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**AFP**

AUSTRALIAN FEDERAL POLICE



## Parliamentary Joint Committee on Intelligence and Security

Inquiry into Counter-  
Terrorism Legislation  
Amendment (High Risk  
Terrorist Offenders) Bill  
2020

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Submission by the  
Australian Federal Police

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### Introduction

1. The AFP strongly supports the introduction of the Extended Supervision Order (ESO) scheme, introduced as part of the Counter Terrorism Legislation Amendment (High Risk Terrorist Offenders) Bill 2020 (the ESO Bill). The ESO scheme will support the AFP's ability to manage the risk posed by terrorist offenders following release from custody, and address any ongoing risks to community safety.
2. The AFP supported the joint submission prepared by the Department of Home Affairs and the Attorney General's Department which provides a comprehensive overview of the measures in the Bill. This submission will focus on the AFP's role in the ongoing management of terrorist offenders, and the operational benefits of the Bill.

### The changing threat environment

3. As referenced in the AFP's recent submission to the Committee's 2020 review into AFP Powers, Australia's terrorism landscape is continually evolving. In the last fifteen years, the primary threat to Australia has shifted from predominantly large-scale operations by substantial, organised terrorist networks to smaller-scale 'lone-actor' style attacks following the rise of Islamic State (IS) and the increased ease in online radicalisation.
4. Since the elevation of the National Terrorism Threat Level to PROBABLE in 2014, Australian law enforcement have responded to a diverse range of terrorist threats and 110 individuals have been charged as a result of 51 counter terrorism related investigations. There have been seven domestic attacks and 18 major counter terrorism disruption operations in relation to potential or imminent attack planning within Australia, with two of those disruptions relating to individuals alleged to support extreme right wing ideology.
5. Since 2019, following the first release of an eligible person under the High Risk Terrorist Offenders (HRTTO) scheme, there has been a heightened need to address the reintegration and continuing risks associated with the release of these offenders after completion of their sentence, to ensure protection of the Australian community.

### The conditions of an ESO

6. In the 2017 Independent National Security Legislation Monitor (INSLM) review of Divisions 104 (control orders) and 105 (preventative detention orders) of the Criminal Code, the INSLM made recommendations to address the interoperability between control orders and continuing detention orders (CDOs) through the creation of an ESO scheme. The Committee endorsed the INSLM's recommendations in its 2018 review of the control order scheme.
7. The INSLM further recommended the same conditions and monitoring provisions be available for ESOs as control orders. The ESO Bill includes those same conditions and additional conditions which the AFP considers, on the basis of operational

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experience, will enable appropriate supervision of an offender who poses an unacceptable risk of committing a serious Part 5.3 offence, once released into the community.

8. The inclusion of additional conditions in the ESO Bill ensures ESOs can be adapted to specific risk posed by the individual offender and ensures the conditions imposed are best suited or tailored to mitigate that risk. The additional controls reflect the AFP's experience monitoring a growing cohort of released terrorist offenders in the community, particularly since early 2019.
9. Since control orders were introduced in 2005, the controls available remain largely unchanged. By contrast, the monitoring and management of terrorist offenders in the community has become increasingly complex. Terrorist offenders in the community have access to a myriad of tools, technology and people which enable them to: mask identities and intentions; conceal associations and membership; and, unless interrupted, commence preparations to carry out terrorism acts with the intention to harm the Australian community. As a result, the AFP supports the inclusion of conditions for ESOs which will provide the flexibility to tailor orders to manage the specific risk each terrorist offender may pose to the community.
10. The twelve controls currently available in the control order framework limit the capacity for a judicial officer to tailor orders to the particular threat posed by the relevant individual. The AFP has observed that there are areas of risk (including based on previously identified behaviour) that cannot be controlled or managed by the controls available under a control order because there is no applicable obligation, prohibition or restriction available in Division 104. The practical examples provided below demonstrate this challenge.
11. The release of terrorist offenders and other persons posing a threat to the community has seen the AFP apply for **15** interim control orders since the National Threat Level was raised to PROBABLE in September 2014.
  - a) The AFP, with our State and Territory partners are currently managing **9** confirmed control orders.
  - b) In October 2020, the AFP applied for an interim control order against an offender who is due for release in November. This offender is also under concurrent consideration for a Continuing Detention Order (CDO).
12. The recent, increased use of the existing control order framework has identified a number of challenges for law enforcement in applying for, monitoring and enforcing control orders. Lessons learnt by the AFP in recent control orders, as well as from comparable state post-sentence supervision schemes, such as the NSW Terrorism High Risk Offenders (THRO) Scheme, have informed the AFP's contribution to the development of the ESO Bill and the conditions. A comparison table between the Commonwealth control order scheme, ESO scheme and the NSW THRO scheme is provided at **Attachment A**.

