using an individual message/call application service provided by the designated communications provider;

(v) telecommunications data that relates to voice calls made or received by the relevant person using an individual message/call application service provided by the designated communications provider;

(vi) telecommunications data that relates to video calls made or received by the relevant person using an individual message/call application service provided by the designated communications provider;

(vii) telecommunications data that relates to an individual message/call application service provided by the designated communications provider, where the individual message/call application service is used, or is likely to be used, by the relevant person;

(viii) telecommunications data that relates to material that has been uploaded by the relevant person for storage or back-up by a storage/back-up service provided by the designated communications provider;

(ix) telecommunications data that relates to material that has been posted by the relevant person on a general electronic content service provided by the designated communications provider; and

(b) Subdivision A has been complied with in relation to the application; and

(c) in the case of a telephone application—because of urgent circumstances, it was necessary to make the application by telephone; and

(d) disclosing the telecommunications data to the Organisation, under an order issued under this clause, would be in

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No. 2020  Telecommunications Legislation Amendment (International Production Orders) Bill 2020
connection with the performance by the Organisation of its functions;
the nominated AAT Security Division member may issue an order (to be known as an international production order) directing the designated communications provider to do either or both of the following:
(e) so far as the telecommunications data is held by the designated communications provider when the international production order comes into force—disclose any such telecommunications data to the Organisation;
(f) so far as the telecommunications data commences to be held by the designated communications provider during a specified period—disclose any such telecommunications data to the Organisation.

Period specified in international production order
(3) A period specified in an international production order for the purposes of paragraph (2)(f) must not begin before the time when the order is given to the designated communications provider.
Note: International production orders are given under clause 112.
(4) A period specified in an international production order for the purposes of paragraph (2)(f) must not be longer than 90 days.

Matters to which nominated AAT Security Division member must have regard
(5) In deciding whether to issue an international production order under subclause (2), the nominated AAT Security Division member must have regard to the following matters:
(a) to what extent methods of performing the Organisation’s functions (so far as performing those functions relates to the relevant person) that are less intrusive than obtaining, under such an order, the telecommunications data have been used by, or are available to, the Organisation;
(b) how much the use of such methods would be likely to assist the Organisation in performing its functions (so far as performing those functions relates to the relevant person);
(c) how much the use of such methods would be likely to prejudice the Organisation in performing its functions (so far as performing those functions relates to the relevant person), whether because of delay or for any other reason;

(d) such other matters (if any) as the nominated AAT Security Division member considers relevant.

108 Content of international production order

Scope

(1) This clause applies to an international production order issued under clause 107.

Content

(2) The order must be signed by the nominated AAT Security Division member who issued it.

(3) The order must set out the following:

(a) the date on which the order was issued;

(b) the name of the designated communications provider to whom the order is directed;

(c) the name of the designated international agreement nominated in the application for the order.

(4) If the order directs a designated communications provider to disclose telecommunications data to the Organisation, the order may require the provider to disclose that data to the Organisation in a specified way.

(5) A requirement under subclause (4) may:

(a) require that the telecommunications data be disclosed to the Organisation directly; or

(b) require that the telecommunications data be disclosed to the Organisation indirectly via the Australian Designated Authority.

(6) For the purposes of this clause, a specified way may deal with matters of timing.
Example: If a requirement under subclause (4) relates to telecommunications data that commences to be held by a designated communications provider during a specified period, the requirement may require that the telecommunications data be disclosed to the Organisation within 30 minutes after the telecommunications data commences to be held.

109 Issue of further international production order

If:

(a) an international production order (the original order) was issued under clause 107; and

(b) the original order was in respect of a particular person; and

(c) the original order was directed to a designated communications provider;

this Schedule does not prevent the issue of a further international production order under clause 107 that:

(d) is in respect of the person; and

(e) is directed to the provider.

Part 5—Giving of international production orders

110 Simplified outline of this Part

- Before an international production order is given to a designated communications provider, the Australian Designated Authority must consider whether the order complies with the designated international agreement nominated in the application for the order.

- If the Australian Designated Authority is satisfied that the order complies with the designated international agreement nominated in the application for the order, the Australian Designated Authority must give the order to the designated communications provider. The order comes in force when it is given to the provider.

- If the Australian Designated Authority is not satisfied that the order complies with the designated international agreement
nominated in the application for the order, the Australian Designated Authority must cancel the order.

111 Giving of international production orders—relevant agency

(1) If an international production order is issued under Part 2 or 3 of this Schedule:
   (a) the relevant agency that applied for the order must:
      (i) give the order, or a certified copy of the order, to the Australian Designated Authority; and
      (ii) do so as soon as practicable after the order is issued; and
   (b) the Australian Designated Authority must consider whether the order complies with the designated international agreement nominated in the application for the order; and
   (c) if the Australian Designated Authority is satisfied that the order complies with the designated international agreement nominated in the application for the order—the Australian Designated Authority must:
      (i) give the order, or the certified copy of the order, to the designated communications provider to whom the order is directed; and
      (ii) do so as soon as practicable after becoming so satisfied; and
   (d) if the Australian Designated Authority is not satisfied that the order complies with the designated international agreement nominated in the application for the order—the Australian Designated Authority must:
      (i) cancel the order; and
      (ii) return the order, or the certified copy of the order, to the agency; and
      (iii) give the agency such advice as the Australian Designated Authority considers appropriate in relation to compliance with the designated international agreement.

Note: See clause 171 (which deals with electronic service of documents).

(2) For the purposes of this Schedule, if the Australian Designated Authority gives a certified copy of an international production
order to a designated communications provider under
subclause (1), the Australian Designated Authority is taken to have
given the order to the designated communications provider under
subclause (1).

(3) An international production order issued under Part 2 or 3 of this
Schedule comes into force when it is given to the designated
communications provider to whom the order is directed.

(4) For the purposes of this Schedule, if the Australian Designated
Authority gives an international production order to a designated
communications provider under subclause (1), the order is taken to
invoke the designated international agreement nominated in the
application for the order.

(5) If the Australian Designated Authority gives an internation
production order to a designated communications provider under
subclause (1), the Australian Designated Authority must notify the
giving of the order to the relevant agency that applied for the order.

(6) A cancellation under paragraph (1)(d) is to be set out in a written
instrument.

(7) If an international production order is issued under Part 2 or 3 of
this Schedule, the relevant agency that applied for the order may
give the Australian Designated Authority information that is likely
to assist the Australian Designated Authority in making a decision
under this clause in relation to the order.

112 Giving of international production orders—the Organisation

(1) If an international production order is issued under Part 4 of this
Schedule:

(a) the Organisation must:

(i) give the order, or a certified copy of the order, to the
Australian Designated Authority; and

(ii) do so as soon as practicable after the order is issued; and

(b) the Australian Designated Authority must consider whether
the order complies with the designated international
agreement nominated in the application for the order; and
(c) if the Australian Designated Authority is satisfied that the order complies with the designated international agreement nominated in the application for the order—the Australian Designated Authority must:

(i) give the order, or the certified copy of the order, to the designated communications provider to whom the order is directed; and

(ii) do so as soon as practicable after becoming so satisfied;

and

(d) if the Australian Designated Authority is not satisfied that the order complies with the designated international agreement nominated in the application for the order—the Australian Designated Authority must:

(i) cancel the order; and

(ii) return the order, or the certified copy of the order, to the Organisation; and

(iii) give the Organisation such advice as the Australian Designated Authority considers appropriate in relation to compliance with the designated international agreement.

Note: See clause 171 (which deals with electronic service of documents).

(2) For the purposes of this Schedule, if the Australian Designated Authority gives a certified copy of an international production order to a designated communications provider under subclause (1), the Australian Designated Authority is taken to have given the order to the designated communications provider under subclause (1).

(3) An international production order issued under Part 4 of this Schedule comes into force when it is given to the designated communications provider to whom the order is directed.

(4) For the purposes of this Schedule, if the Australian Designated Authority gives an international production order to a designated communications provider under subclause (1), the order is taken to invoke the designated international agreement nominated in the application for the order.
Schedule 1 Amendments
Part 1 General amendments

(5) If the Australian Designated Authority gives an international production order to a designated communications provider under subclause (1), the Australian Designated Authority must notify the giving of the order to the Organisation.

(6) A cancellation under paragraph (1)(d) is to be set out in a written instrument.

(7) If an international production order is issued under Part 4 of this Schedule, the Organisation may give the Australian Designated Authority information that is likely to assist the Australian Designated Authority in making a decision under this clause in relation to the order.

Part 6—Revocation of international production orders

113 Simplified outline of this Part

- If an international production order was issued in response to an application made by a relevant agency, the chief officer of the agency:
  (a) may revoke the order; and
  (b) must revoke the order if the chief officer is satisfied that the grounds on which the order was issued have ceased to exist.

- If an international production order was issued in response to an application made by the Organisation, the Director-General of Security:
  (a) may revoke the order; and
  (b) must revoke the order if the Director-General of Security is satisfied that the grounds on which the order was issued have ceased to exist.

- If an international production order is revoked after it has come into force, the Australian Designated Authority must
Amendments **Schedule 1**  
General amendments **Part 1**

114 **Revocation of international production orders—relevant agency**

(1) If:

(a) an international production order was issued under Part 2 or 3 of this Schedule; and

(b) the order was issued in response to an application made by a relevant agency;

the chief officer of the agency:

(c) may revoke the order; and

(d) must revoke the order if the chief officer is satisfied that the grounds on which the order was issued have ceased to exist.

(2) A revocation under this clause is to be set out in a written instrument.

(3) For the purposes of the application of subclause (1) to an international production order issued under Part 4 of this Schedule on the ground that a control order was in force in relation to a particular person when the international production order was issued, that ground is taken to have ceased to exist if, and only if, neither that control order, nor any succeeding control order, is in force.

115 **Giving of instrument of revocation—relevant agency**

(1) If an international production order is revoked under clause 114 by the chief officer of a relevant agency, the relevant agency must:

(a) give the instrument of revocation to the Australian Designated Authority; and

(b) do so as soon as practicable after the order is revoked.

(2) If:

(a) the Australian Designated Authority gave an international production order to the designated communications provider to whom the order is directed; and

(b) the order was subsequently revoked under clause 114;

the Australian Designated Authority must:
Schedule 1 Amendments
Part 1 General amendments

(c) give the instrument of revocation to the designated communications provider; and
(d) do so as soon as practicable after the instrument of revocation is given to the Australian Designated Authority.

(3) A revocation under clause 114 takes effect:
   (a) if the instrument of revocation is required to be given to the designated communications provider concerned—when the instrument is given; or
   (b) otherwise—when the revocation is made.

(4) If:
   (a) an international production order is revoked under clause 114; and
   (b) when the revocation takes effect, the Australian Designated Authority has not made a decision about the order under clause 111;
   clause 111 ceases to apply to the order when the revocation takes effect.

116 Revocation of international production orders—the Organisation

(1) If an international production order was issued under Part 4 of this Schedule, the Director-General of Security:
   (a) may revoke the order; and
   (b) must revoke the order if the Director-General of Security is satisfied that the grounds on which the order was issued have ceased to exist.

(2) A revocation under this clause is to be set out in a written instrument.

117 Giving of instrument of revocation—the Organisation

(1) If an international production order is revoked under clause 116 by the Director-General of Security, the Organisation must:
   (a) give the instrument of revocation to the Australian Designated Authority; and
   (b) do so as soon as practicable after the order is revoked.
(2) If:

(a) the Australian Designated Authority gave an international production order to the designated communications provider to whom the order is directed; and

(b) the order was subsequently revoked under clause 116;

the Australian Designated Authority must:

(c) give the instrument of revocation to the designated communications provider; and

(d) do so as soon as practicable after the instrument of revocation is given to the Australian Designated Authority.

(3) A revocation under clause 116 takes effect:

(a) if the instrument of revocation is required to be given to the designated communications provider concerned—when the instrument is given; or

(b) otherwise—when the revocation is made.

(4) If:

(a) an international production order is revoked under clause 116; and

(b) when the revocation takes effect, the Australian Designated Authority has not made a decision about the order under clause 112;

clause 112 ceases to apply to the order when the revocation takes effect.

118 Delegation by the chief officer of a relevant agency

(1) The chief officer of a relevant agency may, by writing, delegate any or all of the chief officer’s functions or powers under this Part to a certifying officer of the agency.

(2) In performing functions, or exercising powers, under a delegation under subclause (1), the delegate must comply with any directions of the chief officer.
Part 1  General amendments

119 Delegation by the Director-General of Security

(1) The Director-General of Security may, by writing, delegate any or all of the Director-General of Security’s functions or powers under this Part to a person who is:
   (a) a Deputy Director-General of Security; or
   (b) an ASIO employee.

(2) In performing functions, or exercising powers, under a delegation under subclause (1), the delegate must comply with any directions of the Director-General of Security.

