

**Attachment A**

## **EXPLANATORY DOCUMENT**

**Note, text marked \*\* and *italicised* responds to recommendations in the PJCIS report of 26 February 2018 and is not the subject of the current inquiry.**

### **Amendment (1): Commencement**

1. Item 3 in the table provides that Part 1 of Schedule 2 will commence at the same time as the provisions in item 2 (a day to be fixed by Proclamation), or six months after the day this Act receives the Royal Assent, whichever is earlier.
2. Item 4 in the table provides that Part 2 of Schedule 2 will commence at the same time as the provisions in item 2 (a day to be fixed by Proclamation), or immediately after the commencement of Schedule 1 to the Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Act 2018, whichever is later.
3. Item 5 in the table provides that Part 3 of Schedule 2 will commence at the same time as the provisions in item 2 (a day to be fixed by Proclamation), or immediately after the commencement of item 4 of Schedule 13 to the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2018, whichever is later.
4. Item 6 in the table provides that Part 4 of Schedule 2 will commence at the same time as the provisions in item 2 (a day to be fixed by Proclamation), or immediately after the commencement of Schedule 1 to the Telecommunications and Other Legislation Amendment Act 2017, whichever is later.
5. Item 7 in the table provides that Part 5 of Schedule 2 will commence at the same time as the provisions in item 2 (a day to be fixed by Proclamation).

### **\*\*Amendments 2 to 27 – Schedule 1**

6. *Amendments 2 to 11 replace references to ‘Minister’ in the Independent National Security Legislation Monitor Act 2010 under Schedule 1 with ‘Attorney-General’. These amendments give effect to Recommendation two of the PJCIS report of 26 February 2018.*
7. *Amendments 12 to 15, 17 to 25 and 27 replace the references to ‘Minister’ in the Inspector-General of Intelligence and Security Act 1986 under Schedule 1 with ‘Attorney-General’. These amendments give effect to Recommendation two of the PJCIS report.*
8. *Amendment 16 repeals and re-inserts subsections 9(1) [item 35] and 9(3) [item 35A] of the Inspector-General of Intelligence and Security Act 1986 (IGIS Act) to ensure that the Prime Minister remains the only Minister who may request (under section 9) the Inspector-General of Intelligence and Security (IGIS) to inquire into a matter relating to an intelligence agency or an intelligence or security matter relating to a Commonwealth agency, and the IGIS must comply with such a request. This amendment*

*gives effect to Recommendation 1 of the PJCIS report. Item 35B is a savings provision that ensures that this amendment does not affect any section 9 inquiry under way before the commencement of this item.*

9. *Amendments 17 and 19 are consequential amendments to amendment 16, reflecting that only the Prime Minister may request the IGIS to inquire into a matter under section 9. The Attorney-General may request a copy of a report from an inquiry conducted under sections 8 or 9 even if he or she did not initiate the inquiry. ‘*
10. *Amendment 26 repeals the phrase ‘to the Minister’ in subsection 35(2) of the IGIS Act, as it is not necessary for the operations of this provision. The amendments will remove any doubt that the annual report prepared by the IGIS under section 46 of the Public Governance, Performance and Accountability Act 2013 is to be given to the Minister responsible for the Office of the IGIS – which will be the Attorney-General – unless otherwise prescribed by the rules in that Act.*

## **Amendment (28): Schedule 2—Other amendments**

### **Part 1—Amendments commencing on Proclamation**

#### *Administrative Appeals Tribunal Act 1975*

11. Item 1 inserts a new definition for ‘ASIO Minister’ as the Minister administering the Australian Security Intelligence Organisation Act 1979 into subsection 3(1) of this Act. This reflects the transfer of policy responsibility for national security (including ASIO) to the Home Affairs portfolio, which means a number of powers related to national security (and ASIO) previously exercised by the Attorney-General will be exercised by the Minister for Home Affairs.
12. Items 2 and 3 amend section 38A of this Act to replace references to ‘Attorney-General’ with ‘ASIO Minister’ to reflect the Minister for Home Affairs will be responsible for ASIO and should issue certificates (to withhold information on the basis it would be prejudicial to the interests of security) under paragraph 38(2)(b) of the ASIO Act.
13. Item 4 amends subsection 39A(8) of this Act to replace ‘Minister administering the Australian Security Intelligence Organisation Act 1979 (the **responsible Minister**)’ with ‘ASIO Minister’. This is a consequential change from the insertion of the new definition of ASIO Minister at item 1.
14. Item 5 amends paragraph 39A(9)(b) of this Act to replace ‘responsible Minister’ with ‘ASIO Minister’. This is a consequential change from the insertion of the new definition of ASIO Minister at item 1.
15. Items 6 to 9 amend section 39B of this Act to replace references to ‘Attorney-General’ with ‘ASIO Minister’ to reflect that the Minister for Home Affairs will be responsible for ASIO and should issue public interest certificates relating to a review of security assessments in the Security Division of the Tribunal.
16. Item 10 amends subsection 43AAA(4) of this Act to replace ‘Attorney-General’ with ‘ASIO Minister’ to reflect the Minister for Home Affairs will be responsible for ASIO, and should receive copies of the findings of the Tribunal. The Attorney-General would

continue to receive a copy of any comments the Tribunal makes on matters relating to ASIO's procedures or practices as a result of a review, under subsection 43AAA(8) of this Act.

*Administrative Decisions (Judicial Review) Act 1977*

17. Item 11 amends paragraphs (daa) and (daaa) of Schedule 1 to this Act to replace 'Attorney-General' with 'Minister administering the Australian Security Intelligence Organisation Act 1979', to reflect that the Minister for Home Affairs will exercise the relevant powers in the Telecommunications Act 1997, following the transfer of national security responsibilities.
18. Item 12 amends paragraph (dab) of Schedule 1 to this Act to replace 'Attorney-General' with 'Minister administering the Australian Federal Police Act 1979', to reflect that the Minister for Home Affairs will exercise the relevant powers in the Criminal Code Act 1995.