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### Court's flexibility to tailor ESO conditions

13. The AFP strongly supports the provisions in the ESO Bill which includes a discretion for the Supreme Court to impose any additional conditions the Court considers is reasonably necessary, appropriate and adapted, to ensuring the safety and protection of the community. This will ensure the Court is equipped to impose ESO conditions appropriate to the personal circumstances and specific risk of each terrorist offender.
14. The ability to tailor conditions affords greater scope to impose conditions which take into account an offender's specific circumstances. For instance:
  - a) employment (e.g. Does the offender have a job/will get a job that involves access to multiple computers and phones; or to use multiple vehicles; or to travel via a number of high risk sites); and
  - b) tertiary studies (e.g. If the offender enrolls in a TAFE, university or other studies – does it require/lecture or class attendance during proposed curfew hours; does it require interstate travel; will it involve access to specified technology or telecommunication devices).
15. Flexibility by the Court will enable consideration of the evolving nature of terrorism-related activity, advances in technology and the use of such technology to assist criminal activity or to conceal activities from law enforcement. It will also ensure any evidence from experts, which include recommendations outside of listed conditions can be appropriately considered and applied.

### Expanded list of conditions

16. The list of possible conditions have been expanded to better achieve the purpose of protecting the community. The new provisions also recognise that, at the time the Supreme Court first imposes the ESO conditions, it is not possible to anticipate all the circumstances which may arise during the period of the order and might require police or other authorities to manage the offender's activity. The ESO scheme improves the ability to adapt the conditions of the order to mitigate threats as they arise. This is particularly important noting that an ESO applies for up to three years (reviewed annually), rather than the 12 month period for control orders. Emerging risks within the three year period can then be appropriately addressed as they arise.
17. For instance, the control order scheme requires the AFP to identify exact locations for exclusion or individuals of concern, to enable them to be captured by the order. The ESO Bill provides an ability for the Court to make conditions prohibiting the offender visiting 'specified classes' of areas and places and associating with 'specified classes' of individuals. The new provisions more appropriately capture the threat an offender may pose to a specified class of areas, places or individuals. This better achieves the intended purpose of the scheme and protection of the Australian public.
18. The Supreme Court must still be satisfied of the requisite threshold before imposing any condition (section 105A.7B(1)).

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### **Hypothetical Case Example 1: Varying risk of communication – class of persons**

An offender is subject to a condition not to communicate or associate by any means with a specified individual. Under the current control order scheme controls, the list of prohibited associations is determined at the time of the interim application. There is no scope to add to this condition between interim and confirmation. In addition, adding another individual or classes of individual to a confirmed control order requires the AFP Commissioner to cause an application to be made to the Court and requires the AFP Commissioner to suspect on reasonable grounds that the additional control is reasonably necessary, and reasonably appropriate and adapted. This presents operational difficulties where a risk is identified after an interim control order is made, or confirmed.

In the example, the offender begins to spend more time online and establishes an online correspondence with their cousin, who the AFP suspects on reasonable grounds holds right wing extremist views. The cousin starts sending the offender website links and news articles which contain right wing propaganda.

Under the ESO scheme, the Supreme Court can make a condition which authorises a specified authority to prohibit association with a person or class of persons. In this example, such a condition would enable the AFP (as the specified authority) to quickly adapt to the emerging risk and list the cousin as a person with whom the offender cannot communicate or associate.

### Exemption conditions and reasonable directions

19. Where the Supreme Court is satisfied the unacceptable risk posed by the offender requires it, the Supreme Court may also:

- a) specify conditions with exemptions (section 105A.7C), or
- b) make conditions which permit a specified authority to give a direction which is reasonable in all the circumstances (section 105A.7B(4)).

### Exemption conditions

20. Exemption conditions enable the offender to apply to a specified authority (such as a police officer) for a temporary exemption from a condition, rather than requiring the offender to apply to the Supreme Court.

21. Exemption conditions are not recognised under the existing control order scheme. For control orders, the AFP has previously relied on informal exemptions from time to time to accommodate variables in the subject's daily life. Otherwise, the legislation requires a formal, time consuming process of varying the order with by application to the relevant court. The exemption conditions in the ESO Bill provide a less onerous mechanism for the offender to have the ESO conditions adapted to their day to day personal circumstances.



