



## Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Bill 2008

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Law and Bills Digest Section

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## Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Bill 2008

**Date introduced:** 3 December 2008

**House:** House of Representatives

**Portfolio:** Home Affairs

**Commencement:** Schedules 1 - 5 and 7, commence the day after Royal Assent. Schedule 6 and schedule 5, Part 1 commence on a single day to be fixed by proclamation. However, if any of the provisions do not commence within 6 months from the date of Royal Assent, then they commence on the first day after the end of that period.

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

The Bill contains a range of amendments. The key ones are:

- creation of three offences in the Criminal Code aimed at dealing with the growing phenomenon of identity crime
- repeal of section 55D of the *Judiciary Act 1903* which contains an outdated provision dealing with the national practising certificate regime for lawyers
- inclusion of the Office of Police Integrity of Victoria in the definition of ‘enforcement body’ in the *Privacy Act 1988*
- providing for the delegation of powers and functions to certain persons, and legal immunity for the Director or member of staff carrying out functions under the *Director of Public Prosecutions Act 1983*
- improving the efficacy of processes for alcohol and drug testing under the *Australian Federal Police Act 1979*
- enhancing the operation of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, and providing for a more consistent approach to the restrictions on disclosure of sensitive AUSTRAC<sup>1</sup> information, and

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1. Australian Transaction Reports and Analysis Centre.

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- reframing the administration of justice offences in Part III of the *Crimes Act 1914* to align them with the *Criminal Code Act 1995*.

## Background

Identity theft (known as identity fraud in many other countries) is not a new phenomenon. However, its prevalence, operative reach and gravity of consequences have grown in modern society due to the rapid advances in and capacities of new technologies.<sup>2</sup> With the exception of Queensland and South Australia, which have laws specifically tailored to target identity crime, other states in Australia rely on a patchwork of laws contained in various State, Territory and Commonwealth legislation. The shortcomings of the present state of the law were recognised in the final report of the Model Criminal Law Officers' Committee (MCLOC) of the Standing Committee of Attorneys-General on [Identity Crime](#).<sup>3</sup> The amendments contained in this Bill respond to gaps in the law by creating three key offences relating to identity crime recommended by MCLOC, and also enables victims of identity crimes to apply for a certificate which may be used to restore their personal or financial/business reputation.

The Bill also makes a variety of other amendments designed to clarify and enhance the operation of justice legislation in the Commonwealth.<sup>4</sup>

## Financial implications

The Explanatory Memorandum states that there is no financial impact.<sup>5</sup>

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2. S Cuganesan and D Lacey, *Identity Fraud in Australia: An Evaluation of its Nature, Cost and Extent*, 2003, Securities Industry Research Centre of Asia-Pacific, 1.
  3. Model Criminal Law Officers' Committee of the Standing Committee of Attorneys-General, *Final Report: Identity Crime*, 2008, at: [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(CFD7369FCAE9B8F32F341DBE097801FF\)~6/Final+Report+Identity+Crime+March+2008.PDF/\\$file/6Final+Report+Identity+Crime+March+2008.PDF](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32F341DBE097801FF)~6/Final+Report+Identity+Crime+March+2008.PDF/$file/6Final+Report+Identity+Crime+March+2008.PDF), accessed on 3 February 2009.
  4. Explanatory Memorandum, Law and Justice Amendment (Identity Crimes and Other Measures) Bill 2008, p. 1.
  5. *ibid.*

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## Main provisions

### Schedule 1— *Criminal Code Act 1995*

#### Definitions

**Proposed section 370.1** inserts three definitions into new Part 9.5 of the Act which attach to the creation of the following offences:

- dealing in identification information, where that person intends to pass themselves off as another person for the purposes of committing or facilitating the commission of a Commonwealth indictable offence (proposed section 372.1),
- possessing identification information, where a person intends to use that information to commit or facilitate the commission of an indictable offence (proposed section 372.2), and
- possession of equipment to create identification documentation, in certain circumstances, where the person or another person intends to use the equipment to make identification documentation for the purposes of engaging in conduct that constitutes an offence under section 372.1 (proposed section 372.3).

The term ‘**deal**’, in the context of dealing with identification information, includes make, supply or use any such information.

The term ‘**identification documentation**’ has been defined so as to ensure the broadest inclusion of possible material and things which may be used by an individual with the aim of passing themselves off as another person.<sup>6</sup>

Similarly, the term ‘**identification information**’ has been defined to ensure the broadest inclusion and capture of identification information. ‘**Identification information**’ means information relating to a person (whether living, dead, real or fictitious) that is capable of being used (whether alone or in conjunction with other informational documents) to identify or purportedly identify the person, including any of the following:

- (a) a name or address,
- (b) a date or place of birth, whether the person is married or has a de facto partner, relatives’ identity or similar information;
- (c) a driver’s licence or driver’s licence number;
- (d) a passport or passport number;

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6. Explanatory Memorandum, p. 3.