Part 7—Objections to, and cancellation of, international production orders

120 Simplified outline of this Part

• If an international production order is given to a designated communications provider, the provider may object to the order on the grounds that the order does not comply with the designated international agreement nominated in the application for the order.

• The Australian Designated Authority may cancel an international production order.

121 Designated communications provider may object to international production order

(1) If an international production order is given to the designated communications provider to whom the order is directed, the provider may, by written notice given to the Australian Designated Authority, object to the order on the grounds that the order does not comply with the designated international agreement nominated in the application for the order.

(2) The notice must:
(a) be given to the Australian Designated Authority within a reasonable time after the international production order is given to the designated communications provider; and
(b) set out the reasons why the provider considers that the order does not comply with the designated international agreement nominated in the application for the order.

122 Cancellation of international production orders

(1) The Australian Designated Authority may cancel an international production order.

(2) A cancellation under subclause (1) is to be set out in a written instrument.

(3) If an international production order is cancelled under subclause (1), the Australian Designated Authority must:
   (a) if the order was issued under Part 2 or 3 of this Schedule in response to an application by a relevant agency:
      (i) inform the chief officer of the relevant agency of the cancellation; and
      (ii) do so as soon as practicable after cancelling the order; or
   (b) if the order was issued under Part 4 of this Schedule:
      (i) inform the Organisation of the cancellation; and
      (ii) do so as soon as practicable after cancelling the order.

(4) If:
   (a) the Australian Designated Authority gave an international production order to the designated communications provider to whom the order is directed; and
   (b) the order was subsequently cancelled under subclause (1);
the Australian Designated Authority must:
   (c) give the instrument of cancellation to the designated communications provider; and
   (d) do so as soon as practicable after cancelling the order.

(5) A cancellation under subclause (1) takes effect:

No. 2020 Telecommunications Legislation Amendment (International Production Orders) Bill 2020
(a) if the instrument of cancellation is required to be given to the designated communications provider concerned—when the instrument is given; or
(b) otherwise—when the cancellation is made.

(6) If:
(a) an international production order is cancelled under this clause; and
(b) when the cancellation takes effect, the Australian Designated Authority has not made a decision about the order under clause 111 or 112 (as the case may be); the clause 111 or 112 (as the case may be) ceases to apply to the order when the cancellation takes effect.

Part 8—Compliance with international production orders

123 Simplified outline of this Part

• Civil penalties apply for failing to comply with international production orders.

124 Compliance with international production orders

If:
(a) an international production order is given to the designated communications provider to whom the order is directed; and
(b) the order is in force; and
(c) when the order is given, the designated communications provider meets the enforcement threshold;
the designated communications provider must comply with the order to the extent to which the designated communications provider is capable of doing so.

Civil penalty: 238 penalty units.
125 When a designated communications provider meets the enforcement threshold

(1) For the purposes of this Schedule, if:

(a) a designated communications provider owns or operates a telecommunications network that is used to supply a carriage service to one or more Australians; or

(b) a designated communications provider supplies a carriage service to one or more Australians; or

(c) a designated communications provider provides a message/call application service to one or more Australians; or

(d) a designated communications provider provides a storage/back-up service to one or more Australians; or

(e) one or more Australians have posted material on a general electronic content service provided by a designated communications provider;

the designated communications provider meets the enforcement threshold unless:

(f) if paragraph (a) applies—the provider of a carriage service supplied using the telecommunications network cannot reasonably be considered to have offered or provided the carriage service on the basis of the service being available to Australians; and

(g) if paragraph (b) applies—the designated communications provider cannot reasonably be considered to have offered or provided the carriage service on the basis of the service being available to Australians; and

(h) if paragraph (c) applies—the designated communications provider cannot reasonably be considered to have offered or provided the message/call application service on the basis of the service being available to Australians; and

(i) if paragraph (d) applies—the designated communications provider cannot reasonably be considered to have offered or provided the storage/back-up service on the basis of the service being available to Australians; and

(j) if paragraph (e) applies—the designated communications provider cannot reasonably be considered to have offered or provided the general electronic content service on the basis of...
the opportunity to post material on the service being available to Australians.

Australian

(2) For the purposes of this clause, Australian means an individual who is ordinarily resident in Australia.

126 Civil penalty provision—enforcement

Enforceable civil penalty provision


Note: Part 4 of the Regulatory Powers (Standard Provisions) Act 2014 allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers (Standard Provisions) Act 2014, the Communications Access Co-ordinator is an authorised applicant in relation to a civil penalty provision in this Part.

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers (Standard Provisions) Act 2014, the Federal Court of Australia and the Federal Circuit Court of Australia are relevant courts in relation to a civil penalty provision in this Part.

Penalty for a body corporate

(4) Paragraph 82(5)(a) of the Regulatory Powers (Standard Provisions) Act 2014, as it applies in relation to a civil penalty provision in this Part, has effect as if “5 times” were omitted and “200 times” were substituted.
Extra-territorial application


Part 9—Reporting and record-keeping requirements

Division 1—Introduction

127 Simplified outline of this Part

- The chief officer of a relevant agency and the Australian Designated Authority must give the Minister annual reports about matters relating to international production orders.

- The Director-General of Security must give the Attorney-General a report on the extent to which compliance by a designated communications provider with an international production order has assisted the Organisation in carrying out its functions.

- The Minister must cause to be prepared annual reports about matters relating to international production orders that were issued in response to applications made by relevant agencies.

- The chief officer of a relevant agency, the Director-General of Security and the Australian Designated Authority must ensure that records are kept of matters relating to international production orders.

Division 2—Reporting requirements

128 Annual reports by relevant agencies

The chief officer of a relevant agency must, within 3 months after the end of each financial year, give the Minister a written report that sets out:

No. 2020 Telecommunications Legislation Amendment (International Production Orders) Bill 2020
Schedule 1 Amendments
Part 1 General amendments

1. (a) the relevant statistics about applications made by the agency under clause 22 during the financial year; and
2. (b) the relevant statistics about applications made by the agency under clause 33 during the financial year; and
3. (c) the relevant statistics about applications made by the agency under clause 42 during the financial year; and
4. (d) the relevant statistics about applications made by the agency under clause 52 during the financial year; and
5. (e) the relevant statistics about applications made by the agency under clause 63 during the financial year; and
6. (f) the relevant statistics about applications made by the agency under clause 72 during the financial year; and
7. (g) for each designated international agreement—the number of applications made by the agency under Part 2 or 3 of this Schedule during the financial year that nominated the designated international agreement; and
8. (h) if one or more international production orders were issued before the end of the financial year in response to applications made by the agency:
   (i) the number of occasions during the financial year on which protected information obtained in accordance with those orders was shared with other relevant agencies; and
   (ii) the number of arrests that were made during the financial year on the basis of protected information obtained in accordance with those orders; and
   (iii) the number of prosecutions where protected information obtained in accordance with those orders was used in evidence during the financial year; and
   (iv) the number of convictions during the financial year where protected information obtained in accordance with those orders was used in the prosecutions that resulted in those convictions; and
9. (i) if one or more international production orders were issued under clause 30 during the financial year, in response to applications made by the agency, on grounds relating to the investigation of one or more offences—the type or types of those offences; and
(j) if one or more international production orders were issued under clause 39 during the financial year, in response to applications made by the agency, on grounds relating to the investigation of one or more offences—the type or types of those offences; and

(k) if one or more international production orders were issued under clause 48 during the financial year, in response to applications made by the agency, on grounds relating to the investigation of one or more offences—the type or types of those offences; and

(l) the number of international production orders revoked by the chief officer under clause 114 during the financial year; and

(m) if subparagraph 30(2)(g)(ii) or (h)(ii) applied to one or more international production orders issued under clause 30 during the financial year in response to applications made by the agency—the number of those orders; and

(n) if subparagraph 60(2)(g)(ii) or (h)(ii) applied to one or more international production orders issued under clause 60 during the financial year in response to applications made by the agency—the number of those orders.

129 Reports to be made to the Attorney-General by the Director-General of Security

The Director-General of Security must:

(a) give the Attorney-General, in respect of each international production order issued under clause 89, a written report on the extent to which compliance by a designated communications provider with the order has assisted the Organisation in carrying out its functions; and

(b) do so within 3 months after whichever of the following first occurs:

(i) the end of the last day on which the designated communications provider could have done an act or thing in compliance with the order;

(ii) the time when the order ceases to be in force because of the revocation or cancellation of the order.
130 Annual reports by the Australian Designated Authority

(1) The Australian Designated Authority must, within 3 months after the end of each financial year, give the Minister a written report that sets out, for each relevant agency:

(a) if one or more international production orders issued in response to applications made by the agency were given by the Australian Designated Authority to designated communications providers during the financial year:
   (i) the number of those orders; and
   (ii) the number of each type of those orders; and
   (iii) for each designated international agreement—the number of those orders that invoked the designated international agreement; and

(b) if subparagraph 30(2)(g)(ii) or (h)(ii) applied to one or more international production orders that were:
   (i) issued under clause 30 in response to applications made by the agency; and
   (ii) given by the Australian Designated Authority to designated communications providers during the financial year;
   the number of those orders; and

(c) if subparagraph 60(2)(g)(ii) or (h)(ii) applied to one or more international production orders that were:
   (i) issued under clause 60 in response to applications made by the agency; and
   (ii) given by the Australian Designated Authority to designated communications providers during the financial year;
   the number of those orders; and

(d) if one or more international production orders issued in response to applications made by the agency were cancelled by the Australian Designated Authority under clause 111 during the financial year—the number of those orders; and

(e) if one or more international production orders issued in response to applications made by the agency were cancelled by the Australian Designated Authority under clause 122 during the financial year—the number of those orders; and
(f) if one or more instruments of revocation of international production orders issued in response to applications made by the agency were given by the Australian Designated Authority to designated communications providers during the financial year—the number of those instruments; and

(g) if one or more objections were received by the Australian Designated Authority under clause 121 during the financial year in relation to international production orders issued in response to applications made by the agency:

(i) the number of international production orders to which those objections relate; and

(ii) the number of each type of those orders; and

(iii) for each designated international agreement—the number of those orders that invoked the designated international agreement.

(2) The Minister must:

(a) cause a copy of a report under subclause (1) to be given to the Attorney-General; and

(b) do so as soon as practicable after receiving the report.

131 Annual reports by the Minister

(1) The Minister must, as soon as practicable after the end of each financial year, cause to be prepared a written report that:

(a) sets out, for each relevant agency, the information contained in the report by the chief officer of the agency under clause 128 for the financial year; and

(b) sets out the information contained in the report by the Australian Designated Authority under clause 130 for the financial year.

Report to be tabled

(2) The Minister must cause a copy of a report under subclause (1) to be tabled in each House of the Parliament within 15 sitting days of that House after the report is prepared.

(3) A report under subclause (1) must not be made in a manner that is likely to enable the identification of a person.
(4) For the purposes of section 34C of the Acts Interpretation Act 1901, a report that subclause (1) requires to be prepared as soon as practicable after the end of a financial year is taken to be a periodic report that this Act requires a person to furnish to the Minister and that relates to the administration of this Schedule during the financial year.

132 Deferral of inclusion of information in Ministerial report

Scope

(1) This clause applies to information:

(a) included in a report given to the Minister:
   (i) under clause 128 by the chief officer of a relevant agency; or
   (ii) under clause 130 by the Australian Designated Authority; and

(b) that the Minister would, apart from this clause, be required to include in the next Ministerial report.

Exclusion of information—relevant agency

(2) If:

(a) subparagraph (1)(a)(i) applies; and
(b) the chief officer of the relevant agency is satisfied that the information is control order information;

the chief officer must advise the Minister in writing not to include the information in the next Ministerial report.

(3) If the Minister is satisfied, on the advice of the chief officer, that the information is control order information, the Minister must:

(a) notify the chief officer in writing; and
(b) not include the information in any Ministerial report until the Minister decides otherwise under subclause (5).

Inclusion of information in subsequent report—relevant agency

(4) If the information has not been included in a Ministerial report because of subclause (3), the chief officer must, before the Minister prepares the next Ministerial report:
Amendments Schedule 1
General amendments Part 1

(a) reconsider whether the information is control order
information; and

(b) if the chief officer is satisfied that the information is not
control order information—advise the Minister in writing to
include the information in the next Ministerial report.

(5) If the Minister is satisfied, on the advice of the chief officer, that
the information is not control order information, the Minister must:
(a) notify the chief officer in writing; and
(b) include the information in the next Ministerial report.

Exclusion of information—Australian Designated Authority

(6) If:
(a) subparagraph (1)(a)(ii) applies; and
(b) the Australian Designated Authority is satisfied that the
information is control order information;
the Australian Designated Authority must advise the Minister in
writing not to include the information in the next Ministerial
report.