*A New Tax System (Family Assistance) Act 1999*

19. Item 13 amends subsection 3(1) of this Act to repeal the definition of 'Attorney-General's Secretary'. The definition is redundant given the items set out below transfer responsibility for the Secretary to consult prior to the giving of a security notice under section 57GJ to the Home Affairs portfolio.
20. Item 14 inserts a new definition of 'Home Affairs Minister' as the Minister administering the Australian Security Intelligence Organisation Act 1979 (ASIO Act) into subsection 3(1) of this Act. This reflects the transfer of policy responsibility for national security (including ASIO) to the Home Affairs portfolio, which means a number of powers related to national security previously exercised by the Attorney-General are now exercised by the Minister for Home Affairs.
21. Item 15 amends subsection 3(1) of this Act to repeal the definition of 'Immigration Minister'. The definition is no longer required given the Immigration Minister and the ASIO Minister is now the same minister.
22. Items 16 to 18 and item 20 amend the heading of section 57GJ, the first reference to Attorney-General in subsection 57GJ(1), paragraph 57GJ(1)(a) and subsection 57GJ(3) of this Act to replace references to 'Attorney-General' with 'Home Affairs Minister'. This reflects the transfer of policy responsibility for national security to the Minister for Home Affairs.
23. Item 19 repeals paragraph 57GJ(1)(b) of this Act and replaces it with new paragraphs 57GJ(1)(b)-(d) setting out the relevant visa cancellation conditions (currently in section 57GL, which is repealed at item 24 below) which would be grounds for a person's right to family assistance payments to be removed. This amendment removes the now redundant obligation for the Minister for Immigration to notify the Minister for Home Affairs of the relevant cancellation; because the cancellation is within the knowledge of the Minister for Home Affairs (as he or she is also the Minister for Immigration). The amendment clarifies that the Minister for Home Affairs is authorised to use the relevant 'cancellation' information for the purpose of considering whether to give to the Minister a

relevant security notice. Accordingly, internal administrative processes will replace the notification requirement.

24. Item 21 amends subsection 57GJ(4) of this Act to replace ‘Attorney-General’s Secretary’ with ‘Secretary of the Department administered by the Home Affairs Minister’, reflecting the transfer of policy responsibility for national security to the Home Affairs Minister.
25. Items 22, 23 and 25 amend paragraph 57GJ(4)(b) and sections 57GK, 57GNA and 57GO of this Act to replace references to ‘Attorney-General’ with ‘Home Affairs Minister’, reflecting the transfer of policy responsibility for national security to the Home Affairs Minister.
26. Item 24 repeals section 57GL of this Act as it is no longer necessary for the Immigration Minister to provide a notice. The information previously provided to the Minister under this section will now be given under new paragraphs 57GJ(1)(b)-(d) (see item 19 above).

#### *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

27. Item 26 amends section 5 of this Act to repeal and re-insert the reference to ‘the Attorney-General’ to remove any doubt that the references to the Attorney-General’s Department in this Act are defined as the Department administered by the Attorney-General.

#### *AusCheck Act 2007*

28. The AusCheck Act provides for a regulatory framework for a background checking service (AusCheck) by empowering regulations that establish and regulate the AusCheck scheme. Under the scheme, AusCheck conducts and coordinates background checks of individuals for various purposes, including for the purposes of the Aviation Transport Security Act 2004 (ATS Act) and the Maritime Transport and Offshore Facilities Security Act 2003 (MTOFS Act).
29. The Minister for Home Affairs now administers both the ATS Act and the MTOFS Act (previously administered by the Minister for Infrastructure) in addition to this Act (previously administered by the Attorney-General). As a result, references to the Transport Secretary in this Act are no longer necessary.
30. Item 27 amends subsection 4(1) of this Act to repeal the definition of ‘Transport Secretary’ as it is now redundant.
31. Items 28 and 29 amend subparagraphs 8(3)(a)(ii) and (iv) of this Act to replace references to ‘Transport Secretary’ with references to regulations made under the ATS Act or the MTOFS Act. These reflect that the applications referenced in the subparagraphs are now considered by the Home Affairs Secretary.
32. Item 30 amends subparagraph 8(3)(a)(v) of this Act to replace the reference to a decision made ‘by an issuing body, the Secretary or the Transport Secretary’ with a reference to a decision ‘made under regulations made under either of those Acts [being the ATS Act or the MTOFS Act] or a decision made under the AusCheck scheme’. This reflects that the decisions referenced in the subparagraph are made under those regulations or the AusCheck scheme.

33. Item 31 amends subsection 10(3) of this Act to delete the reference to 'Transport Secretary'. Given the ATS Act and MTOFS Act are now administered by the Minister for Home Affairs, there is no longer a need to empower regulations to notify the Transport Secretary of specified matters separately from the Home Affairs Secretary.
34. Items 32 and 33 amend subparagraphs 10(3)(a)(ii) and (iv) of this Act to replace references to 'Transport Secretary' with references to regulations made under the ATS Act or MTOFS Act. These reflect that the applications referenced in the subparagraphs are now considered by the Home Affairs Secretary.
35. Item 34 amends subparagraph 10(3)(a)(v) of this Act to replace the reference to a decision made 'by an issuing body, the Secretary or the Transport Secretary' with a reference to a decision 'made under regulations made under either of those Acts [being the ATS Act or the MTOFS Act] or a decision made under the AusCheck scheme'. This reflects that the decisions referenced in the subparagraph are made under those regulations or the AusCheck scheme.
36. Items 35 and 37 repeal paragraphs 11(3)(b) and (d) of this Act as they are redundant following the transfer of responsibility for the ATS Act and the MTOFS Act to the Minister for Home Affairs. Administrative arrangements will be put in place to ensure that the Home Affairs Secretary is able to delay considering certain applications in the circumstances outlined in the paragraphs.
37. Item 36 amends paragraph 11(3)(c) of this Act to make editorial changes to the text reflecting the repeal of paragraph 11(3)(d) (see item 37 above).
38. Item 38 amends subparagraph 14(2)(b)(ia) of this Act to replace 'the Secretary or the Transport Secretary' with 'a Secretary of a Department'. This would continue to allow AusCheck to use and disclose personal information for the purpose of monitoring and enforcing compliance with requirements in the Aviation Transport Security Regulations 2005 and Maritime and Offshore Facilities Security Regulations 2003 for the Secretary to be notified when an applicant for, or a holder of, an aviation security identification card or maritime security identification card is convicted of and sentenced for a security-relevant offence. This continues to authorise use and disclosure of information where there is a possible failure to self-report a security relevant offence, and action is required under the AusCheck scheme or under the ATS Regulations or MTOFS Regulations.

#### *Australian Citizenship Act 2007*

39. Item 39 amends subsection 6A(1) of this Act to replace 'Attorney-General' with 'Minister' (meaning the Minister administering this Act, which is the Minister for Home Affairs), reflecting the transfer of national security responsibilities.

#### *Australian Crime Commission Act 2002*

40. Item 40 amends paragraphs 12(1)(a) and 12(1A)(a) of this Act to repeal and re-insert the references to 'Attorney-General of the Commonwealth' to remove any doubt that the Australian Criminal Intelligence Commission can continue, where relevant, to give the Attorney-General evidence that would be admissible in a prosecution of an offence.
41. Item 41 amends section 16 of this Act to repeal and re-insert the reference to 'Attorney-General of the Commonwealth' to ensure the reference remains correct.