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### **Hypothetical Case Example 2: Reintegration with family – exemption condition**

An offender is subject to a condition restricting their movement to the Australian Capital Territory, where their residence is located. While subject to this condition, the offender's aunt falls ill and is admitted to a hospital in New South Wales.

Under the control order framework, the provisions in Division 104 do not contain an authority for AFP to provide any formal exemption to conditions without appearing before the court. This can place an impost on legal and operational resources to prepare an application, and may be overly restrictive on the offender.

Under the ESO Bill, the offender requests an exemption to visit their aunt for a specified period of time. The AFP believes granting the exemption would be beneficial to the offender, noting that family plays an important protective factor for their rehabilitation and reintegration into the community, and authorises the request. The offender is able to visit their aunt for a period of three days, within the conditions of the ESO.

22. Importantly, the refusal of an exemption condition by a specified authority does not prevent the offender subsequently applying to the Supreme Court to vary the condition. As such, the exercise of the exemption condition is subject to appropriate oversight.

#### Reasonable directions

23. The Supreme Court may specify that a condition permits a police officer or other specified authority to issue a direction in respect of that particular condition. The Court must still be satisfied that the condition (which imposes the ability for a direction to be made) is reasonably necessary, and reasonably appropriate and adapted for the purpose of protecting the community from the unacceptable risk of the offender committing a serious Part 5.3 offence.
24. Additionally, in exercising the direction, the police officer or specified person must be satisfied the direction is reasonable in all the circumstances to give effect to the condition or the objects of Division 105A (s105A.7B(4)).

### **Hypothetical Case Example 3: Non-association condition – reasonable direction**

An offender is subject to a condition which prohibits communicating or associating with a specified individual (Person A). The offender is also required to comply with any reasonable direction issued by the AFP (as a specified authority) in relation to this condition.

The JCTT is conducting an ongoing investigation into Person A and his associates. The JCTT lawfully intercepts a call which indicates Person A and his associates regularly meet at a park to have a BBQ.

During these meetings Person A and his associates all leave their phones in their cars. The JCTT suspects these meetings are designed to avoid law enforcement surveillance.

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The offender has provided his schedule of movements to the AFP, indicating he will be attending a picnic with friends at the same park.

The AFP contacts the offender and issues a direction not to attend the event - to ensure the offender does not come into contact with Person A, thereby giving effect to the condition.

Without the power to issue this reasonable direction, the offender and Person A would come into contact, undermining the objectives of Division 105A.

### Application process

25. The ESO Bill will also streamline the application process for post-sentence orders, addressing a key recommendation made by INSLM. ESOs can be issued by the same Court hearing the application for a Continuing Detention Order (CDO).
26. This streamlined application process and jurisdiction addresses the current interoperability issues experienced between the current CDO and control order schemes. It will also avoid unnecessary duplication of administrative resources by removing the need for two separate applications to two different courts to be made.
27. The resourcing required to make an application for a control order is significant, however the order can only be imposed for a period of up to 12 months. ESOs will be issued for a period of up to three years at a time, and must be reviewed annually to ensure they remain necessary to address the ongoing risk.

### Eligibility for CDOs, ESOs and ICOs

28. ESOs will form part of the High Risk Terrorist Offenders (HRTTO) framework established under Division 105A of the Criminal Code, and will provide a less restrictive alternative to CDOs, to manage the unacceptable risk posed by eligible offenders post-sentence.
29. An ESO can only be sought for individuals who have been convicted of a serious Part 5.3 offence under the Criminal Code, or other specified offences. As such, ESOs have been specifically designed to target this narrower cohort of individuals compared to those to whom the control order scheme is intended to apply.
30. Once the ESO scheme has commenced, the AFP anticipates fewer control order applications will be made for HRTTO-eligible offenders. This recognises the INSLM and Committee recommendations around the purpose of ESOs as a key feature to streamline the HRTTO framework. In exceptional circumstances, the AFP may consider a control order application for a HRTTO-eligible offender.
31. We note the ESO Bill includes provisions which limit when a control order can be in force for an offender: who is still serving a sentence of imprisonment or who is the subject of a CDO or ESO.
32. Control orders retain an important place in Australia's counter-terrorism legislative framework. The AFP **does not support** any proposal to repeal the control order



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scheme once ESOs have commenced. Control orders remain a key tool to address risks, and will continue to apply to a broader cohort of individuals, including those who are not eligible for consideration for an ESO, for example:

- a) individuals who have not been charged with any offence,
- b) individuals who have been convicted of related offences, who are not eligible for consideration of an ESO or CDO under the HRTTO framework (for example, an offence against section 102.8 - associating with terrorist organisations) who are about to be released following completion of their sentence, and
- c) individuals who have been convicted of an offence at some point in the past (whether or not they were considered for and/or subject to post-sentence orders immediately following their release from prison).