(7) If the Minister is satisfied, on the advice of the Australian
Designated Authority, that the information is control order
information, the Minister must:
(a) notify the Australian Designated Authority in writing; and
(b) not include the information in any Ministerial report until the
Minister decides otherwise under subclause (9).

Inclusion of information in subsequent report—Australian
Designated Authority

(8) If the information has not been included in a Ministerial report
because of subclause (7), the Australian Designated Authority
must, before the Minister prepares the next Ministerial report:
(a) reconsider whether the information is control order
information; and
(b) if the Australian Designated Authority is satisfied that the
information is not control order information—advise the
Minister in writing to include the information in the next
Ministerial report.
(9) If the Minister is satisfied, on the advice of the Australian
Designated Authority, that the information is not control order
information, the Minister must:
(a) notify the chief officer in writing; and
(b) include the information in the next Ministerial report.

Definitions

(10) In this clause:

control order information means information that, if made public,
could reasonably be expected to enable a reasonable person to
conclude that:
(a) an international production order is likely to be, or is not
   likely to be, in force under Part 3 of this Schedule in relation
to:
   (i) an individual carriage service used, or likely to be used,
       by a particular person; or
   (ii) an individual message/call application service used, or
        likely to be used, by a particular person; or
   (iii) stored communications that consist of communications
        that a particular person has made using an
        individual carriage service; or
   (iv) stored communications that consist of messages that a
        particular person has sent or received using an
        individual message/call application service; or
   (v) stored communications that consist of recordings of
       voice calls that a particular person has made or received
       using an individual message/call application service; or
   (vi) stored communications that consist of recordings of
       video calls that a particular person has made or received
       using an individual message/call application service; or
   (vii) stored communications that consist of material that a
        particular person has uploaded for storage or back-up by
        a storage/back-up service; or
   (viii) stored communications that consist of material that a
        particular person has posted to a general electronic
        content service; or
Amendments Schedule 1
General amendments Part 1

No. 2020 Telecommunications Legislation Amendment (International Production Orders) Bill 2020

151

(i) telecommunications data that relates to communications
that a particular person has made using an individual
 carriage service; or
(x) telecommunications data that relates to an individual
 carriage service used, or likely to be used, by a
 particular person; or
(xi) telecommunications data that relates to messages sent or
 received by a particular person using an individual
 message/call application service; or
(xii) telecommunications data that relates to voice calls made
 or received by a particular person using an individual
 message/call application service; or
(xiii) telecommunications data that relates to video calls made
 or received by a particular person using an individual
 message/call application service; or
(xiv) telecommunications data that relates to an individual
 message/call application service used, or likely to be
 used, by a particular person; or
(xv) telecommunications data that relates to material that has
 been uploaded by a particular person for storage or
 back-up by a storage/back-up service; or
(xvi) telecommunications data that relates to material that has
 been posted by a particular person on a general
 electronic content service; or
(b) an international production order is likely to be, or is not
 likely to be, in force under Part 3 of this Schedule in relation
to a particular person.

Ministerial report means a report the Minister causes to be
prepared under clause 131.

Division 3—Record-keeping requirements

133 Keeping documents associated with international production
orders—relevant agencies

(1) The chief officer of a relevant agency must cause the following to
be kept in the agency’s records:
Schedule 1 Amendments
Part 1 General amendments

(a) a copy of each written application made by the agency for an international production order;
(b) a copy of each affidavit that accompanied a written application made by the agency for an international production order;
(c) a copy of each international production order issued in response to an application made by the agency;
(d) a copy of each authorisation given by the chief officer under subclause 23(3);
(e) a copy of each authorisation given by the chief officer under subclause 34(3);
(f) a copy of each authorisation given by the chief officer under subclause 43(3);
(g) a copy of each authorisation given by the chief officer under subclause 53(3);
(h) a copy of each authorisation given by the chief officer under subclause 64(3);
(i) a copy of each authorisation given by the chief officer under subclause 73(3);
(j) if the chief officer revokes an international production order under clause 114—a copy of the instrument of revocation.

(2) The period for which the chief officer of a relevant agency must cause a copy of a particular document to be kept in the agency’s records under subclause (1) is the period:
(a) starting when the document came into existence; and
(b) ending:
   (i) when 3 years have elapsed since the document came into existence; or
   (ii) when the Ombudsman gives a report to the Minister under clause 150 that is about records that include the copy;
   whichever happens earlier.

134 Other records to be kept—relevant agencies

(1) The chief officer of a relevant agency must cause the following to be kept in the agency’s records:
(a) details of each telephone application made by the agency for an international production order;
(b) for each application made by the agency for an international production order—a statement as to whether the application was granted, refused or withdrawn;
(c) for each international production order issued in response to an application made by the agency:
   (i) a record of the type of order; and
   (ii) a record of the designated international agreement nominated in the application; and
   (iii) a statement as to whether the international production order was issued on grounds relating to the investigation of one or more offences and, if so, the type or types of those offences; and
   (iv) if subparagraph 30(2)(g)(ii) or (h)(ii) applied to the order—a statement to that effect; and
   (v) if subparagraph 60(2)(g)(ii) or (h)(ii) applied to the order—a statement to that effect; and
   (vi) if a period was specified in the order—details of that period; and
   (vii) a record of the agency giving the order, or a certified copy of the order, to the Australian Designated Authority; and
   (viii) details of each communication by an officer of the agency to a person other than an officer of the agency of protected information obtained in accordance with the order; and
   (ix) a record of the designated communications provider to whom the order was directed; and
   (x) a statement as to whether the designated communications provider complied with the order; and
   (xi) if the designated communications provider made intercepted communications, messages, voice calls or video calls available to the agency directly—a statement to that effect; and
   (xii) if the designated communications provider made stored communications or telecommunications data available to the agency directly—a statement to that effect; and
(xiii) if the agency used protected information obtained in accordance with the order—a statement setting out details of that use of the protected information; and

(xiv) if the chief officer revoked the order under clause 114—a statement setting out the reasons for the revocation; and

(xv) if the Australian Designated Authority cancelled the order under clause 122—a record of the cancellation; and

(xvi) if a certifying officer of the agency certified a document to be a true copy of the order—a statement to that effect;

(d) documents indicating whether a record was destroyed in accordance with subclause 140(1) or (3);

(e) documents and other materials of a kind prescribed under subclause (2).

(2) The Minister may, by legislative instrument, prescribe kinds of documents and other materials that the chief officer of a relevant agency must cause to be kept in the agency’s records.

(3) The period for which the chief officer of a relevant agency must cause a particular item to be kept in the agency’s records under subclause (1) is the period:

(a) starting when the item came into existence; and

(b) ending:

(i) when 3 years have elapsed since the item came into existence; or

(ii) when the Ombudsman gives a report to the Minister under clause 150 that is about records that include the item;

whichever happens earlier.

135 Keeping documents associated with international production orders—the Organisation

(1) The Director-General of Security must cause the following to be kept in the Organisation’s records:

(a) a copy of each written application made under Part 4 of this Schedule for an international production order;
(b) a copy of each affidavit that accompanied a written
application under Part 4 of this Schedule for an international
production order;
(c) a copy of each international production order issued under
Part 4 of this Schedule;
(d) a copy of each authorisation given by the Director-General of
Security under subclause 83(4);
(e) a copy of each authorisation given by the Director-General of
Security under subclause 92(4);
(f) a copy of each authorisation given by the Director-General of
Security under subclause 101(4);
(g) if the Director-General of Security revoked an international
production order under clause 116—a copy of the instrument
of revocation.

(2) The period for which the Director-General of Security must cause a
copy of a particular document to be kept in the Organisation’s
records under subclause (1) is the period:
(a) starting when the document came into existence; and
(b) ending when 3 years have elapsed since the document came
into existence.

136 Other records to be kept—the Organisation

(1) The Director-General of Security must cause the following to be
kept in the Organisation’s records:
(a) details of each telephone application made under Part 4 of
this Schedule for an international production order;
(b) for each application made under Part 4 of this Schedule for
an international production order—a statement as to whether
the application was granted, refused or withdrawn;
(c) for each international production order issued under Part 4 of
this Schedule:
(i) a record of the type of order; and
(ii) a record of the designated international agreement
nominated in the application for the order; and
(iii) if a period was specified in the order—details of that
period; and
Schedule 1 Amendments
Part 1 General amendments

(iv) a record of the Organisation giving the order, or a
certified copy of the order, to the Australian Designated
Authority; and
(v) details of each communication by an ASIO official to a
person other than an ASIO official of protected
information obtained in accordance with the order; and
(vi) a record of the designated communications provider to
whom the order was directed; and
(vii) a statement as to whether the designated
communications provider complied with the order; and
(viii) if the designated communications provider made
intercepted communications, messages, voice calls,
video calls, stored communications or
telecommunications data available to the Organisation
directly—a statement to that effect; and
(ix) if the Organisation used protected information obtained
in accordance with the order—a statement setting out the
details of that use of the protected information; and
(x) if the Director-General of Security revokes the order
under clause 116—a statement setting out the reasons
for the revocation; and
(xi) if the Australian Designated Authority cancelled the
order under clause 122—a record of the cancellation; and
(xii) if a certifying person certified a document to be a true
copy of the order—a statement to that effect;
(d) documents indicating whether a record was destroyed in
accordance with subclause 140(2) or (4).

(2) The period for which the Director-General of Security must cause a
particular record to be kept in the Organisation’s records under
subclause (1) is the period:
(a) starting when the record came into existence; and
(b) ending when 3 years have elapsed since the record came into
existence.
137 Keeping documents associated with international production orders—Australian Designated Authority

(1) The Australian Designated authority must cause the following to be kept in the Australian Designated Authority’s records:

(a) a copy of each international production order given by the Australian Designated Authority to a designated communications provider;

(b) if an instrument of revocation of an international production order was given by the Australian Designated Authority to a designated communications provider—a copy of the instrument of revocation;

(c) if an instrument of cancellation of an international production order was given by the Australian Designated Authority to a designated communications provider—a copy of the instrument of cancellation;

(d) a copy of each objection received by the Australian Designated Authority under clause 121.

(2) The period for which the Australian Designated Authority must cause a document to be kept in the Australian Designated Authority’s records under subclause (1) is the period:

(a) starting when the document came into existence; and

(b) ending when 3 years have elapsed since the document came into existence.

138 Other records to be kept—Australian Designated Authority

(1) The Australian Designated Authority must cause the following to be kept in the Australian Designated Authority’s records:

(a) for each international production order given by the Australian Designated Authority to a designated communications provider:

(i) a record of the type of order; and

(ii) a record of the Australian entity that applied for the order; and

(iii) the name of the designated international agreement invoked by the order; and
(iv) the name of the designated communications provider;
and
(v) if, in compliance with the order, the designated communications provider made intercepted communications, messages, voice calls or video calls available to an Australian entity directly—a statement to that effect; and
(vi) if, in compliance with the order, the designated communications provider made stored communications or telecommunications data available to an Australian entity directly—a statement to that effect;
(b) if an international production order is cancelled by the Australian Designated Authority under clause 111, 112 or 122—a record of the cancellation and the reasons for the cancellation;
(c) if an instrument of revocation of an international production order is given by the Australian Designated Authority to a designated communications provider—a record of the giving of the instrument;
(d) if an instrument of cancellation of an international production order is given by the Australian Designated Authority to a designated communications provider—a record of the giving of the instrument;
(e) if an objection is received by the Australian Designated Authority under clause 121:
   (i) a record of the receipt of the objection; and
   (ii) a record of the international production order to which the objection relates; and
   (iii) a record of the type of order; and
   (iv) the name of the designated international agreement invoked by the order; and
   (v) the name of the designated communications provider to whom the order is directed; and
   (vi) the name of the Australian entity that applied for the order; and
   (vii) if the objection was referred to an authority (however described) of a foreign country—a record of the referral.

(2) If:
(a) there is a designated international agreement between
Australia and one or more foreign countries; and
(b) the agreement deals with (among other things) the issue of
orders (however described) by a competent authority
(however described) of such a foreign country; and
(c) such an order (the incoming order) is directed to a
designated communications provider that:
   (i) carries on activities in Australia; or
   (ii) provides one or more services to end-users who are
    physically present in Australia; and
(d) the provider notifies an authority (however described) of the
foreign country that the provider objects to the incoming
order:
   (i) on the grounds that the incoming order does not comply
   with the designated international agreement; or
   (ii) on similar grounds; and
(e) the Australian Designated Authority is aware of the
   objection;
the Australian Designated Authority must cause the following to be
kept in the Australian Designated Authority’s records:
(f) a record of the objection;
(g) the name of the foreign entity that applied for the incoming
   order;
(h) the name of the designated international agreement;
(i) the name of the provider;
(j) a record of whether the incoming order was cancelled
   (however described), withdrawn or set aside as a result of the
   objection;
(k) if the Australian Designated Authority made one or more
    representations to an authority (however described) of the
    foreign country that resulted in the incoming order being
    cancelled (however described), withdrawn or set aside—a
    record of those representations.