*Australian Federal Police Act 1979*

42. Items 42 to 44 amend subsections 43(1) and 43(3) of this Act to replace ‘Minister’ with ‘Minister administering the Crimes (Superannuation Benefits) Act 1989’ or ‘that Minister’, as appropriate, to reflect the Attorney-General’s ongoing responsibility for ensuring the integrity of law enforcement agencies and public officials (and for consistency with the scheme set out in the Crimes (Superannuation Benefits) Act).
43. Item 45 amends paragraph 44(b) of this Act to replace ‘Minister’ with ‘Minister administering the Crimes (Superannuation Benefits) Act 1989’ to reflect the Attorney-General’s ongoing responsibility for ensuring the integrity of law enforcement agencies and public officials (and for consistency with the scheme set out in the Crimes (Superannuation Benefits) Act).
44. Item 46 amends section 44 of this Act to replace the second occurring reference to ‘the Minister’ with ‘that Minister’ to ensure it is clear that it is the Attorney-General who may authorise the Director of Public Prosecutions to apply to the appropriate court for a superannuation order.
45. Item 47 amends subsection 47B(3) of this Act to replace references to ‘the Minister’ with ‘the Minister administering the Crimes (Superannuation Benefits) Act 1989’ to reflect the Attorney-General’s ongoing responsibility for ensuring the integrity of law enforcement agencies and public officials (and for consistency with the scheme set out in the Crimes (Superannuation Benefits) Act).
46. Items 48 and 49 amend paragraph 49P(1)(c) and subparagraph 51(3)(b)(iii) of this Act to replace ‘Minister’ with ‘Minister administering the Crimes (Superannuation Benefits) Act 1989’ to reflect the Attorney-General’s ongoing responsibility for ensuring the integrity of law enforcement agencies and public officials (and for consistency with the scheme set out in the Crimes (Superannuation Benefits) Act).

*\*\*Australian Security Intelligence Organisation Act 1979*

47. *Items 50 and 51 insert new subsections 8A(1A) and 8A(2A) of this Act to include a requirement for consultation with the Attorney-General on guidelines issued by the Minister for Home Affairs to the Director-General of Security. It is appropriate the Attorney-General, who will be responsible for issuing warrants to ASIO and other functions under the ASIO Act, is consulted on these guidelines. This approach is consistent with item 76 in Schedule 1 of this Bill to require consultation with the Attorney-General before the making of guidelines on cooperation between ASIO and the Australian Secret Intelligence Service under the Intelligence Services Act 2001.*
48. *Items 52 to 54 amend section 18C of this Act to repeal and re-insert references to ‘Attorney-General’ to remove any doubt that the Attorney-General, as First Law Officer and the Minister with broader policy responsibility for the administration of the criminal justice system, will continue to consent to the prosecution of offences under this section.*
49. *Items 55 to 62 amend a number of provisions in Division 2 of Part III of this Act to replace references to ‘issuing Minister’ or ‘authorising Minister’ with*

*‘Attorney-General’. This reflects that the Attorney-General as First Law Officer will continue to exercise powers and functions relating to the issue of warrants to ASIO under this Act.*

50. *Item 63 amends sections 38 and 38A of this Act to replace references to ‘Attorney-General’ with ‘Minister’ (meaning the Minister administering the ASIO Act, which will be the Minister for Home Affairs). It is appropriate the Minister responsible for the ASIO Act is responsible for certifying that certain information should be withheld for security purposes.*
51. *Item 64 amends the heading of section 65 of this Act to replace ‘Minister’ with ‘Attorney-General’ to reflect the role of the Attorney-General in initiating inquiries under section 65 (see items 65 to 68 below).*
52. *Items 65 to 68 amend subsections 65(1) and 65(1A) of this Act to enable the Attorney-General to require the Administrative Appeals Tribunal (AAT) to inquire and report in respect of actions of ASIO relating to a security assessment or communication of a similar nature. The Attorney-General will also be able to require the Inspector-General of Intelligence and Security to inquire into a matter for the purposes of determining whether to make such a requirement of the Tribunal. It is appropriate that the Attorney-General can exercise these powers given the Attorney-General’s role in integrity and oversight (as well as responsibility for the AAT and the IGIS). The AAT and the IGIS will report any findings and the results of any inquiry to both the Attorney-General and the Minister for Home Affairs.*
53. *Item 69 amends subsection 65(3) of this Act to replace ‘Minister’ with ‘Attorney-General’ to enable the Attorney-General to communicate or publish the findings of the AAT as he or she considers appropriate in the interests of justice.*
54. *Item 70 amends subsection 92(3) of this Act to repeal and re-insert the reference to ‘Attorney-General’ to remove any doubt that the Attorney-General, as First Law Officer and the Minister with broader policy responsibility for the administration of criminal justice system, will continue to consent to the prosecution of offences under this section.*
55. *The table at item 71 lists all provisions in Divisions 2, 3 and 4 of Part III of this Act where references to ‘Minister’ are being replaced with ‘Attorney-General’. These amendments reflect that the Attorney-General will retain responsibility for powers and functions relating to ASIO warrants (including questioning, and questioning and detention warrants) and authorising special intelligence operations under Part III.*

#### *Aviation Transport Security Act 2004*

56. *Items 72 and 73 repeal paragraph 127(1)(aa) and subsection 127(4) of this Act as the reference to officers from the Attorney-General’s Department in this Act is redundant, reflecting the transfer of policy responsibility for national security and crisis coordination to the Home Affairs portfolio.*

#### *Crimes Act 1914*

57. *Item 74 amends subsections 3ZZAE(1) and (2) of this Act to replace ‘Minister’ with ‘Minister administering the Judiciary Act 1903’, to reflect that the Attorney-General as First Law Officer is responsible for declaring a Judge an eligible issuing officer.*

58. Items 75 and 76 amend section 3ZZAF of this Act to replace references to ‘Minister’ with ‘Minister administering the Administrative Appeals Tribunal Act 1975’ or ‘AAT Minister’ to reflect that the Attorney-General as First Law Officer is responsible for nominating an AAT member to issue delayed notification search warrants.
59. Item 77 amends section 9A of this Act to replace ‘Attorney-General’ with ‘Minister administering the Proceeds of Crime Act 2002’ to reflect that responsibility for administering this Act has transferred to the Minister for Home Affairs and it is appropriate that the Minister for Home Affairs can give directions relating to forfeited articles.
60. Items 78 to 80 amend section 15GG of this Act to replace ‘Minister’ with ‘Minister administering the Administrative Appeals Tribunal Act 1975’ or ‘AAT Minister’ to reflect that the Attorney-General as First Law Officer is responsible for nominating an AAT member to handle applications for extending authorities for controlled operations beyond three months.
61. Items 81 to 83 amend section 15LD of this Act to replace references to ‘Minister’ with ‘Minister administering the Law Enforcement Integrity Commissioner Act 2006’ or ‘LEIC Minister’ to reflect that the Attorney-General will continue to receive reports from law enforcement agencies regarding authorities for assumed identities.
62. Item 84 amends subsection 23WJ(6) of this Act to repeal and re-insert the references to ‘Attorney-General’, to remove any doubt the Attorney-General will continue to authorise a constable to apply to a magistrate to carry out a forensic procedure requested by a foreign law enforcement agency.
63. Items 85 to 87 amend paragraph 23WT(1)(ca), paragraph 23XWU(1)(d) and section 23YQA of this Act to repeal and re-insert the references to ‘Attorney-General’, to remove any doubt that authorisations under section 23WJ will continue to be made by the Attorney-General.
64. Item 87 also amends section 23YQB of this Act to repeal and re-insert the references to ‘Attorney-General’ to remove any doubt the Attorney-General will continue to give directions relating to evidence from a forensic procedure requested by a foreign country.
65. Item 88 repeals section 23YUK of this Act. The section is now redundant since the review referred to in the section has been carried out.