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- (e) biometric data;
- (f) a voice print;
- (g) a credit or debit card, its number, or data stored or encrypted on it;
- (h) a financial account number, user name or password;
- (i) a digital signature;
- (j) a series of numbers or letters (or both) intended for use as a means of personal identification;
- (k) an ABN.

#### Division 372 – Identity fraud offences

While the Criminal Code already contains a range of offences that cover some forms of identity crime,<sup>7</sup> it was recognised by the final report of the Model Criminal Law Officers' Committee of the Standing Committee of Attorneys-General on [Identity Crime](#), that there remained gaps in the coverage of those offences. The creation and insertion of the following offences is intended to address those gaps.

#### **Section 372.2 - Proposed offence possessing in identification information**

Proposed section 372.2 establishes the preparatory offence of possessing identification information where a person *intends* to use that information to commit, or facilitate the commission of a Commonwealth indictable offence under proposed section 372.1. Absolute liability applies to the fact that the conduct constitutes an offence against section 372.1, and the offence in proposed section 372.1 attracts a penalty of 3 years' imprisonment.

#### **Section 372.1 - Proposed offence of dealing in identification information**

Proposed section 372.1 adopts the term 'dealing' (in identification information) whose broad ambit as a preparatory offence captures 'making', 'supplying' and 'using' identification information, where a person *intends* to use that identification information to pretend to be, or pass themselves off as, another person, with the purpose of committing or facilitating a Commonwealth indictable offence. Where the proposed offence is made out, absolute liability applies with a penalty of 5 years' imprisonment.

#### **Section 372.3 - Proposed offence of possessing equipment to make identification documentation**

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7. For example, crimes such as of making a false document, credit card skimming and fraud.

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Proposed section 372.3 creates the preparatory offence to possessing equipment to make identification documentation, where the person in possession of that equipment *intends* that the equipment be used (by either that first person or any other person) to engage in conduct that constitutes the offence of dealing, or facilitates dealing, in identification information. Absolute liability applies where this offence is made out and the penalty for the offence is 3 years' imprisonment.

The term 'equipment' is not defined in the Bill. The Explanatory Memorandum justifies the lack of definition of the term 'equipment' on the basis of a desire to avoid the fast-dating of the provision. However, leaving the term undefined and thus potentially too broad in its capture may invite unfair operational outcomes. As an undefined term, 'equipment' will be defined by a court according to its plain and ordinary meaning, thereby including commonly and widely possessed equipment such as photocopiers, scanners, and computers, which arguably may be used to create false identification information. Because of its potentially and undesirably broad capture, it may be more appropriate to delimit the current definition to the certain specific equipment (subject to periodic updates on the basis technological advances) to items such as credit card skimming machines, data storage mediums, laminators, card printers, embossers, templates on computer equipment and scanners.

#### **Section 372.4 - Extended geographical jurisdiction – category A**

In recognition of the serious transnational dimensions and implications of identity crimes, this item extends the application and operation of the three proposed identity crime offences to an Australian citizen or body corporate outside Australia. Thus, an Australian citizen or body corporate will not be able to argue that because no local equivalent offence exists, their conduct is legal. This jurisdiction is detailed in section 15.1 of the Criminal Code.

#### **Section 372.5 - Alternative verdict**

Where a trier of fact in a prosecution (such as a magistrate or judge) is not satisfied beyond reasonable doubt that a person is guilty of the offence of *dealing* in identification information, the accused may nonetheless, be found guilty of the offence of possessing identification information, provided that the defendant has been accorded procedural fairness in relation to that finding of guilt. In this case, the need to re-think the need to define the term 'equipment', seems to take on greater importance.

#### **Section 372.6 - Attempt not an offence**

This section clarifies that it is not an offence to attempt to commit offences against sections 372.1, 372.2 or 372.3. This is probably because there is no harm or damage until a person uses the identity information, not simply attempts to use it.

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Division 375 – Victims' certificates

### **Section 375.1 – Certificate may be issued by magistrate in relation to victim of identity crime**

A magistrate may, upon an application by a victim of identity crime, issue a certificate to assist with any problems the identity crime has caused in relation to the victim's personal or business affairs. This, for example, may relate to the victim's reputation and credit history.