(3) The period for which the Australian Designated Authority must
cause a particular record to be kept in the Australian Designated
Authority’s records under subclause (1) or (2) is the period:
(a) starting when the record came into existence; and
Schedule 1 Amendments

Part 1 General amendments

(b) ending when 3 years have elapsed since the record came into existence.

(4) For the purposes of this clause, *Australian entity* means:

(a) a relevant agency; or

(b) the Organisation.

(5) For the purposes of this clause, *foreign entity* means an agency or authority of a foreign country.

Division 4—Register of international production orders

139 Register of international production orders

(1) The Australian Designated Authority must cause to be kept a register of international production orders.

(2) The Australian Designated Authority must cause each of the following to be recorded in the register in relation to each international production order:

(a) the date of issue of the order;

(b) the type of order;

(c) particulars of the person who issued the order;

(d) if a relevant agency applied for the order—the name of the relevant agency;

(e) if the order was issued under Part 4 of this Schedule—the fact that the Organisation applied for the order;

(f) the name of the designated communications provider to whom the order is directed;

(g) the name of the designated international agreement nominated in the application for the order;

(h) if the order was issued under clause 30—the period that was specified in the order for the purposes of subparagraph 30(2)(i)(i) or (j)(i);

(i) if the order was issued under clause 60—the period that was specified in the order for the purposes of subparagraph 60(2)(k)(i) or (l)(i);
(j) if the order was issued under clause 89—the period that was
specified in the order for the purposes of
subparagraph 89(2)(i)(i) or (j)(i);

(k) if:
   (i) the order was issued under clause 48; and
   (ii) a period was specified in the order for the purposes of
        paragraph 48(2)(f);

   that period;

(l) if:
   (i) the order was issued under clause 78; and
   (ii) a period was specified in the order for the purposes of
        paragraph 78(2)(g);

   that period;

(m) if:
   (i) the order was issued under clause 107; and
   (ii) a period was specified in the order for the purposes of
        paragraph 107(2)(f);

   that period;

(n) if the order was issued under Part 2 of this Schedule in
    response to an application made on grounds relating to the
    investigation of one or more offences—the type or types of
    those offences;

(o) if the order was issued under Part 3 of this Schedule in
    relation to a control order—the name of the person to whom
    the control order relates.

Division 5—Destruction of records

140 Destruction of records

   Interception

   (1) If:
      (a) an international production order was issued in response to an
          application made by a relevant agency; and
      (b) in compliance with the order, a designated communications
          provider makes:
          (i) intercepted communications; or
162 Telecommunications Legislation Amendment (International Production Orders) Bill 2020
(a) an international production order was issued in response to an application made by a relevant agency; and

(b) in compliance with the order, a designated communications provider makes a copy of stored communications available to the agency (whether directly or indirectly via the Australian Designated Authority); and

(c) the copy is in the agency’s possession; and

(d) the chief officer of the agency is satisfied that the copy is not likely to be required for a purpose referred to in clause 153 or 158;

the chief officer must cause the copy to be destroyed immediately after becoming so satisfied.

(4) If:

(a) an international production order was issued under clause 98;

and

(b) in compliance with the order, a designated communications provider makes a copy of stored communications available to the Organisation (whether directly or indirectly via the Australian Designated Authority); and

(c) the copy is in the Organisation’s possession; and

(d) the Director-General of Security is satisfied that the copy is not likely to be required for a purpose referred to in clause 153 or 158;

the Director-General of Security must cause the copy to be destroyed immediately after becoming so satisfied.

Part 10—Oversight by the Commonwealth Ombudsman

141 Simplified outline of this Part

- The Ombudsman may inspect records of a relevant agency to determine the extent of compliance with this Schedule by the relevant agency and its officers.
Schedule 1 Amendments
Part 1 General amendments

1. The Ombudsman may inspect records of the Australian Designated Authority to determine the extent of compliance with this Schedule by the Australian Designated Authority.

2. The Ombudsman must give the Minister an annual report about the results of those inspections.

142 Inspection of records—relevant agency

(1) The Ombudsman may inspect records of a relevant agency to determine the extent of compliance with this Schedule by the relevant agency and its officers.

(2) For the purpose of an inspection under this clause, the Ombudsman:

(a) after notifying the chief officer of the relevant agency, may enter at any reasonable time premises occupied by the relevant agency; and

(b) is entitled to have full and free access at all reasonable times to all records of the relevant agency that are relevant to the inspection; and

(c) despite any other law, is entitled to make copies of, and to take extracts from, records of the relevant agency; and

(d) may require a member of staff of the relevant agency to give the Ombudsman any information that the Ombudsman considers necessary, being information:

(i) that is in the member’s possession, or to which the member has access; and

(ii) that is relevant to the inspection.

(3) Before inspecting records of a relevant agency under this clause, the Ombudsman must give reasonable notice to the chief officer of the relevant agency of when the inspection will occur.

(4) The chief officer must ensure that members of staff of the relevant agency give the Ombudsman any assistance the Ombudsman reasonably requires to enable the Ombudsman to perform functions under this clause.
**143 Inspection of records—Australian Designated Authority**

(1) The Ombudsman may inspect records of the Australian Designated Authority to determine the extent of compliance with this Schedule by the Australian Designated Authority.

(2) For the purpose of an inspection under this clause, the Ombudsman:

(a) after notifying the Australian Designated Authority, may enter at any reasonable time premises occupied by the Attorney-General’s Department; and

(b) is entitled to have full and free access at all reasonable times to all records of the Australian Designated Authority that are relevant to the inspection; and

(c) despite any other law, is entitled to make copies of, and to take extracts from, records of the Australian Designated Authority; and

(d) may require a member of staff of the Attorney-General’s Department to give the Ombudsman any information that the Ombudsman considers necessary, being information:

   (i) that is in the member’s possession, or to which the member has access; and

   (ii) that is relevant to the inspection.

(3) Before inspecting records of the Australian Designated Authority under this clause, the Ombudsman must give reasonable notice to the Australian Designated Authority of when the inspection will occur.

(4) The Australian Designated Authority must ensure that members of staff of the Attorney-General’s Department give the Ombudsman any assistance the Ombudsman reasonably requires to enable the Ombudsman to perform functions under this clause.

**144 Power to obtain relevant information**

*Relevant agency*

(1) If the Ombudsman has reasonable grounds to believe that an officer of a particular relevant agency is able to give information
relevant to an inspection under this Part of the relevant agency’s records, the Ombudsman may:

(a) if the Ombudsman knows the officer’s identity—by written notice given to the officer, require the officer to do one or both of the following:
   (i) give the information to the Ombudsman, by writing signed by the officer, at a specified place and within a specified period;
   (ii) attend before a specified inspecting officer to answer questions relevant to the inspection; or

(b) if the Ombudsman does not know the officer’s identity—
   require the chief officer of the relevant agency, or a person nominated by the chief officer, to attend before a specified inspecting officer to answer questions relevant to the inspection.

Australian Designated Authority

(2) If the Ombudsman has reasonable grounds to believe that a member of staff of the Attorney-General’s Department is able to give information relevant to an inspection under this Part of the Australian Designated Authority’s records, the Ombudsman may:

(a) if the Ombudsman knows the member’s identity—by written notice given to the member, require the member to do one or both of the following:
   (i) give the information to the Ombudsman, by writing signed by the member, at a specified place and within a specified period;
   (ii) attend before a specified inspecting officer to answer questions relevant to the inspection; or

(b) if the Ombudsman does not know the member’s identity—
   require the Australian Designated Authority, or a person nominated by the Australian Designated Authority, to attend before a specified inspecting officer to answer questions relevant to the inspection.

Specification of place and period etc.

(3) A requirement under subclause (1) or (2) to attend before an inspecting officer must specify:

166  Telecommunications Legislation Amendment (International Production Orders) Bill 2020 No.  , 2020
(a) a place for the attendance; and
(b) a period within which, or a time and day when, the
attendance is to occur.

The place, and the period or the time and day, must be reasonable
having regard to the circumstances in which the requirement is
made.

**Offence**

(4) A person commits an offence if:
(a) the person is subject to a requirement under subclause (1) or
(2); and
(b) the person omits to do an act; and
(c) the omission breaches the requirement.

Penalty for an offence against this subclause: Imprisonment
for 6 months.

**145 Ombudsman to be given information and access despite other laws**

(1) Despite any other law, a person is not excused from giving
information, answering a question, or giving access to a document,
as and when required under this Part, on the ground that giving the
information, answering the question, or giving access to the
document, as the case may be:
(a) would contravene a law; or
(b) would be contrary to the public interest; or
(c) might tend to incriminate the person or make the person
liable to a penalty.

(2) However:
(a) the information, the answer, or the fact that the person has
given access to the document, as the case may be; or
(b) any information or thing (including a document) obtained as
a direct or indirect consequence of giving the information,
answering the question or giving access to the document;
is not admissible in evidence against the person except in a
proceeding by way of a prosecution for:
(c) an offence against clause 152; or
(d) an offence against Part 7.4 or 7.7 of the Criminal Code.

(3) Nothing in clause 152, or in any other law, prevents an officer of a relevant agency from:
(a) giving information to an inspecting officer (whether orally or in writing and whether or not in answer to a question); or
(b) giving access to a record of the relevant agency to an inspecting officer;
for the purposes of an inspection under this Part of the relevant agency’s records.

(4) Nothing in clause 152, or in any other law, prevents an officer of a relevant agency from making a record of information, or causing a record of information to be made, for the purposes of giving the information to a person as permitted by subclause (3).

(5) Nothing in clause 152, or in any other law, prevents a member of staff of the Attorney-General’s Department from:
(a) giving information to an inspecting officer (whether orally or in writing and whether or not in answer to a question); or
(b) giving access to a record of the Australian Designated Authority to an inspecting officer;
for the purposes of an inspection under this Part of the Australian Designated Authority’s records.

(6) Nothing in clause 152, or in any other law, prevents a member of staff of the Attorney-General’s Department from making a record of information, or causing a record of information to be made, for the purposes of giving the information to a person as permitted by subclause (5).

146 Application of Ombudsman Act

(1) Section 11A of the Ombudsman Act 1976 does not apply in relation to the exercise or proposed exercise of a power, or the performance or the proposed performance of a function, of the Ombudsman under this Part.

(2) A reference in section 19 of the Ombudsman Act 1976 to the Ombudsman’s operations does not include a reference to anything that an inspecting officer has done or omitted to do under this Part.
(3) Subject to clause 145, subsections 35(2), (3), (4) and (8) of the
Ombudsman Act 1976 apply for the purposes of this Part and so
apply as if:
   (a) a reference in those subsections to an officer were a reference
to an inspecting officer; and
   (b) a reference in those subsections to information did not
   include a reference to protected information; and
   (c) a reference in those subsections to that Act were a reference
to this Part; and
   (d) paragraph 35(3)(b) of that Act were omitted; and
   (e) section 35A of that Act had not been enacted.

147 Exchange of information between Ombudsman and
State/Territory inspecting authorities

(1) If the Ombudsman has obtained under this Part information
relating to an authority of a State or Territory, the Ombudsman
may give the information to another authority of that State or
Territory (an inspecting authority) that:
   (a) has powers under the law of that State or Territory; and
   (b) has the function of making inspections of a similar kind to
those provided for in clause 142 when the inspecting
authority is exercising those powers.

(2) However, the Ombudsman may give the information only if the
Ombudsman is satisfied that giving the information is necessary to
enable the inspecting authority to perform its functions in relation
to the first-mentioned authority of the State or Territory.

(3) An inspecting authority may give the Ombudsman information
relevant to the performance of the Ombudsman’s functions under
this Part.

148 Delegation by Ombudsman

(1) The Ombudsman may, by writing, delegate:
   (a) to an APS employee responsible to the Ombudsman; or
   (b) to a person having similar oversight functions to the
       Ombudsman under the law of a State or Territory or to an
       employee responsible to that person;
all or any of the Ombudsman’s powers under this Part other than a power to report to the Minister.

(2) A delegate must, upon request by a person affected by the exercise of any power delegated to the delegate, produce the instrument of delegation, or a copy of the instrument, for inspection by the person.

149 Ombudsman not to be sued

The Ombudsman, an inspecting officer, or a person acting under an inspecting officer’s direction or authority, is not liable to an action, suit or proceeding for or in relation to an act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of a function or power conferred by this Part.

150 Reports

(1) The Ombudsman must report to the Minister, in writing, about the results of:
   (a) inspections under clause 142 of the records of relevant agencies during a financial year; and
   (b) inspections under clause 143 of the records of the Australian Designated Authority during a financial year.