#### *Crimes (Aviation) Act 1991*

66. Item 89 amends the definition of ‘authorised person’ in section 3 of this Act to replace the reference to an employee in the ‘Attorney-General’s Department’ with ‘Department’, to remove any doubt that this means the Department of Home Affairs, reflecting the transfer of responsibility for administering this Act.
67. Item 90 amends paragraph 37(6)(c) of this Act to repeal and re-insert the reference to ‘Attorney-General’ to remove any doubt the Attorney-General will continue to receive evidence taken at preliminary inquiries by a magistrate.



68. Item 91 amends subsection 41(1) of this Act to repeal and re-insert the references to 'Attorney-General' to remove any doubt the Attorney-General will continue to certify records of evidence taken at preliminary inquiries by a magistrate.
69. Item 92 amends section 48 of this Act to repeal and re-insert the references to 'Attorney-General' to remove any doubt the Attorney-General (with the Director of Public Prosecutions) will continue to notify a court that an indictment will not be filed against a defendant or will be filed in another court.

*Crimes (Biological Weapons) Act 1976*

70. Items 93 and 94 amend section 13 of this Act to insert new subsections (2) and (3) to make the Minister for Home Affairs the rule-maker as defined by paragraph 6(1)(a) of the Legislation Act 2003 for the purposes of section 8 (offences) or 9 (forfeiture and seizure) of the Crimes (Biological Weapons) Act 1976. As a consequence, the Minister will also be the responsible person as defined by paragraph 6(2)(b) of the Legislation Act 2003. The Minister will have policy responsibility for these provisions in the Act and would be best placed to have responsibility for any regulations made under these provisions. The Attorney-General will continue to have responsibility for administering this Act.

*Crimes (Currency) Act 1981*

71. Items 95 and 96 amend section 30 of this Act to insert new subsections (2) and (3) to make the Minister for Home Affairs the rule-maker as defined by paragraph 6(1)(a) of the Legislation Act 2003 for the purposes of Part II (offences) of the Crimes (Currency) Act 1981. This is appropriate because the Minister has policy responsibility for that Part while the Attorney-General remains responsible for administering this Act.

*Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990*

72. Item 97 amends section 22 of this Act to insert new subsections (3) and (4) to make the Minister for Home Affairs the rule-maker as defined by paragraph 6(1)(a) of the Legislation Act 2003 for the purposes of the Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990. This is appropriate because the Minister has policy responsibility for this Act while the Attorney-General remains responsible for administering this Act.

*Criminal Code Act 1995*

73. Items 98 and 99 amend section 5 of this Act to insert new subsections (2) and (3) to make the Minister for Home Affairs the rule maker as defined by paragraph 6(1)(a) of the Legislation Act 2003 for the purposes of the provisions of the Criminal Code referred to in subsection (2). This is appropriate because the Minister has policy responsibility for those provisions while the Attorney-General remains responsible for administering this Act.
74. Item 100 amends section 72.28 of the Criminal Code to replace references to 'Minister' with 'AFP Minister', which is defined in section 72.36 (see item 101 below), reflecting the transfer of policy responsibility for law enforcement (including explosives offences) to the Minister for Home Affairs.

75. Items 101, 102 and 108 to 111 amend sections 72.36, 100.1, 117.1, 300.2, 470.1 and 473.1 of the Criminal Code to insert a new definition of ‘AFP Minister’ as the Minister administering the Australian Federal Police Act 1979, reflecting the transfer of policy responsibility for law enforcement (including explosives, terrorism, foreign incursions, serious drugs, postal service and telecommunications service offences) to the Minister for Home Affairs.
76. Item 103 amends section 105.2 of the Criminal Code to replace references to ‘Minister’ with ‘Attorney-General’ to reflect that the Attorney-General as First Law Officer is responsible for appointing an issuing authority for continued preventative detention orders.
77. Item 104 amends subsection 105.37(4) of the Criminal Code to replace ‘by the Department’ with ‘by the Australian Government Security Vetting Agency or by another Commonwealth, State or Territory agency that is authorised or approved by the Commonwealth to issue security clearances’. This reflects that the Australian Government Security Vetting Agency is now responsible for the processing and granting of security clearances for the majority of Australian Government agencies and state and territory personnel and contracted service providers. The Australian Government enables other authorised or approved agencies to process and grant security clearances.
78. Items 105 to 107 amend sections 105A.19 and 105A.20 of the Criminal Code to replace ‘Department’ with ‘Department administered by the AFP Minister’ or ‘that Department’ as appropriate, reflecting the transfer of policy responsibility for national security and law enforcement (including terrorism offences) to the Home Affairs portfolio.
79. Item 112 amends paragraph 474.17(2)(d) of the Criminal Code to replace ‘Attorney-General’s Department’ with ‘Department administered by the AFP Minister’, reflecting the transfer of policy responsibility for law enforcement (including telecommunications service offences) to the Home Affairs portfolio.
80. The tables at items 113 and 114 replace all existing references to ‘Minister’ or ‘Attorney-General’ with ‘AFP Minister’ in the specified provisions. It is appropriate the Minister for Home Affairs exercise all powers and functions in the provisions set out in the table, reflecting the transfer of policy responsibility for law enforcement (including explosives, terrorism, foreign incursions, serious drugs, postal service and telecommunications service offences) to the Minister for Home Affairs.

*Criminology Research Act 1971*

81. Item 115 amends subsection 33(4) to replace the reference to ‘Attorney-General of the government that the person represents’ with ‘Minister of the Commonwealth, State or Territory who appointed the person’ to reflect that responsibility for administering this Act has transferred to the Minister for Home Affairs, and the Minister for Home Affairs is responsible for appointing the Commonwealth representative of the Criminology Research Advisory Council.
82. The table at item 116 amends 10 provisions of this Act to replace all the remaining references to ‘Attorney-General’ with ‘Minister’, reflecting the transfer of responsibility for this Act to the Minister for Home Affairs.