## Conclusion

33. The ESO Bill will support the AFP to manage the risk posed by convicted offenders following their release from prison. The ESO scheme will play an important role in ensuring the AFP can continue to protect Australia and the Australian community from the risk and threat of terrorism from known terrorist offenders.

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## Attachment A

Comparison Table on conditions available in the Commonwealth control order scheme, proposed Commonwealth extended supervision (ESO) scheme and NSW THRO extended supervision order scheme. **Note:** Green font identifies conditions within the Commonwealth ESO scheme which expand upon the existing Commonwealth control order scheme.

Commonwealth Control Order scheme	Proposed Commonwealth ESO scheme	NSW THRO (ESO) scheme
<b>Non-exhaustive conditions – NIL</b>	<b>Non-exhaustive conditions</b>  An order may direct an eligible offender to comply with such conditions as the Supreme Court considers reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from the unacceptable risk of the offender committing a serious Part 5.3 offence.	<b>Non-exhaustive conditions</b>  An order may direct an eligible offender to comply with such conditions as the Supreme Court considers appropriate.
<b>Reasonable direction – NIL</b>	<b>Reasonable direction</b>  The offender must obey if the direction is reasonable and attaches to a condition.	<b>Reasonable direction</b>  The offender must obey if the direction is reasonable and attaches to a condition.
<b>Exemption condition – NIL (in legislation)</b>  <i>Division 104 does not explicitly include an exemption control. As a result, the AFP has had to address and satisfy each Court hearing an ICO application to include an exemption condition. The inclusion of an exemption condition (and the flexibility it affords the Control Order subject) is therefore vulnerable to differences in judicial interpretation.</i>	<b>Exemption condition</b>  An exemption condition is a condition in the order from which the offender may apply for a temporary exemption.	<b>Exemption condition - NIL</b>

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Commonwealth Control Order scheme	Proposed Commonwealth ESO scheme	NSW THRO (ESO) scheme
<p><b>Conditions that MAY be imposed by Federal Court are as follows:</b></p> <p><i>NB: the below conditions reference the relevant subsections under section 104.5 of the Criminal Code.</i></p>	<p><b>Conditions that MAY be imposed by Supreme Court are as follows:</b></p> <p><i>NB: the below conditions reference the relevant subsections under section 105A.7B of the Bill.</i></p>	<p><b>Some conditions MUST be imposed (unless decided by the Court otherwise), other conditions MAY be imposed by Supreme Court are as follows :</b></p> <p><i>NB: the below conditions reference the relevant subsections under section 29 of the THRO Act. Ss: (1) (may be imposed) and (1A) must be imposed</i></p>
<p>Prohibition/restriction on attending specified areas or places (3)(a)</p> <p><i>In practice, previous control orders have included classes of areas such as 'any Australian airport which has an international point of departure'.</i></p>	<p>Prohibition/restriction against attending specified areas or places <b>or classes of areas or places or any determined by a specified authority (3)(a).</b></p>	<p>Prohibition/restriction on attending or residing at specified locations or classes of locations (1)(j) or any place or district specified by an enforcement officer (1A)(r).</p>
<p>Prohibition/restriction on leaving Australia (3)(b);</p>	<p>Prohibition/restriction on leaving Australia or <b>the State or Territory in which the offender's residence is located (3)(d).</b></p> <p><b>To give effect to the above condition, the offender may also be required to provide their passport (3)(e) to a specified authority and be prohibited from applying for an Australian/foreign country travel document (3)(g).</b></p>	<p>Prohibition/restriction on leaving New South Wales except with the approval of the Commissioner of Corrective Services (1A)(d).</p>
<p>Requirement to reside at specified premises between specified times each day, or on specified days, but for no more than 12 hours within any 24 hours (3)(c)</p>	<p>Requirement to reside at specified premises between specified times each day, or on specified days, but for no more than 12 hours within any 24 hours -s105A7B (3)(c).</p> <p><b>To enable the monitoring of this condition, a specified authority can visit and enter the offender's premises at</b></p>	<p>Requirement to reside at specified premises at address approved by an enforcement officer (1)(f),(1A)(c) and/or:</p> <ul style="list-style-type: none"> <li>Notify an enforcement officer of any intention to change the offender's address or living arrangements (1)(f),(1A)(c)</li> </ul>