(2) The report under subclause (1) must be given to the Minister as soon as practicable after the end of the financial year.

(3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives it.

(4) The Ombudsman may report to the Minister in writing at any time about the results of an inspection under this Part and must do so if so requested by the Minister.

(5) If, as a result of an inspection under this Part of the records of a relevant agency, the Ombudsman is of the opinion that an officer of the relevant agency has contravened a provision of this Schedule, the Ombudsman may include in the Ombudsman’s report on the inspection a report on the contravention.
(6) If, as a result of an inspection under this Part of the records of the
Australian Designated Authority, the Ombudsman is of the opinion
that a member of staff of the Attorney-General’s Department has
contravened a provision of this Schedule, the Ombudsman may
include in the Ombudsman’s report on the inspection a report on
the contravention.

(7) The Ombudsman must:
(a) give the chief officer of a relevant agency a copy of so much
of a report under subclause (1) or (4) as relates to the relevant
agency; and
(b) give the Australian Designated Authority a copy of so much
of a report under subclause (1) or (4) as relates to the
Australian Designated Authority.

(8) A report under this clause must not include information which, if
made public, could reasonably be expected to:
(a) endanger a person’s safety; or
(b) prejudice an investigation or prosecution; or
(c) compromise any relevant agency’s operational activities or
methodologies.

Part 11—Disclosure of protected information

151 Simplified outline of this Part

• Protected information must not be used, recorded or disclosed,
  unless an exception applies.

• Protected information must not be admitted in evidence,
  unless an exception applies.

152 Prohibition on use, recording or disclosure of protected
information or its admission in evidence

(1) A person commits an offence if:
(a) the person uses, records or discloses information; and
(b) the information is protected information; and
Schedule 1 Amendments
Part 1 General amendments

(c) the use, recording or disclosure of the information is not permitted by this Part.

Penalty: Imprisonment for 2 years.

(2) Subject to this Part, protected information must not be admitted in evidence in any proceedings in Australia.

153 Exceptions—general

(1) Protected information may be used, recorded or disclosed, or may be admitted in evidence, for any of the following purposes:

(a) the investigation of a serious category 1 offence or a serious category 2 offence or the making of a report on the outcome of such an investigation;

(b) the making of a decision whether or not to bring a prosecution for a serious category 1 offence or a serious category 2 offence (other than an offence referred to in paragraph (r));

(c) a proceeding by way of a prosecution for a serious category 1 offence or a serious category 2 offence (other than an offence referred to in paragraph (r));

(d) a proceeding by way of a bail application if the application relates to a proceeding by way of a prosecution for a serious category 1 offence or a serious category 2 offence;

(e) a proceeding by way of review of a decision to refuse such a bail application;

(f) a proceeding by way of a review of a decision to grant such a bail application;

(g) the investigation of a contravention of a civil penalty provision in this Schedule or the making of a report on the outcome of such an investigation;

(h) the performance of the functions, or the exercise of the powers, of the Organisation;

(i) 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 104 of the Criminal Code (control orders);

(j) a preventative detention order law;
(k) 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 105A of the Criminal Code (continuing detention orders);

(l) a proceeding by way of an application for a civil penalty order in relation to a contravention of a civil penalty provision in this Schedule;

(m) the making of reports, and the keeping of records, under Part 9 of this Schedule;

(n) the making of reports referred to in subsection 94(1) of the Australian Security Intelligence Organisation Act 1979, so far as they include statements covered by subsection 94(2BBA) of that Act;

(o) an inspection by the Ombudsman under clause 142 or 143;

(p) the performance of a function or duty, or the exercise of a power, by an IGIS official under the Inspector-General of Intelligence and Security Act 1986;

(q) the performance of a function or duty, or the exercise of a power, by an Ombudsman official under the Ombudsman Act 1976;

(r) an investigation under the Privacy Act 1988 or any other law of the Commonwealth concerning the privacy of personal information and also any subsequent investigation or prosecution of a serious category 1 offence, or a serious category 2 offence, arising directly from that first-mentioned investigation;

(s) the administration or execution of this Schedule;

(t) any legal proceedings arising out of or otherwise related to this Schedule or any report of any such proceedings;

(u) a proceeding for the taking of evidence pursuant to section 43 of the Extradition Act 1988, in so far as the proceeding relates to a serious category 1 offence;

(v) a proceeding under section 13 of the Mutual Assistance in Criminal Matters Act 1987 in relation to a criminal matter (within the meaning of that Act) that concerns an offence, against the laws of the foreign country that made the request resulting in the proceeding, that is punishable by imprisonment for life or for a period, or maximum period, of at least 3 years;
Schedule 1 Amendments

Part 1 General amendments

(w) a proceeding under Division 5 of Part 4 of the *International Criminal Court Act 2002*;

(x) a proceeding before the International Criminal Court sitting in Australia under Part 5 of the *International Criminal Court Act 2002*;

(y) a proceeding under Division 1 of Part 4 of the *International War Crimes Tribunals Act 1995*;

(z) a designated international agreement.

(2) For the purposes of subclause (1), this Schedule includes the *Regulatory Powers (Standard Provisions) Act 2014*, so far as that Act relates to this Schedule.

Disclosure to Public Interest Monitor of Victoria or Queensland

(3) If:

(a) a person (the applicant) applies, or proposes to apply, under clause 22, on behalf of an interception agency of Victoria or Queensland for an international production order under clause 30; and

(b) a law of that State authorises or requires the applicant:

(i) to notify a PIM of that State of the application or proposed application; or

(ii) to notify a PIM of that State of any information that relates to the application or proposed application; or

(iii) to give a PIM of that State any document that relates to the application or proposed application;

making the notification, or giving the document, to a PIM of that State is taken to be necessary for the purposes of the administration or execution of this Schedule.

(4) If:

(a) a person (the applicant) applies, or proposes to apply, under clause 52, on behalf of a control order IPO agency of Victoria or Queensland for an international production order under clause 60; and

(b) a law of that State authorises or requires the applicant:

(i) to notify a PIM of that State of the application or proposed application; or
(ii) to notify a PIM of that State of any information that relates to the application or proposed application; or

(iii) to give a PIM of that State any document that relates to the application or proposed application;

making the notification, or giving the document, to a PIM of that State is taken to be necessary for the purposes of the administration or execution of this Schedule.

International assistance

(5) If the Attorney-General has authorised the provision of protected information to a foreign country under subsection 13A(1) of the Mutual Assistance in Criminal Matters Act 1987, the information may be disclosed to:

(a) that foreign country; or

(b) the Secretary of the Attorney-General’s Department for the purpose of providing the information to that foreign country.

(6) If the Attorney-General has authorised the provision of protected information to the International Criminal Court under section 69A of the International Criminal Court Act 2002, the information may be disclosed to:

(a) that Court; or

(b) the Secretary of the Attorney-General’s Department for the purpose of providing the information to that Court.

(7) If the Attorney-General has authorised the provision of protected information to a War Crimes Tribunal under section 25A of the International War Crimes Tribunals Act 1995, the information may be disclosed to:

(a) that Tribunal; or

(b) the Secretary of the Attorney-General’s Department for the purpose of providing the information to that Tribunal.

154 Exception—disclosure to the Minister

Protected information may be disclosed to the Minister for the purposes of the performance of the functions, or the exercise of the powers, of the Minister.
Exception—disclosure to the Attorney-General

Protected information may be disclosed to the Attorney-General for the purposes of the performance of the functions, or the exercise of the powers, of the Attorney-General.

Exception—statistical information

A designated communications provider may disclose the total number of international production orders given to the provider during a period of at least 6 months.

Note: This clause authorises the disclosure of aggregate statistical information. That information cannot be broken down:

(a) by agency; or
(b) in any other way.

Exceptions—international production orders relating to interception

(1) Protected information that:

(a) was obtained in accordance with an international production order issued under clause 30, 60 or 89; or
(b) relates to an international production order issued under clause 30, 60 or 89;

may be used, recorded or disclosed, or may be admitted in evidence, for any of the following purposes:

(c) a proceeding for the confiscation or forfeiture of property in connection with the commission of a serious category 1 offence;
(d) a proceeding under the Spam Act 2003;
(e) a proceeding under, or a proceeding relating to a matter arising under, the main unexplained wealth provisions;
(f) a proceeding under, or a proceeding relating to a matter arising under, the unexplained wealth legislation of a participating State, the Australian Capital Territory or the Northern Territory;
(g) a proceeding under, or a proceeding relating to a matter arising under, an organised crime control law;
(h) a proceeding for the extradition of a person from a State or Territory to another State or Territory, in so far as the proceeding relates to a serious category 1 offence;

(i) a proceeding by way of a coroner’s inquest if, in the opinion of the coroner, the event that is the subject of the inquest may have resulted from the commission of a serious category 1 offence;

(j) a police disciplinary proceeding;

(k) a proceeding in so far as it relates to:
   (i) a decision by the Commissioner of Police to terminate the employment of an AFP employee or the appointment of a special member of the Australian Federal Police; or
   (ii) a decision by the Commissioner of a Police Force of a State to terminate the appointment of an officer or member of staff of that Police Force;

(l) a proceeding in so far as it is, or relates to, disciplinary or legal action (within the meaning of section 6S) that is in relation to an eligible staff member (within the meaning of that section) of the Australian Federal Police or the ACC;

(m) any other proceeding (not being a proceeding by way of a prosecution for an offence) in so far as it relates to alleged misbehaviour, or alleged improper conduct, of an officer of the Commonwealth or of a State;

(n) a proceeding for the recovery of an amount due to a carrier or carriage service provider in connection with the supply of a carriage service;

(o) a proceeding of an eligible Commonwealth authority;

(p) a proceeding of the Independent Commission Against Corruption;

(q) a proceeding of the Inspector of the Independent Commission Against Corruption;

(r) a proceeding in relation to an application under subsection 34B(1) of the ACC Act in respect of contempt of the ACC;

(s) a proceeding of the IBAC;

(t) a proceeding of the Victorian Inspectorate;

(u) a proceeding of the Corruption and Crime Commission;
(v) a proceeding of the Parliamentary Inspector of the Corruption and Crime Commission;
(w) a proceeding of the Law Enforcement Conduct Commission;
(x) a proceeding of the Inspector of the Law Enforcement Conduct Commission;
(y) a proceeding of the Crime and Corruption Commission;
(z) a proceeding of the Independent Commissioner Against Corruption;
(za) an eligible purpose of the ACC;
(zb) an eligible purpose of the Australian Federal Police;
(zc) an eligible purpose of the Australian Commission for Law Enforcement Integrity;
(zd) an eligible purpose of a Commonwealth Royal Commission that is an eligible Commonwealth authority;
(ze) an eligible purpose of the Police Force of a State;
(zf) an eligible purpose of an eligible authority of a State;
(zg) an eligible purpose of the Independent Commission Against Corruption;
(zh) an eligible purpose of the Inspector of the Independent Commission Against Corruption;
(zi) an eligible purpose of the Inspector of the Law Enforcement Conduct Commission;
(zj) an eligible purpose of the Law Enforcement Conduct Commission;
(zk) an eligible purpose of the IBAC;
(zl) an eligible purpose of the Victorian Inspectorate;
(zm) an eligible purpose of the Corruption and Crime Commission;
(zn) an eligible purpose of the Crime and Corruption Commission;
(zo) an eligible purpose of the Parliamentary Inspector of the Corruption and Crime Commission;
(zp) an eligible purpose of the Independent Commissioner Against Corruption.