*Customs Act 1901*

83. Item 117 amends the definition of ‘prescribed officer’ in subsection 208DA(1) of this Act to remove ‘Attorney-General’s’ immediately before ‘Department’, meaning the reference to such an officer would be a Department of Home Affairs officer. This reflects the transfer of responsibility for the Proceeds of Crime Act 2002 to the Home Affairs portfolio.
84. Item 118 amends subsection 208DA(4) of this Act to replace references to ‘Attorney-General’ with ‘Minister’, meaning the Minister for Home Affairs who administers this Act. This reflects the transfer of responsibility for the Proceeds of Crime Act 2002 to the Home Affairs portfolio.

*Maritime Transport and Offshore Facilities Security Act 2003*

85. Items 119 and 120 repeal paragraph 202(1)(b) and subsection 202(4) of this Act as the reference to officers from the Attorney-General’s Department in this Act is redundant, reflecting the transfer of policy responsibility for national security and crisis coordination functions to the Home Affairs portfolio.

*Migration Act 1958*

86. Items 121, 122 and 125 amend sections 143 of this Act to replace references to ‘Attorney-General’ with ‘Minister’, meaning the Minister for Home Affairs who administers this Act. This reflect the transfer of responsibility for law enforcement operations to the portfolio of the Minister for Home Affairs.
87. Item 123 amends paragraph 143(1)(a) of this Act to remove ‘Attorney-General’s’ immediately before ‘Department’, meaning the provision now refers to the Department of Home Affairs (as the Department administered by the Minister administering this Act). This reflect the transfer of responsibility for law enforcement operations to the portfolio of the Minister for Home Affairs.
88. Item 124 amends paragraph 143(1)(b) of this Act to replace ‘that Department’ with ‘the Department’. This is a consequential amendment to the one at item 123 above.
89. Item 126 amends section 144 of this Act to replace ‘Attorney-General may’ with ‘Minister may’. This reflects the transfer of responsibility for law enforcement operations to the portfolio of the Minister for Home Affairs.
90. Items 127 and 128 amend sections 145-147 and paragraph 162(1)(a) of this Act to replace references to ‘Attorney-General’ with ‘Minister’. The Minister for Home Affairs will be better positioned to achieve efficiencies by issuing and cancelling criminal justice certificates for purposes relating to investigations and trials in Commonwealth, State and Territory matters.
91. Item 129 amends subsection 162(2) of this Act to remove the requirement for the Attorney-General to notify the Home Affairs Secretary about the cancellation of a criminal justice certificate under sections 145 or 147 of this Act, given that responsibility for issuing such certificates has transferred to the Minister for Home Affairs. Administrative arrangements will be established to ensure the Home Affairs Secretary is notified of the cancellation of a certificate issued under sections 145 or 147.

92. Item 130 amends subsection 202(3) of this Act to reflect that the Minister for Home Affairs will receive a copy of a report under section 65 of the ASIO Act (see items 66 and 68) where the Attorney-General has referred a matter under that section to the AAT, and the AAT has confirmed the adverse security assessment.

*Offshore Petroleum and Greenhouse Gas Storage Act 2006*

93. Item 131 amends paragraph 604(5)(a) of this Act to replace ‘Attorney-General’ with ‘Minister administering the Australian Federal Police Act 1979’, reflecting the transfer of policy responsibility for law enforcement (including proceeds of crime and forfeiture orders) to the Home Affairs portfolio.
94. Item 132 amends paragraph 604(5)(b) of this Act to replace ‘the Attorney-General’s’ with ‘that Minister’s’. This is a consequential amendment to the one at item 131 above.
95. Item 133 amends paragraph 610(4)(a) of this Act to replace ‘Attorney-General’ with ‘Minister administering the Australian Federal Police Act 1979’, reflecting the transfer of policy responsibility for law enforcement (including proceeds of crime and forfeiture orders) to the Home Affairs portfolio.
96. Item 134 amends paragraph 610(4)(b) of this Act to replace ‘the Attorney-General’s’ with ‘that Minister’s’. This is a consequential amendment to the one at item 133 above.

*Ombudsman Act 1976*

97. Items 135 and 136 amend subsection 14(3) of this Act to replace references to ‘Attorney-General’ with ‘Minister administering the Australian Security Intelligence Organisation Act 1979’ or ‘ASIO Minister’ to reflect the transfer of policy responsibility for national security to the Minister for Home Affairs who is best placed to assess whether the security or defence of the Commonwealth may be prejudiced.
98. Item 137 amends subsection 14(3) of this Act to replace the reference to ‘that Minister’ with ‘such a Minister’. This is an editorial change to ensure the reference is to acting arrangements for a Minister specified in the declaration, rather than the acting Minister.
99. Item 138 amends section 16 of this Act to repeal and re-insert all references to ‘Prime Minister’ so that the Ombudsman will continue to write to the Prime Minister if the Ombudsman considers an agency has not taken appropriate action in response to a report given to the agency. It is appropriate for those concerns to continue to be raised with the Prime Minister as the head of the government.
100. Item 139 amends subsection 35B(1) of this Act to replace ‘Attorney-General’ with ‘Minister administering section 7 of the Australian Crime Commission Act 2002’ to reflect that responsibility for the Australian Criminal Intelligence Commission has transferred to the Minister for Home Affairs who is best placed to issue any certificate to prevent disclosure of information relevant to the Commission’s operations.

*Paid Parental Leave Act 2010*

101. Item 140 repeals the definition of ‘Attorney-General’s Secretary’ in section 6 of this Act. The definition is redundant, given the transfer of responsibility for consultation prior to the giving of a security notice under section 278C to the Home Affairs portfolio.

102. Item 141 inserts a new definition of ‘Home Affairs Minister’ as the Minister administering the Australian Security Intelligence Organisation Act 1979 into section 6 of this Act. This reflects the transfer of policy responsibility for national security (including ASIO) to the Home Affairs portfolio, which means a number of powers related to national security (including ASIO) previously exercised by the Attorney-General are now exercised by the Minister for Home Affairs.
103. Item 142 amends section 6 of this Act to repeal the definition of ‘Immigration Minister’ as it is no longer required.
104. Item 143 amends subsection 200C(4) of this Act to remove the reference to Immigration Minister. There is no substantive change to this subsection as the Social Services Secretary is still required to give the Home Affairs Secretary a copy of a departure prohibition order.
105. Items 144 to 146 and item 148 amend the heading of section 278C, the first reference to Attorney-General in subsection 278C(1), paragraph 278C(1)(a) and subsection 278C(2) of this Act to replace references to ‘Attorney-General’ with ‘Home Affairs Minister’. This reflects the transfer of responsibility for ASIO to the Home Affairs Minister.
106. Item 147 amends paragraph 278C(1)(b) of this Act to replace the existing paragraph with the relevant visa cancellation conditions (currently in section 278E) which would be grounds for a person’s right to family assistance payments to be removed. This amendment removes the now redundant obligation for the Minister for Immigration to notify the Minister for Home Affairs of the relevant cancellation; because the cancellation is within the knowledge of the Minister for Home Affairs. The amendment clarifies that the Minister for Home Affairs is authorised to use the relevant ‘cancellation’ information for the purposes of considering whether to give to the Minister a relevant security notice. Accordingly, internal administrative processes will replace the notification requirement.
107. Item 149 amends subsection 278C(3) of this Act to replace ‘Attorney-General’s Secretary’ with ‘Secretary of the Department administered by the Home Affairs Minister’. This reflects the transfer of responsibility for ASIO to the Home Affairs Minister.
108. Items 150, 151 and 153 amend paragraph 278C(3)(b) and sections 278D, 278GA and 278H of this Act to replace references to ‘Attorney-General’ with ‘Home Affairs Minister’. This reflects the transfer of responsibility for ASIO to the Home Affairs Minister.
109. Item 152 repeals section 278E of this Act as it is no longer necessary for the Immigration Minister to provide a notice. The information previously provided to the Minister under this section will now be given under new paragraphs 278C(1)(b)-(d) (see item 147 above).