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Commonwealth Control Order scheme	Proposed Commonwealth ESO scheme	NSW THRO (ESO) scheme
	<p>any time for the purpose of determining compliance of curfew requirements(5)(g).</p> <p>The offender may also be required to request permission of a specified authority to reside at other/new premises (3)(b).</p>	<ul style="list-style-type: none"> <li>Permit visit and entry of any enforcement officer at the offender's residential address at any time to determine compliance with condition (1)(a) (1A)(n).</li> </ul>
NIL	Prohibition on changing name, or using any name that is not specified in the order (3)(f).	Prohibition on changing name (1)(p) or using any other name without notifying an enforcement officer (1A)(q).
<p>Requirement to wear a tracking device (3)(d).</p> <p>If a person is required to wear a tracking device they must also comply with other requirements such as taking steps to ensure the device is in good working order, notifying the specified authority if the device has failed and allow AFP members to enter premises for the purpose of installing equipment for the operation of the device (3A), (3B).</p>	<p>Requirement for electronic monitoring and comply with directions given by a specified authority in relation to electronic monitoring (5)(d).</p> <p>If a person is required to wear a monitoring device they must also comply with other requirements such as taking steps to ensure the device is in good working order, notifying the specified authority if the device has failed and allowing a specified authority to enter premises at any reasonable time for any purpose relating to electronic monitoring of the offender including repairing or removing the device (s105A.7E).</p> <p>A direction given by a specified authority could include directing the offender to charge the device.</p> <p>Due to advances in technology, legislative references to "tracking device" have been replaced with "electronic monitoring".</p>	<p>Requirement to wear monitoring equipment (1)(h) (1A)(b) and not tamper with, or remove, the equipment (1A)(b).</p>

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Commonwealth Control Order scheme	Proposed Commonwealth ESO scheme	NSW THRO (ESO) scheme
Prohibition/restriction on communicating or associating with specified individuals (3)(e).  <i>In practice, control orders have prohibited direct or indirect communication with a broad range of identifiable individuals, such as 'any person incarcerated in any correctional facility'.</i>	Prohibition/restriction on communicating or associating (including via third parties) with specified individuals (or classes of, or those determined by a specified authority) (3)(h).	Prohibition/restriction on communicating or associating (including via third parties) with specified persons or classes of persons (1)(k) or any person specified by law enforcement (1A)(p).
Prohibition or restriction on accessing or use of specified forms of telecommunication or other technology (including the internet) (3)(f).	Prohibition or restriction on accessing or use of specified forms of telecommunication or other technology (including the internet) (3)(i).	Prohibition or restriction on accessing or use of the offender's access to specified forms of communication and use of the internet (1)(r), (1A)(m).
NIL (in legislation)  <i>In practice, control orders have included requirements to provide information (in most circumstances limited to the relevant case officer) to seek approval of and provide information regarding a nominated mobile/telephone service and internet service provider.</i>	Requirement to provide specified information to a specified authority within a specified period or before a specified event (3)(q). The type of 'information' is not limited.	Provide any enforcement officer with information not limited to a carriage service/internet service used or intended to be used (1)(s).
NIL  <i>In practice, control orders have required the offender to provide any new password for the device to the AFP.</i>	That the offender facilitate access (including by providing passwords or in any other way) to electronic equipment or technology, data held within, or accessible from, any electronic equipment or technology; owned or controlled by the offender, for the purposes of a police officer searching and seizing any such equipment or accessing such data (or both) (3)(f).	That the offender allow a law enforcement officer to access any of the following a computer or related electronic equipment that is at the offender's residential address or in the possession of the offender, or data held within, or accessible from, the computer or related electronic equipment (including data accessible by means of an electronic identity), (1)(b).