Eligible purpose

(2) For the purposes of this clause:
(a) each of the following is an **eligible purpose** of the ACC:

(i) a special ACC operation/investigation;

(ii) a report to the Board of the ACC on the outcome of such an operation or investigation;

(iii) an investigation of, or an inquiry into, alleged misbehaviour, or alleged improper conduct, of a member of the staff referred to in subsection 47(1) of the ACC Act;

(iv) a report on such an investigation or inquiry;

(v) the making by a person of a decision, following such an investigation or inquiry, in relation to the employment of such a staff member (including a decision to terminate the staff member’s employment);

(vi) a review (whether by way of appeal or otherwise) of such a decision; and

(b) each of the following is an **eligible purpose** of the Australian Federal Police:

(i) an investigation of, or an inquiry into, alleged misbehaviour, or alleged improper conduct, of an officer of the Commonwealth, being an investigation or inquiry under a law of the Commonwealth or by a person in the person’s capacity as an officer of the Commonwealth;

(ii) a report on such an investigation or inquiry;

(iii) the making by a person of a decision under the **Australian Federal Police Act 1979** in relation to the engagement of an AFP employee, the retirement of an AFP employee or the termination of the employment of an AFP employee or in relation to the appointment or the termination of the appointment of a special member of the Australian Federal Police;

(iv) a review (whether by way of appeal or otherwise) of such a decision;

(v) the tendering to the Governor-General of advice to terminate, because of misbehaviour or improper conduct, the appointment of an officer of the Commonwealth;

(vi) deliberations of the Executive Council in connection with advice to the Governor-General to terminate,
Schedule 1 Amendments

Part 1 General amendments

because of misbehaviour or improper conduct, the
appointment of an officer of the Commonwealth; and

(c) each of the following is an eligible purpose of the Australian
Commission for Law Enforcement Integrity:

(i) a corruption investigation (within the meaning of the
Law Enforcement Integrity Commissioner Act 2006);

(ii) a report on such an investigation; and

(d) each of the following is an eligible purpose of a
Commonwealth Royal Commission that is an eligible
Commonwealth authority:

(i) an investigation that the Commonwealth Royal
Commission is conducting in the course of the inquiry it
is commissioned to undertake;

(ii) a report on such an investigation; and

(e) each of the following is an eligible purpose of the Police
Force of a State:

(i) an investigation of, or an inquiry into, alleged
misbehaviour, or alleged improper conduct, of an officer
of that State, being an investigation or inquiry under a
law of that State or by a person in the person’s capacity
as an officer of that State;

(ii) a report on such an investigation or inquiry;

(iii) the making by a person of a decision in relation to the
appointment, re-appointment, term of appointment,
retirement or termination of appointment of an officer or
member of staff of that Police Force;

(iv) a review (whether by way of appeal or otherwise) of
such a decision;

(v) the tendering to the Governor of that State of advice to
terminate, because of misbehaviour or improper
conduct, the appointment of an officer of that State;

(vi) deliberations of the Executive Council of that State in
connection with advice to the Governor of that State to
terminate, because of misbehaviour or improper
conduct, the appointment of an officer of that State; and
(f) each of the following is an eligible purpose of an eligible authority of a State:
   (i) an inspection of the authority’s records that is made under a requirement of the law of that State, being a requirement of the kind referred to in paragraph 35(1)(h);
   (ii) a report on such an inspection; and

(g) each of the following is an eligible purpose of the Independent Commission Against Corruption:
   (i) an investigation under the Independent Commission Against Corruption Act into whether corrupt conduct (within the meaning of that Act) may have occurred, may be occurring or may be about to occur;
   (ii) a report on such an investigation; and

(h) each of the following is an eligible purpose of the Inspector of the Independent Commission Against Corruption:
   (i) dealing with (by reports and recommendations) complaints of abuse of power, impropriety or other forms of misconduct (within the meaning of the Independent Commission Against Corruption Act) on the part of the Independent Commission Against Corruption or officers of that Commission;
   (ii) dealing with (by reports and recommendations) conduct amounting to maladministration (within the meaning of the Independent Commission Against Corruption Act) by the Independent Commission Against Corruption or officers of that Commission; and

(i) each of the following is an eligible purpose of the Inspector of the Law Enforcement Conduct Commission:
   (i) dealing with (by reports and recommendations) conduct amounting to agency maladministration (within the meaning of subsection 5(6A)) on the part of the Commission (whether or not the subject of a complaint);
   (ii) dealing with (by reports and recommendations) conduct amounting to officer misconduct (within the meaning of section 122 of the Law Enforcement Conduct Commission Act 2016 (NSW)) or officer maladministration (within the meaning of that section) on the part of officers (within the meaning of that Act)
of the Commission (whether or not the subject of a complaint); and

(j) each of the following is an eligible purpose of the Law Enforcement Conduct Commission:

(i) an investigation under Part 6 of the Law Enforcement Conduct Commission Act 2016 (NSW) in respect of conduct to which subsection 5(7) of this Act applies;

(ii) a report on an investigation covered by subparagraph (i);

(iii) the tendering to the Governor of New South Wales of advice to terminate, because of misbehaviour or improper conduct, the appointment of the Commissioner of the New South Wales Police Force;

(iv) deliberations of the Executive Council of New South Wales in connection with advice to the Governor of that State to terminate, because of misbehaviour or improper conduct, the appointment of the Commissioner of the New South Wales Police Force; and

(k) each of the following is an eligible purpose of the IBAC:

(i) an investigation under the IBAC Act of corrupt conduct (within the meaning of that Act);

(ii) an investigation under the IBAC Act of police personnel conduct (within the meaning of that Act); and

(l) each of the following is an eligible purpose of the Victorian Inspectorate:

(i) an investigation under the Victorian Inspectorate Act;

(ii) a report or recommendation on such an investigation; and

(m) each of the following is an eligible purpose of the Corruption and Crime Commission:

(i) an investigation under the Corruption and Crime Commission Act into whether misconduct (within the meaning of that Act) has or may have occurred, is or may be occurring, is or may be about to occur, or is likely to occur;

(ii) a report on such an investigation; and

(n) each of the following is an eligible purpose of the Crime and Corruption Commission:

182  Telecommunications Legislation Amendment (International Production Orders) Bill 2020
(i) an investigation under the Crime and Corruption Act into whether corruption (within the meaning of that Act) may have occurred, may be occurring or may be about to occur;
(ii) a report on such an investigation; and
(o) each of the following is an eligible purpose of the Parliamentary Inspector of the Corruption and Crime Commission:
   (i) dealing with a matter of misconduct (within the meaning of the Corruption and Crime Commission Act) on the part of the Corruption and Crime Commission;
   (ii) dealing with a matter of misconduct (within the meaning of the Corruption and Crime Commission Act) on the part of an officer of the Corruption and Crime Commission;
   (iii) dealing with a matter of misconduct (within the meaning of the Corruption and Crime Commission Act) on the part of an officer of the Parliamentary Inspector of the Corruption and Crime Commission; and
(p) each of the following is an eligible purpose of the Independent Commissioner Against Corruption:
   (i) an investigation under the Independent Commissioner Against Corruption Act into corruption in public administration (within the meaning of that Act);
   (ii) a report on such an investigation.

158 Exceptions—international production orders relating to stored communications

Protected information that:
(a) was obtained in accordance with an international production order issued under clause 39, 69 or 98; or
(b) relates to an international production order issued under clause 39, 69 or 98; may be used, recorded or disclosed, or may be admitted in evidence, for any of the following purposes:
(c) a proceeding for the confiscation or forfeiture of property in connection with the commission of a serious category 1 offence;
(d) a proceeding for the extradition of a person from a State or Territory to another State or Territory, in so far as the proceeding relates to a serious category 1 offence;

(e) a proceeding by way of a coroner’s inquest if, in the opinion of the coroner, the event that is the subject of the inquest may have resulted from the commission of a serious category 1 offence;

(f) a proceeding for recovery of a pecuniary penalty for a contravention that would, if proved, render the person committing the contravention liable to:

   (i) a pecuniary penalty, or a maximum pecuniary penalty, of at least 60 penalty units if the contravention is committed by an individual; or

   (ii) if the contravention cannot be committed by an individual—a pecuniary penalty, or a maximum pecuniary penalty, of at least 300 penalty units;

(g) a proceeding under the *Spam Act 2003*;

(h) a police disciplinary proceeding.

159 Exceptions—telecommunications data

   (1) Protected information that:

      (a) consists of telecommunications data obtained in accordance with an international production order; or

      (b) relates to such an international production order;

      may be used, recorded or disclosed, or may be admitted in evidence, for any of the following purposes:

      (c) the enforcement of the criminal law;

      (d) the enforcement of a law imposing a pecuniary penalty;

      (e) the protection of the public revenue.

   (2) If the Australian Federal Police, or a Police Force of a State has been notified that a person is missing, protected information that consists of telecommunications data obtained in accordance with an international production order may be disclosed if:

      (a) the disclosure is reasonably necessary for the purposes of finding the missing person; or
(b) the information is disclosed to the person who notified the Australian Federal Police, or a Police Force of a State, of the missing person and:
   (i) the missing person consented to the disclosure; or
   (ii) the missing person is unable to consent, and the disclosure is reasonably necessary to prevent a threat to the missing person’s health, life or safety; or
   (iii) the missing person is dead.

Part 12—Evidentiary certificates

160 Simplified outline of this Part

- A manager of a designated communications provider may issue an evidentiary certificate setting out facts with respect to acts or things done by the provider in order to comply with an international production order.

- A manager of a designated communications provider may issue an evidentiary certificate setting out facts with respect to acts or things done by the provider in order to voluntarily provide information in connection with an international production order.

- A certifying officer of a relevant agency may issue an evidentiary certificate setting out facts with respect to the receipt by the agency of information that was made available to the agency in accordance with an international production order.

- A certifying person may issue an evidentiary certificate setting out facts with respect to the receipt by the Organisation of information that was made available to the Organisation in accordance with an international production order.

- If an international production order requires information to be made available to a relevant agency or the Organisation indirectly via the Australian Designated Authority, the
Australian Designated Authority may issue an evidentiary certificate setting out facts with respect to:

(a) the receipt by the Australian Designated Authority of the information; or
(b) anything done by the Australian Designated Authority for the purposes of ensuring that the information was passed on to the agency or the Organisation.

161 Evidentiary certificates—compliance with international production orders by designated communications providers

(1) If:
(a) an international production order is directed to a designated communications provider; and
(b) the provider is not an individual;

a manager of the provider may issue a written certificate signed by the manager setting out such facts as the manager considers relevant with respect to acts or things done by the provider in order to comply with the international production order.

(2) If:
(a) an international production order is directed to a designated communications provider; and
(b) the provider is an individual;

the provider may issue a written certificate signed by the provider setting out such facts as the provider considers relevant with respect to acts or things done by the provider in order to comply with the international production order.

(3) A document purporting to be a certificate issued under subclause (1) or (2):
(a) is to be received in evidence in a proceeding in Australia without further proof; and
(b) in a proceeding in Australia, is conclusive evidence of the matters stated in the document.
162  Evidentiary certificates—voluntary provision of associated information by designated communications providers

Interception

(1) If:

(a) an international production order is directed to a designated communications provider; and
(b) the provider is not an individual; and
(c) either:

(i) the order requires the provider to intercept communications carried by one or more individual carriage services, and make those intercepted communications available to a relevant agency or the Organisation; or
(ii) the order requires the provider to intercept messages sent or received, voice calls made or received, or video calls made or received, using one or more individual message/call application services, and make those intercepted messages, voice calls or video calls available to a relevant agency or the Organisation;

a manager of the provider may do either or both of the following:

(d) issue a written certificate signed by the manager setting out such facts as the manager considers relevant with respect to acts or things done by the provider in order to voluntarily give the relevant agency or the Organisation (as the case may be) in connection with the international production order, information relating to:

(i) those individual carriage services or individual message/call application services (as the case may be); or

(ii) a person who uses, or is likely to use, those individual carriage services or individual message/call application services (as the case may be);

(e) issue a written certificate signed by the manager setting out such facts as the manager considers would assist in explaining:
(i) the operation of those individual carriage services or individual message/call application services (as the case may be); or

(ii) the way in which the intercepted communications, intercepted messages, intercepted voice calls or intercepted video calls (as the case may be) were made available by the provider to the relevant agency or the Organisation (as the case may be).

(2) If:

(a) an international production order is directed to a designated communications provider; and

(b) the provider is an individual; and

(c) either:

(i) the order requires the provider to intercept communications carried by one or more individual carriage services, and make those intercepted communications available to a relevant agency or the Organisation; or

(ii) the order requires the provider to intercept messages sent or received, voice calls made or received, or video calls made or received, using one or more individual message/call application services, and make those intercepted messages, voice calls or video calls available to a relevant agency or the Organisation;

the provider may do either or both of the following:

(d) issue a written certificate signed by the provider setting out such facts as the provider considers relevant with respect to acts or things done by the provider in order to voluntarily give the relevant agency or the Organisation (as the case may be) in connection with the international production order, information relating to:

(i) those individual carriage services or individual message/call application services (as the case may be); or

(ii) a person who uses, or is likely to use, those individual carriage services or individual message/call application services (as the case may be);
(e) issue a written certificate signed by the provider setting out such facts as the provider considers would assist in explaining:

(i) the operation of those individual carriage services or individual message/call application services (as the case may be); or

(ii) the way in which the intercepted communications, intercepted messages, intercepted voice calls or intercepted video calls (as the case may be) were made available by the provider to the relevant agency or the Organisation (as the case may be).