*Proceeds of Crime Act 1987*

110. Item 154 amends the definition of ‘equitable sharing program’ in section 4 to replace references to ‘Attorney-General’ with ‘Minister’ (being the Minister for Home Affairs as

the Minister administering this Act). This reflects the transfer of responsibility for this Act to the Home Affairs portfolio.

111. Item 155 amends the definition of ‘prescribed officer’ in subsection 4(1) of this Act to replace ‘Attorney-General’s Department’ with ‘the Department’ (being the Department of Home Affairs). This reflects the transfer of responsibility for this Act to the Home Affairs portfolio.
112. Items 156 and 158 amend subsections 20(3A) and 30(4A) of this Act to replace references to ‘Attorney-General’ with ‘Minister’, reflecting the transfer of responsibility for this Act to the Home Affairs portfolio.
113. Item 157 amends subsection 23(2) of this Act to replace references to ‘Attorney-General or of a person authorised by the Attorney-General’ with ‘Minister administering the Mutual Assistance Act or of a person authorised by that Minister’, reflecting that the Attorney-General remains responsible for mutual assistance in criminal matters.
114. Items 159 and 161 amend subparagraph 34C(1)(a)(i) and subsection 34D(1) of this Act to replace ‘Attorney-General’ with ‘Minister’. This reflects the transfer of responsibility for this Act to the Home Affairs portfolio.
115. Item 160 amends subparagraphs 34C(1)(a)(ii) and (iii) of this Act to replace ‘Attorney-General’ with ‘Minister administering the Mutual Assistance Act’, reflecting that the Attorney-General remains responsible for mutual assistance in criminal matters (and associated payments out of the Confiscated Assets Special Account to foreign countries, international tribunals, or the States and Territories).
116. Item 162 amends subsection 69(2) and 72(3) of this Act to replace references to ‘Attorney-General’ with ‘Minister administering the Mutual Assistance Act’, reflecting that the Attorney-General remains responsible for mutual assistance in criminal matters.
117. Item 163 amends subsection 75(2) of this Act to replace references to ‘Attorney-General’ and ‘Attorney-General’s Department’ with ‘Minister administering the Mutual Assistance Act’ or ‘that Minister’ and ‘Department administered by that Minister’, reflecting that the Attorney-General remains responsible for mutual assistance in criminal matters.

#### *Proceeds of Crime Act 2002*

118. Item 164 amends paragraph 297(c) of this Act to replace ‘Minister’ with ‘Minister administering the Mutual Assistance in Criminal Matters Act 1987’, reflecting that the Attorney-General remains responsible for mutual assistance in criminal matters (and associated payments out of the Confiscated Assets Account to a foreign country or international tribunal).
119. Item 165 amends paragraph 297(d) of this Act to replace ‘Attorney-General’ with ‘Minister administering the Mutual Assistance in Criminal Matters Act 1987’, reflecting that the Attorney-General remains responsible for mutual assistance in criminal matters (and associated payments out of the Confiscated Assets Account to States and Territories).

120. Item 166 amends the definition of ‘senior Departmental officer’ in section 338 of this Act to remove ‘Attorney-General’s’ immediately before ‘Department’, meaning the reference to such an officer would be a Department of Home Affairs officer. This reflects the transfer of responsibility for this Act to the Home Affairs portfolio.

*Public Order (Protection of Persons and Property) Act 1971*

121. Item 167 amends the reference to ‘Attorney-General’ in the definition of ‘authorised officer’ at section 13A of this Act with ‘Minister’, reflecting the transfer of responsibility for this Act to the Home Affairs portfolio.

*Service and Execution of Process Act 1992*

122. Item 168 amends subsection 100(4) of this Act to replace ‘Attorney-General for the Commonwealth’ with ‘Minister administering the Australian Security Intelligence Organisation Act 1979’, reflecting the transfer of policy responsibility for national security to the Minister for Home Affairs.

*Social Security Act 1991*

123. Item 169 repeals the definition of ‘Attorney-General’s Secretary’ in subsection 23(1) of this Act. The definition is redundant, given the items set out below transfer responsibility for consultation prior to the giving of a security notice under section 38N to the Home Affairs portfolio.

124. Item 170 inserts a new definition of ‘Home Affairs Minister’ as the Minister administering the Australian Security Intelligence Organisation Act 1979 into subsection 23(1) of this Act. This reflects the transfer of policy responsibility for national security (including ASIO) to the Home Affairs portfolio, which means a number of powers related to national security (including ASIO) previously exercised by the Attorney-General are now exercised by the Minister for Home Affairs.

125. Item 171 amends subsection 23(1) of this Act to repeal the definition of ‘Immigration Minister’ as it is no longer required. Item 175 below removes the references to the Immigration Minister in this Act.

126. Items 172 to 174 and 176 amend the heading of section 38N, the first reference to ‘Attorney-General’ in subsection 38N(1), paragraph 38N(1)(a) and subsection 38N(2) of this Act to replace references to ‘Attorney-General’ with ‘Home Affairs Minister’. This reflects the transfer of policy responsibility for national security (including ASIO) to the Minister for Home Affairs.

127. Item 175 repeals paragraph 38N(1)(b) of this Act and replaces it with new paragraphs 38N(1)(b)-(d) setting out the relevant visa cancellation conditions (currently in section 38Q, which is repealed at item 180 below) which would be grounds for a person’s right to family assistance payments to be removed. This amendment removes the now redundant obligation for the Minister for Immigration to notify the Minister for Home Affairs of the relevant cancellation; because the cancellation is within the knowledge of the Minister for Home Affairs (who is also the Minister for Immigration). The amendment clarifies that the Minister for Home Affairs is authorised to use the relevant ‘cancellation’ information for the purpose of considering whether to give to the Minister

a relevant security notice. Accordingly, internal administrative processes will replace the notification requirement.

