

Comparison between the HRTTO regime (ESOs and CDOs) and control orders

	HRTTO Regime (Div 105A)		Control orders (Div 104) <i>The AFP may apply for a control order in relation to a HRTTO-eligible offender where the AFP considers it appropriate to do so in the relevant circumstances.</i>
	Continuing detention orders	Extended supervision orders	
Object of the scheme	To ensure the safety and protection of the community by providing that terrorist offenders who pose an unacceptable risk of committing serious Part 5.3 offences are subject to: <ul style="list-style-type: none">a continuing detention order; oran extended supervision order.	To ensure the safety and protection of the community by providing that terrorist offenders who pose an unacceptable risk of committing serious Part 5.3 offences are subject to: <ul style="list-style-type: none">a continuing detention order; oran extended supervision order.	To allow obligations, prohibitions and restrictions to be imposed on a person by a control order for one or more of the following purposes: <ul style="list-style-type: none">protecting the public from a terrorist actpreventing the provision of support for, or the facilitation of, a terrorist act,preventing the provision of support for, or the facilitation of, the engagement in a hostile activity in a foreign country.
Applicant	AFP Minister	AFP Minister	Senior AFP member (with the consent of the AFP Minister)
Issuing Court	State or Territory Supreme Court	State or Territory Supreme Court	Federal Court or Federal Circuit Court
Availability	Post-sentence	Post-sentence	At any time the threshold can be met (incl. pre-sentence & post-sentence)
Eligibility	<p>An offender would be eligible for a CDO where they are:</p> <ul style="list-style-type: none">serving a custodial sentence for a specified terrorism offencedetained in custody pursuant to a CDO or an interim detention order (IDO) that is in forceserving a custodial sentence for an offence other than a specified terrorism offence, and they have been continuously detained in custody since being convicted of a specified terrorism offence, or since a CDO or IDO was in force in relation to the offender <p>Orders can only be sought for persons who are at least 18 years of age when their sentence of imprisonment for an eligible offence ends.</p>	<p>An offender would be eligible for either a <u>CDO or an ESO</u> where they are:</p> <ul style="list-style-type: none">serving a custodial sentence for a specified terrorism offencedetained in custody pursuant to a CDO or an interim detention order (IDO)serving a custodial sentence for an offence other than a specified terrorism offence, and they have been continuously detained in custody since being convicted of a specified terrorism offence, or since a CDO or IDO was in force in relation to the offenderserving a custodial sentence for breaching an ESO, and the Court is satisfied that the offender poses an unacceptable risk of committing a serious Part 5.3 offence as a result of the breach of the ESO or interim supervision order (ISO) orserving a custodial sentence for breaching a control order, where the process for seeking a control order commenced before the offender was released from prison after serving a sentence for a specified terrorism offence. The Court must be satisfied that the offender poses an unacceptable risk of committing a serious Part 5.3 offence as a result of the breach of the control order. <p>An offender would be eligible for an <u>ESO only</u> where they are:</p> <ul style="list-style-type: none">currently subject to an ESO or ISO that is in forceserving a custodial sentence for an offence other than a specified terrorism offence, and they have been continuously detained in custody since they were subject to an ESO or ISO, orcurrently subject to a control order, and the process for obtaining that control order commenced before the sentence of imprisonment for a specified terrorism offence ended, and before the ESO scheme commenced. <p>Orders would only be available for persons who are at least 18 years of age when their sentence of imprisonment for an eligible offence ends.</p>	<p>Anyone who meets the threshold, including persons who have been convicted of a terrorism offence</p> <p>Orders can only be sought for persons who are at least 14 years of age <i>(there are additional safeguards in the control order scheme for persons who are 14 to 17 years of age)</i></p>