Stored communications

(3) If:

(a) an international production order is directed to a designated communications provider; and

(b) the provider is not an individual; and

(c) the order requires the provider to:

(i) make a copy of stored communications; and

(ii) make the copy available to a relevant agency or the Organisation; and

(d) the stored communications consist of:

(i) communications that a person has made using a carriage service; or

(ii) messages that a person has sent or received using a message/call application service; or

(iii) recordings of voice calls that a person has made or received using a message/call application service; or

(iv) recordings of video calls that a person has made or received using a message/call application service; or

(v) material that a person has uploaded for storage or back-up by a storage/back-up service; or

(vi) material that a person has posted to a general electronic content service;

a manager of the provider may do either or both of the following:

(e) issue a written certificate signed by the manager setting out such facts as the manager considers relevant with respect to...
acts or things done by the provider in order to voluntarily
give the relevant agency or the Organisation (as the case may
be) in connection with the international production order,
information relating to:
(i) those individual carriage services, those individual
message/call application services, that storage/back-up
service or that general electronic content service (as the
case may be); or
(ii) the person;
(f) issue a written certificate signed by the manager setting out
such facts as the manager considers would assist in
explaining:
(i) the operation of those individual carriage services, those
individual message/call application services, that
storage/back-up service or that general electronic
content service (as the case may be); or
(ii) the way in which the copy of the stored communications
was made available by the provider to the relevant
agency or the Organisation (as the case may be).

(4) If:
(a) an international production order is directed to a designated
communications provider; and
(b) the provider is an individual; and
(c) the order requires the provider to:
(i) make a copy of stored communications; and
(ii) make the copy available to a relevant agency or the
Organisation; and
(d) the stored communications consist of:
(i) communications that a person has made using a carriage
service; or
(ii) messages that a person has sent or received using a
message/call application service; or
(iii) recordings of voice calls that a person has made or
received using a message/call application service; or
(iv) recordings of video calls that a person has made or
received using a message/call application service; or
(v) material that a person has uploaded for storage or back-up by a storage/back-up service; or
(vi) material that a person has posted to a general electronic content service;
the provider may do either or both of the following:
(e) issue a written certificate signed by the provider setting out such facts as the provider considers relevant with respect to acts or things done by the provider in order to voluntarily give the relevant agency or the Organisation (as the case may be) in connection with the international production order, information relating to:
   (i) those individual carriage services, those individual message/call application services, that storage/back-up service or that general electronic content service (as the case may be); or
   (ii) the person;
(f) issue a written certificate signed by the provider setting out such facts as the provider considers would assist in explaining:
   (i) the operation of those individual carriage services, those individual message/call application services, that storage/back-up service or that general electronic content service (as the case may be); or
   (ii) the way in which the copy of the stored communications was made available by the provider to the relevant agency or the Organisation (as the case may be).

Telecommunications data

(5) If:
(a) an international production order is directed to a designated communications provider; and
(b) the provider is not an individual; and
(c) the order requires the provider to disclose to a relevant agency, or to the Organisation, telecommunications data that relates to:
   (i) communications carried by an individual carriage service; or
   (ii) an individual carriage service; or
(iii) messages sent or received using an individual message/call application service; or

(iv) voice calls made or received using an individual message/call application service; or

(v) video calls made or received using an individual message/call application service; or

(vi) an individual message/call application service; or

(vii) material that has been uploaded by an end-user for storage or back-up by a storage/back-up service; or

(viii) material that has been posted on a general electronic content service;

a manager of the provider may do either or both of the following:

(d) issue a written certificate signed by the manager setting out such facts as the manager considers relevant with respect to acts or things done by the provider in order to voluntarily give the relevant agency or the Organisation (as the case may be) in connection with the international production order, information relating to those individual carriage services, those individual message/call application services, that storage/back-up service or that general electronic content service (as the case may be);

(e) issue a written certificate signed by the manager setting out such facts as the manager considers would assist in explaining:

(i) the operation of those individual carriage services, those individual message/call application services, that storage/back-up service or that general electronic content service (as the case may be); or

(ii) the way in which the telecommunications data was disclosed by the provider to the relevant agency or the Organisation (as the case may be).

(6) If:

(a) an international production order is directed to a designated communications provider; and

(b) the provider is an individual; and

(c) the order requires the provider to disclose to a relevant agency, or to the Organisation, telecommunications data that relates to:

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192 Telecommunications Legislation Amendment (International Production Orders) Bill 2020
Amendments Schedule 1
General amendments Part 1

(i) communications carried by an individual carriage service; or
(ii) an individual carriage service; or
(iii) messages sent or received using an individual message/call application service; or
(iv) voice calls made or received using an individual message/call application service; or
(v) video calls made or received using an individual message/call application service; or
(vi) an individual message/call application service; or
(vii) material that has been uploaded by an end-user for storage or back-up by a storage/back-up service; or
(viii) material that has been posted on a general electronic content service;

the provider may do either or both of the following:

(d) issue a written certificate signed by the provider setting out such facts as the provider considers relevant with respect to acts or things done by the provider in order to voluntarily give the relevant agency or the Organisation (as the case may be) in connection with the international production order, information relating to those individual carriage services, those individual message/call application services, that storage/back-up service or that general electronic service (as the case may be);

(e) issue a written certificate signed by the provider setting out such facts as the provider considers would assist in explaining:

(i) the operation of those individual carriage services, those individual message/call application services, that storage/back-up service or that general electronic content service (as the case may be); or
(ii) the way in which the telecommunications data was disclosed by the provider to the relevant agency or the Organisation (as the case may be).
Evidentiary effect

(7) A document purporting to be a certificate issued under subclause (1), (2), (3), (4), (5) or (6) in connection with an international production order:
   (a) is to be received in evidence in a proceeding in Australia without further proof; and
   (b) in a proceeding in Australia, is prima facie evidence of the matters stated in the document;

so long as information obtained in accordance with the order is admissible in those proceedings.

163 Evidentiary certificates—interception

(1) A certifying officer of an interception agency may issue a written certificate signed by the officer setting out such facts as the officer considers relevant with respect to:
   (a) the receipt by the agency of:
      (i) intercepted communications; or
      (ii) intercepted messages; or
      (iii) intercepted voice calls; or
      (iv) intercepted video calls;
       that were made available to the agency in accordance with an international production order issued under clause 30; or
   (b) the receipt by the agency of telecommunications data that was disclosed to the agency in accordance with an international production order issued under clause 30.

(2) A certifying officer of a control order IPO agency may issue a written certificate signed by the officer setting out such facts as the officer considers relevant with respect to:
   (a) the receipt by the agency of:
      (i) intercepted communications; or
      (ii) intercepted messages; or
      (iii) intercepted voice calls; or
      (iv) intercepted video calls;
       that were made available to the agency in accordance with an international production order issued under clause 60; or
(b) the receipt by the agency of telecommunications data that
was disclosed to the agency in accordance with an
international production order issued under clause 60.

(3) A certifying person may issue a written certificate signed by the
person setting out such facts as the person considers relevant with
respect to:
(a) the receipt by the Organisation of:
(i) intercepted communications; or
(ii) intercepted messages; or
(iii) intercepted voice calls; or
(iv) intercepted video calls;
that were made available to the Organisation in accordance
with an international production order issued under clause
89; or
(b) the receipt by the Organisation of telecommunications data
that was disclosed to the Organisation in accordance with an
international production order issued under clause 89.

(4) A document purporting to be a certificate issued under
subclause (1), (2) or (3):
(a) is to be received in evidence in a proceeding in Australia
without further proof; and
(b) in a proceeding in Australia, is prima facie evidence of the
matters stated in the document.

164 Evidentiary certificates—stored communications

(1) A certifying officer of a criminal law-enforcement agency may
issue a written certificate signed by the officer setting out such
facts as the officer considers relevant with respect to:
(a) the receipt by the agency of a copy of stored communications
that were made available to the agency in accordance with an
international production order issued under clause 39; or
(b) the receipt by the agency of telecommunications data that
was disclosed to the agency in accordance with an
international production order issued under clause 39.
(2) A certifying officer of a control order IPO agency may issue a written certificate signed by the officer setting out such facts as the officer considers relevant with respect to:
   (a) the receipt by the agency of a copy of stored communications that were made available to the agency in accordance with an international production order issued under clause 69; or
   (b) the receipt by the agency of telecommunications data that was disclosed to the agency in accordance with an international production order issued under clause 69.

(3) A certifying person may issue a written certificate signed by the person setting out such facts as the person considers relevant with respect to:
   (a) the receipt by the Organisation of a copy of stored communications that were made available to the Organisation in accordance with an international production order issued under clause 98; or
   (b) the receipt by the Organisation of telecommunications data that was disclosed to the Organisation in accordance with an international production order issued under clause 98.

(4) A document purporting to be a certificate issued under subclause (1), (2) or (3):
   (a) is to be received in evidence in a proceeding in Australia without further proof; and
   (b) in a proceeding in Australia, is prima facie evidence of the matters stated in the document.

165 Evidentiary certificates—telecommunications data

(1) A certifying officer of an enforcement agency may issue a written certificate signed by the officer setting out such facts as the officer considers relevant with respect to the receipt by the agency of telecommunications data that was disclosed to the agency in accordance with an international production order issued under clause 48.

(2) A certifying officer of a control order IPO agency may issue a written certificate signed by the officer setting out such facts as the officer considers relevant with respect to the receipt by the agency of telecommunications data that was disclosed to the agency in
accordance with an international production order issued under clause 78.

(3) A certifying person may issue a written certificate signed by the person setting out such facts as the person considers relevant with respect to the receipt by the Organisation of telecommunications data that was disclosed to the Organisation in accordance with an international production order issued under clause 107.

(4) A document purporting to be a certificate issued under subclause (1), (2) or (3):
   (a) is to be received in evidence in a proceeding in Australia without further proof; and
   (b) in a proceeding in Australia, is prima facie evidence of the matters stated in the document.

166 Evidentiary certificates—Australian Designated Authority

(1) The Australian Designated Authority may issue a written certificate signed by the Australian Designated Authority setting out such facts as the Australian Designated Authority considers relevant with respect to:
   (a) giving an international production order to a designated communications provider; or
   (b) giving an instrument of revocation of an international production order to a designated communications provider; or
   (c) giving an instrument of cancellation to a designated communications provider.

(2) If an international production order requires a designated communications provider to make intercepted communications, intercepted messages, intercepted voice calls or intercepted video calls available to:
   (a) an interception agency; or
   (b) a control order IPO agency; or
   (c) the Organisation;
indirectly via the Australian Designated Authority, the Australian Designated Authority may issue a written certificate signed by the
Schedule 1 Amendments
Part 1 General amendments

Australian Designated Authority setting out such facts as the
Australian Designated Authority considers relevant with respect to:
(d) the receipt by the Australian Designated Authority of the
intercepted communications, intercepted messages,
intercepted voice calls or intercepted video calls; or
(e) anything done by the Australian Designated Authority for the
purposes of ensuring that the intercepted communications,
intercepted messages, intercepted voice calls or intercepted
video calls were passed on to the agency or Organisation, as
the case requires.

(3) If an international production order requires a designated
communications provider to make a copy of stored
communications available to:
(a) a criminal law-enforcement agency; or
(b) a control order IPO agency; or
(c) the Organisation;
indirectly via the Australian Designated Authority, the Australian
Designated Authority may issue a written certificate signed by the
Australian Designated Authority setting out such facts as the
Australian Designated Authority considers relevant with respect to:
(d) the receipt by the Australian Designated Authority of the
copy; or
(e) anything done by the Australian Designated Authority for the
purposes of ensuring that the copy was passed on to the
agency or Organisation, as the case requires.

(4) If an international production order requires a designated
communications provider to disclose telecommunications data to:
(a) a relevant agency; or
(b) the Organisation;
indirectly via the Australian Designated Authority, the Australian
Designated Authority may issue a written certificate signed by the
Australian Designated Authority setting out such facts as the
Australian Designated Authority considers relevant with respect to:
(c) the receipt by the Australian Designated Authority of the
telecommunications data; or
(d) anything done by the Australian Designated Authority for the purposes of ensuring that the telecommunications data was passed on to the agency or Organisation, as the case requires.

(5) A document purporting to be a certificate issued under subclause (1), (2), (3) or (4):
(a) is to be received in evidence in a proceeding in Australia without further proof; and
(b) in a proceeding in Australia, is prima facie evidence of the matters stated in the document.

Part 13—Incoming orders and requests

167 Simplified outline of this Part

- If there is a designated international agreement between Australia and one or more foreign countries, and a competent authority of such a foreign country issues an order, or makes a request, covered by the agreement, an act or thing done in compliance with such an order or request is exempt from:
  (a) the provisions of this Act that prohibit intercepting communications and accessing stored communications; and
  (b) the provisions of this Act that prohibit disclosure of information; and
  (c) the provisions of the Telecommunications Act 1997 that prohibit the disclosure of information.