128. Item 177 amends subsection 38N(3) of this Act to replace ‘Attorney-General’s Secretary’ with ‘Secretary of the Department administered by the Home Affairs Minister’ to reflect the transfer of policy responsibility for national security (including ASIO) to the Home Affairs portfolio.
129. Items 178, 179 and 181 amend paragraph 38N(3)(b) and sections 38P, 38SA and 38T of this Act to replace references to ‘Attorney-General’ with ‘Home Affairs Minister’. This reflects the transfer of policy responsibility for national security (including ASIO) to the Minister for Home Affairs.
130. Item 180 repeals section 38Q of this Act as it is no longer necessary for the Immigration Minister to provide a notice. The information previously provided to the Minister under this section will now be given under new paragraphs 38N(1)(b)-(d) (see item 175 above).

#### *Surveillance Devices Act 2004*

131. Item 183 amends subsection 12(3) of this Act to replace ‘Minister’ with ‘Minister administering the Judiciary Act 1903’, to reflect that the Attorney-General as First Law Officer continues to be responsible for declaring eligible Judges for issuing warrants. Item 182 is a consequential amendment for subsection 12(2) to link more directly to the Minister referred to in subsection 12(3).
132. Items 184 to 186 amend section 13 of this Act to replace all references to ‘Minister’ with ‘Minister administering the Administrative Appeals Tribunals Act 1975’ or ‘AAT Minister’ to reflect that the Attorney-General as First Law Officer continues to be responsible for nominating AAT members for issuing warrants.
133. Item 187 amends subsection 42(6) of this Act to replace ‘Minister’ with ‘Attorney-General’, reflecting that this is an oversight function, related to the relevant law enforcement agency’s compliance with the requirements of the section.

#### *Telecommunications Act 1997*

134. Item 188 inserts new definitions for ‘AFP Minister’, ‘Home Affairs Department’, ‘Home Affairs Minister’ and ‘Home Affairs Secretary’ into section 7 of this Act. These reflect the transfer of policy responsibility for national security and emergency management to the Home Affairs portfolio.
135. Item 189 amends section 58A of this Act to replace references to ‘Attorney-General’ with ‘Home Affairs Minister’ to reflect that the Minister for Home Affairs is responsible for deciding whether the grant of a carrier licence would be prejudicial to security, reflecting the transfer of policy responsibility for national security to the Minister for Home Affairs.
136. Items 190 to 194 amend section 275B, 275D, 295Y, 295ZB and 295ZD of this Act to replace references to ‘Minister administering the Administrative Decisions (Judicial Review) Act 1977’ with ‘AFP Minister’, reflecting the transfer of policy responsibility for emergency management to the Minister for Home Affairs.



137. Item 195 amends subsection 581(3) of this Act to replace references to ‘Attorney-General’ with ‘Home Affairs Minister’. This reflects that the Minister for Home Affairs is responsible for giving a direction not to use or supply, or to cease using or supplying, carriage services in cases where such use or supply may be prejudicial to security.
138. Items 196 to 205 amend clause 55A and paragraph 57(a) of Schedule 3A to this Act to add references to the Home Affairs Secretary and make other consequential amendments. These amendments ensure the Australian Communications and Media Authority must now consult with both the Attorney-General’s Department (as the department responsible for international law issues) and the Department of Home Affairs (as the department responsible for administering the ASIO Act and for national security policy and operations more broadly) before granting a protection zone installation permit.
139. Item 206 amends clause 57A of Schedule 3A to this Act to replace references to ‘Attorney-General’ with ‘Home Affairs Minister’. This reflects that the Minister for Home Affairs is responsible for deciding whether the grant of a protection zone installation permit would be prejudicial to security.
140. Items 207 and 208 amend subclause 58(5) of Schedule 3A to this Act to reflect the amendment to clause 55A that both the Attorney-General’s Secretary and the Home Affairs Secretary may issue a notice preventing ACMA from granting a protection zone installation permit.
141. Items 209 to 218 amend clause 70 and paragraph 71(aa) of Schedule 3A to this Act to add references to the Home Affairs Secretary and make other consequential amendments. This ensures the Australian Communications and Media Authority must now consult with both the Attorney-General’s Department (as the department responsible for international law issues) and the Department of Home Affairs (as the department responsible for administering the ASIO Act and for national security policy and operations more broadly) before they grant a non-protection zone installation permit.
142. Item 219 amends clause 72A of Schedule 3A to this Act to replace references to ‘Attorney-General’ with ‘Home Affairs Minister’. This reflects that the Minister for Home Affairs is responsible for deciding whether the grant of a non-protection zone installation permit would be prejudicial to security.
143. Items 220 and 221 amend subclause 73(5) of Schedule 3A to this Act to reflect the amendment to clause 72A that both the Attorney-General’s Secretary and the Home Affairs Secretary may issue a notice preventing ACMA from granting a non-protection zone installation permit.
144. Item 222 inserts a new clause 90 of Schedule 3A to this Act to enable the Home Affairs Secretary to delegate any or all of their powers under this Schedule to an SES employee (including an acting SES employee) of the Home Affairs Department. This mirrors the delegation available to the Secretary of the Attorney-General’s Department at clause 89 of this Schedule.
145. Item 223 clarifies that the amendments to Schedule 3A of this Act in this Schedule would apply to a decision on an application for a protection zone installation permit or a non-

protection zone installation permit, on or after the commencement of this item, even if the application for a permit was made before that commencement.

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

146. *Item 224 amends subsection 5(4) of this Act to repeal and re-insert the references to 'Attorney-General' in that subsection so that such references in this Act can be read as including a Minister authorised to exercise powers on behalf of the Attorney-General when the Attorney-General is unavailable.*
147. *Item 225 amends paragraph 68(l) of this Act to insert 'administered by that Minister' after 'Department' (meaning the Attorney-General's Department), reflecting that the Attorney-General remains responsible for mutual assistance in criminal matters.*
148. *Item 226 amends the heading of section 68A of this Act to replace 'Secretary' with 'Secretary of the Attorney-General's Department'. This is a consequential amendment to item 227 (see below).*
149. *Item 227 amends subsection 68A(1) of this Act to insert 'administered by the Attorney-General' after 'Department' (meaning the Attorney-General's Department) to reflect that responsibility for providing certain information to a foreign country pursuant to a mutual assistance in criminal matters remains with the Attorney-General's portfolio.*
150. *Item 228 amends paragraph 68A(1)(a) of this Act to replace 'the Secretary' with 'that Secretary'. This is a consequential amendment to item 227 (see above).*
151. *Item 230 inserts a new paragraph 71(2)(aa) into this Act to include 'the Minister' (being the Minister for Home Affairs) as a person who can have access to certain intercepted information which may tend to establish that certain offences have been committed. This is because the Minister for Home Affairs may require access under section 71, including for the investigation of suspected offences under this Act. The Attorney-General will continue to have access in connection with proceedings under sections 7 and 63 as part of a decision whether to consent to proceedings involving extended jurisdiction, and also the Attorney-General's role under section 105. Item 229 makes a consequential amendment to paragraph 71(2)(a) to reflect the insertion of paragraph 71(2)(aa).*
152. *Item 231 amends paragraph 71(2)(b) of this Act to insert 'or' at the end of the paragraph. This corrects an editorial error in the text and does not change the operation of this provision.*
153. *Item 232 amends subsection 140(1) of this Act to replace the reference to 'Attorney-General' with 'Minister' (being the Minister for Home Affairs as the Minister who administers this Act). While this provision is similar to section 71, there is no link to a requirement for consent to prosecution of the offence, so it is appropriate the function to receive information in these circumstances sits with the Minister responsible for this Act.*
154. *Items 233 and 234 amend paragraphs 180M(1)(b), (c) and (d), and 180M(4)(a) of this Act to replace references to 'Minister' with 'Attorney-General', and item 235 amends paragraph 180M(4)(b) of this Act to replace the first reference to 'Minister' with*