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	Continuing detention orders	Extended supervision orders	
Threshold as to the risk or action	If the Court is satisfied to a high degree of probability , on the basis of admissible evidence, that the offender poses an unacceptable risk of committing a <u>serious Part 5.3 offence</u>	If the Court is satisfied on the balance of probabilities , on the basis of admissible evidence, that the offender poses an unacceptable risk of committing a <u>serious Part 5.3 offence</u>	If the Court is satisfied, on the balance of probabilities that: <ul style="list-style-type: none"> making the order would substantially assist in preventing a terrorist act that the person has provided training to, received training from or participated in training with a listed terrorist organisation the person has engaged in a hostile activity in a foreign country the person has been convicted of an offence relating to terrorism, a terrorist organisation or a terrorist act the person has been convicted in a foreign country of an offence that is constituted by conduct that, if engaged in Australia, would constitute a terrorism offence the order would substantially assist in preventing the provision of support for, or the facilitation of a terrorist act, or the person has provided support for, or otherwise facilitated the engagement in a hostile activity in a foreign country. <u>A control order is available for a broader set of conduct than ‘serious Part 5.3 offence’ required for CDO or ESO.</u>
Threshold as to the order	The Court is satisfied that there is no other less restrictive measure that would be effective in preventing the unacceptable risk (a control order is currently provided as an example of a less restrictive measure. The ESO Bill proposes to replace the reference to a control order with a reference to an ESO as a less restrictive measure).	The Court is satisfied on the balance of probabilities that each of the conditions to be imposed on the offender by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of ensuring the safety and protection of the community.	The Court is satisfied, on the balance of probabilities , that each of the obligations, prohibitions and restrictions to be imposed on the person by the control order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the public from a terrorist act (or preventing the provision of support for or the facilitation of a terrorist act, or preventing the provision of support for or the facilitation of the engagement in a hostile activity in a foreign country.)
Maximum length	Up to 3 years <ul style="list-style-type: none"> Periodic review – the AFP Minister is required to apply for periodic review every 12 months Review upon application – upon application of the respondent on the basis of new facts or circumstances that justify reviewing the order or that it would be in the interests of justice to do so (the ESO Bill proposes to enable the AFP Minister to also seek a review in these circumstances) 	Up to 3 years <ul style="list-style-type: none"> Periodic review – the AFP Minister is required to apply for periodic review every 12 months Review upon application – upon application of the AFP Minister or respondent on the basis of new facts or circumstances that justify reviewing the order or that it would be in the interests of justice to do so 	Up to 12 months Up to 3 months if the person is 14 to 17 years of age.
Consequences of breaching the order	N/A	Five years imprisonment for: <ul style="list-style-type: none"> breaching the conditions of the order interference with a tracking device by the terrorist offender, and interference with the terrorist offender’s monitoring device by a third party <ul style="list-style-type: none"> Makes the offender eligible for an ESO/CDO. 	Five years imprisonment for: <ul style="list-style-type: none"> breaching the conditions of the order interference with a tracking device by the terrorist offender, and interference with the terrorist offender’s monitoring device by a third party Where the AFP requested the ICO be made in respect of a HRTO-eligible offender before the offender was released from custody, breach of an ICO enables the offender’s eligibility for an ESO/CDO.
Conditions that may be imposed under the order	N/A	The Court may impose any conditions (prohibitions, restrictions or obligations) that the Court is satisfied, on the balance of probabilities, are reasonably necessary, and reasonably appropriate and adapted, for the purpose of ensuring the safety and protection of the community. Without limiting the Court’s discretion, the Court may impose conditions relating to: <ul style="list-style-type: none"> not being present at specified areas or places, or classes of areas residing at specified premises remaining in specified premises between specified times each day, or on specified days, but for no more than 12 hours within any 24 hours 	The conditions that may be imposed under a control order are limited to the following : <ul style="list-style-type: none"> a prohibition or restriction on the person: <ul style="list-style-type: none"> being at specified areas or places; leaving Australia; communicating or associating with specified individuals; accessing or using specified forms of telecommunication or other technology (including the internet); possessing or using specified articles or substances carrying out specified activities (including in respect of his or her work or occupation); a requirement that the person:

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		<ul style="list-style-type: none"> not leaving Australia or jurisdictions in which their residence is located providing their passport(s) to specified authorities, and not applying for any travel documents or licences to operate equipment, machinery, a heavy vehicle or a weapon not changing their name or not using a name specified in the order not communicating or associating with specified individuals or classes of individuals not accessing or using specified forms of telecommunication or technology not possessing or using specified articles or substances not engaging in specified work, classes of work, or specified activities relating to specified work or classes of work not engaging in training or education without prior permission of a specified authority attending and participating in specified treatment, rehabilitation or intervention programs or activities attending and participating in interviews and assessments (including for the purpose of undertaking psychological or psychiatric assessment or counselling) allowing results of interviews and assessments, and any other specified information, to be disclosed to specified authorities comply with any reasonable direction given to the offender by a specified authority in relation to any specified condition <p>Monitoring and enforcement conditions (prohibitions, restrictions or obligations) that may be imposed under an ESO on an offender include conditions relating to:</p> <ul style="list-style-type: none"> submitting to testing in relation to the possession or use of specified articles or substances allowing themselves to be photographed and/or fingerprinted wearing a monitoring device carrying at all times a specified mobile phone and answering calls, and complying with specified directions in relation to the mobile phone attending places and reporting to persons at times as specified in the order or by a specified authority providing specified authorities with a schedule of movements and complying with that schedule allowing police officers to search them, their premises, or premises under their control, and seize any items found during the search. 	<ul style="list-style-type: none"> remain at specified premises between specified times each day, or on specified days, but for no more than 12 hours within any 24 hours; wear a monitoring device report to specified persons at specified times and places allow himself or herself to be photographed or fingerprinted participate in specified counselling or education