168 Incoming orders and requests—exemptions from various prohibitions

If:
(a) there is a designated international agreement between Australia and one or more foreign countries; and
(b) the agreement deals with (among other things):
  (i) the issue of orders (however described); or
  (ii) the making of requests (however described);
by a competent authority (however described) of such a foreign country;
then:
(c) subsections 7(1) and 108(1) do not apply to or in relation to:
   (i) an act or thing done in compliance with such an order or request; or
   (ii) the issue of such an order or the making of such a request; and
(d) subsections 63(1) and 133(1) do not apply to or in relation to:
   (i) an act or thing done in compliance with such an order or request; or
   (ii) information obtained in accordance with such an order or request; and
(e) sections 276, 277 and 278 of the *Telecommunications Act 1997* do not apply to or in relation to:
   (i) an act or thing done in compliance with such an order or request; or
   (ii) information obtained in accordance with such an order or request.

Note 1: In a prosecution for an offence against subsection 7(1) or 108(1), a defendant bears an evidential burden in relation to the matter in paragraph (c): see subsection 13.3(3) of the *Criminal Code*.

Note 2: In a prosecution for an offence against subsection 63(1) or 133(1), a defendant bears an evidential burden in relation to the matter in paragraph (d): see subsection 13.3(3) of the *Criminal Code*.

Note 3: In a prosecution for an offence against section 276, 277 or 278 of the *Telecommunications Act 1997*, a defendant bears an evidential burden in relation to the matter in paragraph (e): see subsection 13.3(3) of the *Criminal Code*.

**169 Interaction with the Privacy Act 1988**

For the purposes of the *Privacy Act 1988*, if:
(a) there is a designated international agreement between Australia and one or more foreign countries; and
(b) the agreement deals with (among other things):
   (i) the issue of orders (however described); or
   (ii) the making of requests (however described);
by a competent authority (however described) of such a
foreign country;
the disclosure of information in compliance with any such order or
request, to the extent that the information contains personal
information, is taken to be a disclosure that is authorised by this
Act.

Part 14—Miscellaneous

170 Simplified outline of this Part

- This Part deals with miscellaneous matters, such as:
  (a) electronic service of documents; and
  (b) certified copies of international production orders; and
  (c) delegations.

171 Electronic service of documents

(1) If:
  (a) any of the following is required by this Schedule to be given
to a person by the Australian Designated Authority:
    (i) an international production order;
    (ii) a certified copy of an international production order;
    (iii) an instrument of revocation of an international
        production order;
    (iv) an instrument of cancellation of an international
        production order; and
  (b) the person has nominated an electronic address for service in
      a document given by the person to the Australian Designated
      Authority;
      the order, copy or instrument is taken to have been given to the
      person if it is sent to the nominated electronic address for service.

(2) If:
  (a) any of the following is required by this Schedule to be given
to the Australian Designated Authority by a person, a
relevant agency or the Organisation:
Schedule 1  Amendments

Part 1  General amendments

172  International production order issued in response to a telephone application—action required

Scope

(1) This clause applies if a person (the *issuing person*) issues an international production order in response to a telephone application made by a person (the *applicant*) on behalf of:

(a) a relevant agency; or

(b) the Organisation.

Required action

(2) Within one day after the day on which the international production order is issued, the applicant must:

(a) cause each person who gave information to the issuing person in connection with the application to swear or affirm an affidavit setting out the information so given by the person; and

(b) give to the issuing person:

(i) the affidavit or affidavits; and

(ii) if, as a result of an authorisation that was in force under clause 23, 34, 43, 53, 64 or 73 when the application was made, the applicant was authorised to make the application by telephone—a copy of the authorisation.
Cancellation if required action not taken

(3) If the issuing person is satisfied that subclause (2) has not been complied with in relation to the order, the issuing person may cancel the order.

(4) A cancellation under subclause (3) is to be set out in a written instrument.

(5) If the international production order is cancelled by the issuing person under subclause (3):

   (a) the issuing person must:
         (i) give the instrument of cancellation to the Australian Designated Authority; and
         (ii) do so as soon as practicable after the order is cancelled; and
   (b) if the telephone application was made on behalf of a relevant agency—the Australian Designated Authority must:
         (i) inform the chief officer of the relevant agency of the cancellation; and
         (ii) do so as soon as practicable after the instrument of cancellation is given to the Australian Designated Authority; and
   (c) if the telephone application was made on behalf of the Organisation—the Australian Designated Authority must:
         (i) inform the Organisation of the cancellation; and
         (ii) do so as soon as practicable after the instrument of cancellation is given to the Australian Designated Authority.

(6) If:

   (a) the Australian Designated Authority gave the international production order to the designated communications provider to whom the order is directed; and
   (b) the order was subsequently cancelled under subclause (3); the Australian Designated Authority must:

   (c) give the instrument of cancellation to the designated communications provider; and
(d) do so as soon as practicable after the instrument of
cancellation is given to the Australian Designated Authority.

(7) A cancellation under subclause (3) takes effect:
(a) if the instrument of cancellation is required to be given to the
designated communications provider concerned—when the
instrument is given; or
(b) otherwise—when the cancellation is made.

(8) If:
(a) an international production order is can
celled under this
clause; and
(b) when the cancellation takes effect, the Australian Designated
Authority has not made a decision about the order under
clause 111 or 112 (as the case may be);
clause 111 or 112 (as the case may be) ceases to apply to the order
when the cancellation takes effect.

173 Duty of nominated AAT Security Division member

It is the duty of a nominated AAT Security Division member to
ensure, so far as the member is able to do so, that, in or in
connection with the performance of a function, or the exercise of a
power, conferred on the member by this Schedule, information is
not communicated or made available to a person contrary to the
requirements of security (within the ordinary meaning of that
expression).

174 Certified copy of international production order—interception
agency

(1) A document certified in writing by a certifying officer of an
interception agency to be a true copy of an international production
order issued under clause 30 is to be received in evidence in a
proceeding mentioned in clause 153 or 157 as if it were the original
international production order.

(2) The document is to be known as a certified copy of the original
international production order.
175 Certified copy of international production order—criminal law-enforcement agency

(1) A document certified in writing by a certifying officer of a criminal law-enforcement agency to be a true copy of an international production order issued under clause 39 is to be received in evidence in a proceeding mentioned in clause 153 or 158 as if it were the original international production order.

(2) The document is to be known as a certified copy of the original international production order.

176 Certified copy of international production order—enforcement agency

(1) A document certified in writing by a certifying officer of an enforcement agency to be a true copy of an international production order issued under clause 48 is to be received in evidence in:

(a) a proceeding mentioned in clause 153; or

(b) a proceeding for a purpose mentioned in clause 159;

as if it were the original international production order.

(2) The document is to be known as a certified copy of the original international production order.

177 Certified copy of international production order—control order IPO agency

Interception

(1) A document certified in writing by a certifying officer of a control order IPO agency to be a true copy of an international production order issued under clause 60 is to be received in evidence in:

(a) a proceeding by way of a prosecution for an offence against:

(ii) Part 5.5 of the Criminal Code; or

(b) a proceeding mentioned in clause 153; or

(c) a proceeding mentioned in clause 157;

as if it were the original international production order.
(2) The document is to be known as a certified copy of the original international production order.

Stored communications

(3) A document certified in writing by a certifying officer of a control order IPO agency to be a true copy of an international production order issued under clause 69 is to be received in evidence in:

(a) a proceeding by way of a prosecution for an offence against:
   (i) Part 5.3 of the Criminal Code; or
   (ii) Part 5.5 of the Criminal Code; or
(b) a proceeding mentioned in clause 153; or
(c) a proceeding mentioned in clause 158;
as if it were the original international production order.

(4) The document is to be known as a certified copy of the original international production order.

Telecommunications data

(5) A document certified in writing by a certifying officer of a control order IPO agency to be a true copy of an international production order issued under clause 78 is to be received in evidence in:

(a) a proceeding by way of a prosecution for an offence against:
   (i) Part 5.3 of the Criminal Code; or
   (ii) Part 5.5 of the Criminal Code; or
(b) a proceeding mentioned in clause 153; or
(c) a proceeding for a purpose mentioned in clause 159;
as if it were the original international production order.

(6) The document is to be known as a certified copy of the original international production order.

178 Certified copy of international production order—the Organisation

Interception

(1) A document certified in writing by a certifying person to be a true copy of an international production order issued under clause 89 is
to be received in evidence in a proceeding mentioned in clause 153 or 157 as if it were the original international production order.

(2) The document is to be known as a **certified copy** of the original international production order.

**Stored communications**

(3) A document certified in writing by a certifying person to be a true copy of an international production order issued under clause 98 is to be received in evidence in a proceeding mentioned in clause 153 or 158 as if it were the original international production order.

(4) The document is to be known as a **certified copy** of the original international production order.

**Telecommunications data**

(5) A document certified in writing by a certifying person to be a true copy of an international production order issued under clause 107 is to be received in evidence in:

(a) a proceeding mentioned in clause 153; or
(b) a proceeding for a purpose mentioned in clause 159; as if it were the original international production order.

(6) The document is to be known as a **certified copy** of the original international production order.

**179 Delegation by the Australian Designated Authority**

(1) The Australian Designated Authority may, by writing, delegate any or all of the Australian Designated Authority’s functions or powers under this Schedule to:

(a) an SES employee, or acting SES employee, in the Attorney-General’s Department; or
(b) an APS employee who holds, or is acting in, an Executive Level 1 or 2 position in the Attorney-General’s Department.

Note: The expressions **SES employee**, **acting SES employee** and **APS employee** are defined in section 2B of the Acts Interpretation Act 1901.
(2) In performing functions, or exercising powers, under a delegation under subclause (1), the delegate must comply with any directions of the Australian Designated Authority.

180 Minor defects in connection with international production order

(1) If:
   
   (a) information is purportedly obtained in accordance with an international production order; and
   
   (b) there is a defect or irregularity in relation to the international production order; and
   
   (c) apart from that defect or irregularity, the information would have been obtained in accordance with the international production order;

   the information is taken to have been obtained in accordance with the international production order.

(2) For the purposes of subclause (1), a defect or irregularity in relation to an international production order means a defect or irregularity:

   (a) that is not a substantial defect or irregularity; and

   (b) that is:

      (i) in, or in connection with the issue of, a document purporting to be the international production order; or

      (ii) in connection with compliance with the international production order; or

      (iii) in connection with purported compliance with a document purporting to be the international production order.

181 Protection of persons—control order declared to be void

(1) If:

   (a) an international production order was issued under Part 3 of this Schedule on the basis that an interim control order was in force; and

   (b) a court subsequently declares the interim control order to be void;

208  Telecommunications Legislation Amendment (International Production Orders) Bill 2020 No.  , 2020
a criminal proceeding does not lie against a person in respect of
anything done in good faith by the person in purported compliance
with the international production order.

(2) Subclause (1) does not apply to a thing done at a particular time if,
at that time, the person knew, or ought reasonably to have known,
of the declaration.

182 Specification of international agreements

If:

(a) there is an agreement between Australia and one or more
foreign countries; and
(b) the name of the agreement is specified in:
   (i) regulations made for the purposes of this Schedule; or
   (ii) an application made under this Schedule; or
   (iii) an international production order; or
   (iv) any other instrument made under this Schedule;
a reference in the regulations, application, order or other
instrument (as the case may be) to the agreement is a reference to
the agreement as amended and in force for Australia from time to
time.

183 Operation of the Mutual Assistance in Criminal Matters Act 1987
not limited

This Schedule is not intended to limit the operation of the Mutual

184 Other functions or powers not limited

This Schedule is not intended to limit the functions or powers of:
(a) a relevant agency; or
(b) the Organisation; or
(c) any other body or person;
to request or obtain assistance or information from:
(d) a designated communications provider; or
(e) any other body or person.

No. , 2020  Telecommunications Legislation Amendment (International Production
Orders) Bill 2020
Part 2—Application provisions

44 Application—declaration of eligible Judges

The amendment of subsection 6D(3) of the Telecommunications (Interception and Access) Act 1979 made by this Schedule applies in relation to a declaration made after the commencement of this item.
Part 3—Amendment contingent on the commencement of the Federal Circuit and Family Court of Australia Act 2020

*Telecommunications (Interception and Access) Act 1979*

45 Subclause 126(3) of Schedule 1

Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia”.

*No.  , 2020  Telecommunications Legislation Amendment (International Production Orders) Bill 2020*
Part 4—Minor amendments

Surveillance Devices Act 2004

46 Subsection 42(6)

Omit “Attorney-General”, substitute “Minister”.

Telecommunications (Interception and Access) Act 1979

47 Subsection 6DA(1)

Omit “or 3-3”.

48 Subsection 6DA(4)

Omit “or 3-3,”.

49 Transitional—nomination of AAT member

Scope

(1) This item applies if a nomination of a person under subsection 6DA(1) of the Telecommunications (Interception and Access) Act 1979 to issue warrants under Part 2-5 or 3-3 of that Act was in force immediately before the commencement of this item.

Redundant references to Part 3-3 of the Telecommunications (Interception and Access) Act 1979

(2) The nomination has effect as if each reference in the nomination to Part 3-3 of the Telecommunications (Interception and Access) Act 1979 were omitted.