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Commonwealth Control Order scheme	Proposed Commonwealth ESO scheme	NSW THRO (ESO) scheme
NIL	<p>Allow a police officer to enter and search a specified premises to (3)(j):</p> <ul style="list-style-type: none"> <li>• search the offender;</li> <li>• search the offender's residence or any premises which the offender intends to be the offender's residence;</li> <li>• search any other premises under the offender's control;</li> <li>• seize any item found during those searches, including to allow the item to be examined forensically</li> </ul>	<p>Allow a police officer to enter and search a specified premises to;</p> <ul style="list-style-type: none"> <li>• search the offender and residence and the search and seizure of the offender's vehicle, computer, electronic and communication device or any storage facility, garage, locker or commercial facility under the offender's control (1A)(e).</li> <li>• Allow a law enforcement office to seize any computer or other object at the offender's residential address or in the possession of the offender for the purpose of enabling it to be forensically examined (1)(c).</li> </ul>
NIL	Carry a mobile phone and answer or respond as soon as reasonably practical and comply with directions (5)(e).	NIL
<p>Not to possess or use specified articles or substances (3)(g).</p> <p><i>In practice, control orders have prohibited in respect of the offender's employment, renting, purchasing, or driving any vehicle which exceeds a gross vehicle mass of 4.5 tonne.</i></p>	<p>Not possess or use specified objects or substances (3)(j).</p> <p>Not apply for one or more of the following: any licence to operate equipment, machinery, a heavy vehicle or a weapon, or any licence to possess a weapon (3)(g)(iii).</p>	<p>Not possess or use specified objects or substances (1)(n) or use prohibited drugs, or obtain drugs unlawfully or abuse drugs lawfully obtained (1A)(g).</p> <p>Not to possess or use certain dangerous devices such as firearms, explosive substances (1A)(i).</p>
NIL	Submit to testing in relation to possession or use of specified articles or substances (5)(a).	Submit to drug and alcohol testing (1A)(h).

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Commonwealth Control Order scheme	Proposed Commonwealth ESO scheme	NSW THRO (ESO) scheme
<p>A prohibition or restriction on the person carrying out specified activities (including in respect of his or her work or occupation)(3)(h);</p> <p><i>In practice, control orders have included a prohibition on undertaking paid employment without first notifying the AFP in writing (including details on the proposed employment, employer, nature of the work, etc.).</i></p>	<p>Prohibition or restriction on the person engaging in specified activities, work, classes of work or activities relating to these. (3)(k)(3)(l).</p> <p>Require permission of a specified authority to engage in training or education (3)(m).</p>	<p>A prohibition or restriction on the person engaging in specified or classes of employment, services/facilities or conduct, financial/business dealings (1)(m) (1)(d), (1)(l), (1)(o).</p> <p>Require permission from a law enforcement officer or notify change of employment (1A)(o), (1A)(l).</p>
<p>Requirement to report to specified persons at specified times and places (3)(i).</p>	<p>Requirement to report to specified persons at specified times and places or by a specified authority (5)(f).</p> <p>The offender can also be required to provide a proposed schedule of movements (3)(i) to a specified authority.</p>	<p>Requirement to report to an enforcement officer (1)(e) and be available for interview at times and places as an enforcement officer may from time to time direct (1A)(j).</p> <p>The offender must submit to the supervision and guidance of any enforcement officer responsible for the supervision of the offender for the time being and obey all reasonable directions of an enforcement officer (including in respect of providing a schedule of movements) (1A)(a).</p>
<p>Allow photograph/fingerprints to be taken for the purpose of ensuring compliance with a control order (3)(j),(k).</p>	<p>Allow photograph/fingerprints to be taken for the purpose of ensuring compliance with a control order (5)(b),(c).</p>	<p>NIL</p>
<p>Participate in specified counselling or education (3)(l).</p> <p>A person is required to participate in specified counselling or education as mentioned in paragraph (3)(l) only if the person agrees, at the time of the</p>	<p>Participation in treatment, rehabilitation or intervention programs or activities, undertake psychological or psychiatric assessment or counselling as specified in the order or as directed by a specified authority (3)(n).</p>	<p>Participation in intervention programs or initiatives (1)(g), undergo ongoing psychological or psychiatric assessment or counselling (or any combination of these) as directed by an enforcement officer (1A)(k).</p>

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Commonwealth Control Order scheme	Proposed Commonwealth ESO scheme	NSW THRO (ESO) scheme
counselling or education, to participate in the counselling or education (6).	The Minister may appoint an expert to undertake an assessment of the individual (s105A.18D) to determine the risk of the person committing a part 5.3 offence. The conditions relating to treatment of an offender have been expanded to enable the offender to participate in interviews/assessment and allow for the results of those assessments to be disclosed to a specified authority to ensure the treatment the offender receives can be adapted according to the offender's needs and risks. (3)(o),(3)(p).	

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