*‘Attorney-General’. These amendments reflect that the Attorney-General is responsible for issuing journalist information warrants.*

155. *Item 236 inserts a new subparagraph 180M(4)(a)(ia) of this Act to add the Minister for Home Affairs (but not more junior ministers in the Home Affairs portfolio) to the list of Ministers (which includes the Attorney-General, Prime Minister, Defence Minister and Foreign Minister) who can orally provide an authorisation for the issue of a journalist information warrant in an emergency. As the Home Affairs Minister is responsible for national security policy and operations more broadly, it is appropriate that he or she may give an oral authorisation if the Attorney-General is unavailable.*
156. *Item 237 amends subsections 180M(7) and (8) of this Act to replace references to ‘Minister’ with ‘Attorney-General’. This reflects that the Attorney-General is responsible for issuing journalist information warrants.*
157. *The table in item 238 lists the provisions in this Act being amended to repeal and re-insert references to ‘Attorney-General’.*
  - a. *Items 1 (Part 2-2 of Chapter 2), 2 (Part 2-4 of Chapter 2), 3 (subsection 65(2)) and 6 (subsection 137(3)) of this table relate to the Attorney-General’s continuing responsibility for issuing warrants and receiving reports relating to warrants, or exercising warrant-like powers.*
  - b. *Items 4 (paragraphs 68(l) and 71(2)(a)), 5 (sections 107P, 107Q and 107R), 7 (paragraph 142A(1)(c)) and 8 (sections 180B and 180E) of this table relate to the provision of certain information to foreign countries, which is closely related to the Attorney-General’s powers under the Mutual Assistance in Criminal Matters Act 1987.*
  - c. *Item 4 of this table also relates to paragraph 105(3)(a) of this Act, which enables the Attorney-General, as First Law Officer, to continue to be able to bring proceedings in relation to offences under sections 7 or 63 of this Act.*
158. *The table at item 239 lists the provisions in this Act being amended to replace references to ‘Minister’ with ‘Attorney-General’.*
  - a. *Item 1 (sections 6D, 6DA, 6DB and 6DC) of this table relates to the Attorney-General’s role, as First Law Officer, in nominating eligible Judges and AAT members, and appointing issuing authorities, for the purposes of this Act.*
  - b. *Item 2 (subparagraph 176(6)(b)(ii)) of this table relates to the Attorney-General’s role in journalist information warrants.*
  - c. *Items 3 (sections 180J, 180K, 180L, 180N and 180P) and 4 (paragraph 185D(1)(b)) of this table relate to the Attorney-General’s continuing responsibility for journalist information warrants.*
  - d. *Item 4 (paragraph 180X(2)(a)) of this table relates to the Attorney-General’s enhanced integrity and oversight role, including public interest disclosure matters.*

*Terrorism Insurance Act 2003*

159. Items 240 and 241 remove the reference to consultation with the Attorney-General from subsection 6(1) of this Act, and insert a new subsection 6(4A) to require the Treasurer to consult with the Minister administering the Australian Security Intelligence Organisation Act 1979 (being the Minister for Home Affairs) before declaring a terrorist incident under this Act. This reflects the transfer of policy responsibility for national security (including counter-terrorism policy and operations) to the Minister for Home Affairs.

**Part 3 – Amendments contingent on the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Act 2018**

*Crimes Act 1914*

160. Items 250 and 251 replace references to ‘Attorney-General’ with ‘Minister administering the Australian Security Intelligence Organisation Act 1979’ or ‘ASIO Minister’ in the proposed new section 22B of this Act. That section is proposed to be inserted by the 2017 CLA Bill, and the amendment reflects the transfer of national security functions to the Minister of Home Affairs.

**Part 4 – Amendments contingent on the Telecommunications and Other Legislation Amendment Act 2017**

*Telecommunications Act 1997*

161. Item 252 repeals the insertion into section 7 of this Act of definitions of Attorney-General’s Department and Attorney-General’s Secretary respectively. Those definitions are no longer necessary in this Act with the transfer of national security functions to the Home Affairs portfolio.
162. Items 253 to 282 amend various provisions of this Act to replace references to Attorney-General with Home Affairs Minister, Attorney-General’s Department with Home Affairs Department, and Attorney-General’s Secretary with Home Affairs Secretary. These provisions relate to functions or powers relating to the national security elements of telecommunications policy which have transferred to the Minister for Home Affairs.

*Telecommunications and Other Legislation Amendment Act 2017*

163. Item 283 amends item 35 of this Act to ensure that a security assessment relevant to a direction not to use or supply carriage services by either the Attorney-General or the Home Affairs Minister under section 581 of the Telecommunications Act 1997 remains effective before and after the commencement of this item. The decision to give such a direction by either minister would also remain exempt from the operation of the Administrative Decisions (Judicial Review) Act 1977.

## **Part 5 – Transitional Rules**

164. Clause 1 of item 284 provides that a Minister administering an Act amended by this Schedule may make transitional rules in relation to the amendments or repeals of that Act in this Schedule, or in relation to the effects of an Administrative Arrangements Order or substituted reference order on those amendments or repeals made during the period beginning on 20 December 2017 and ending on the day before this item commences. The AAO was amended on 20 December 2017 to provide for certain matters to be dealt with by the Department of Home Affairs. As legislative instruments, any rules made would be subject to Parliamentary oversight through the disallowance process.
165. Clause 2 of item 284 limits the scope of rules that may be made by a Minister under clause 1.
166. Clause 3 of item 284 clarifies that the only limitations on the rules that may be made by a Minister under this Schedule are contained in clause 2.
167. Clause 4 of item 284 provides that transitional rules may be made during a period of 12 months starting on commencement of this item. It also clarifies that any transitional rules made under this item may have effect from before the commencement of this item and are not subject to subsection 12(2) of the Legislation Act 2003. This means that a transitional rule made under this provision can have retrospective application even if it affects a person's rights or imposes liabilities as referred to in paragraph 12(2)(a) and (b) of that Act.