The certificate may be issued if the magistrate is satisfied on the balance of probabilities, that another person has dealt in identification information, regardless of whether the dealer is identifiable (**proposed section 375.3**), or intended that any person would use the identification information to pass themselves off as another person (whether living or dead), for the purpose of committing or facilitating the commission of an offence (**proposed paragraph 375.1(1)(b)**).

### **Section 375.2 – Content of the certificate**

This section proposes that the content of the certificate must contain the identity of the victim and describe the dealing in identification information. The certificate must not identify the dealer.

### **Section 375.3 – Relation to civil and criminal proceedings**

This section proposes that a certificate must not be issued under proposed section 375.1 if doing so would prejudice any proceedings. This postponement seems curious and potentially a significant unnecessary inconvenience to the victim given that the certificate must not identify the dealer.

Schedule 2— Administration of justice offences

### **Part 1 – Amendment of the *Crimes Act 1914***

Part III of the *Crimes Act 1914* (hereafter the Crimes Act) deals with administration of justice offences. The integrity of the Australian courts and prisons is fundamental to the legitimate robust functioning the Australian legal system. Securing and maintaining this integrity requires laws aimed at deterring and punishing any conduct which may undermine the integrity of Australian courts and system.

### **Reframing administration of justice offences in alignment with Chapter 2, Criminal Code**

The amendments in this Schedule reframe the administration of justice offences so as to align and make them consistent with Chapter 2 of the Criminal Code. Chapter 2 of the

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Criminal Code provides the general principles used for interpreting and applying criminal offence provisions in Commonwealth legislation.

**The application of absolute liability<sup>8</sup> to jurisdictional elements of offences, consistent with Commonwealth criminal law policy**

There are also amendments which apply absolute liability to the jurisdictional elements of the administration of justice offences. A jurisdictional element of an offence relates to whether an offence falls within the legislative power of the Commonwealth, States or Territories. The Explanatory Memorandum provides the example of administration of justice offences containing jurisdictional elements that confine the offences to matters arising in connection with:

- federal judicial proceedings
- lawful Commonwealth criminal detention, and
- offences against the law of the Commonwealth or a Territory.<sup>9</sup>

The effect of this amendment is that the prosecution no longer needs to prove that the defendant *knew* that a judicial proceeding was a federal one, or that they *knew* that criminal detention or an offence was related to the Commonwealth or a Territory's legislative power. This means that they cannot, for example, destroy evidence and claim that they did not know that it was required in federal judicial proceedings.

The use of absolute liability in the jurisdictional elements of administration of justice offences is rather uncontroversial as it has long been part of Commonwealth criminal law policy.<sup>10</sup>

Division 2 – Judges and magistrates

**Item 9 – Judge or magistrate acting oppressively or when interested**

It is proposed that current section 34 be reframed and thus aligned with Chapter 2 of the Criminal Code.

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8. An absolute liability offence is one in which the prosecution does not need to prove any fault in order to establish guilt. It only needs to be shown that the defendant performed the prohibited act. Absolute liability offences do not allow for a defence of mistake of fact.

9. Explanatory Memorandum, p. 16.

10. See Attorney-General's Department, *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, 2004, at: [http://www.ag.gov.au/agd/WWW/rwpattach.nsf/personal/07B8DF7C133D46C8CA256E5F000339FC/\\$FILE/Consolidated+Guide+-++February+2004.pdf](http://www.ag.gov.au/agd/WWW/rwpattach.nsf/personal/07B8DF7C133D46C8CA256E5F000339FC/$FILE/Consolidated+Guide+-++February+2004.pdf), accessed on 3 February 2009.

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**Proposed section 34** creates two offences that may be committed by judges or magistrates acting oppressively or when they have a personal stake in the matter. **Proposed subsection 34(1)** makes it an offence for a judge to require excessive and unreasonable bail, where the requirement represents an abuse of their office. Absolute liability will apply to this offence. The prescribed penalty is 2 years' imprisonment. The defence of reasonable excuse is available and where it is made out, then the prosecution must refute the defence beyond reasonable doubt.

**Proposed subsection 34(4)** makes it an offence for a judge or magistrate to require excessive and unreasonable bail, where the judge has a personal interest in the matter which falls under federal jurisdiction. Absolute liability will apply to this offence and the prescribed penalty is 2 years' imprisonment.

Proposed Division 3 – Evidence and witnesses

### **Item 11 – offences relating to witnesses and evidence**

False testimony

It is proposed that current section 35 be reframed and thus aligned with Chapter 2 of the Criminal Code.

A new offence is created by **proposed section 35**. It is an offence for a person to give false testimony about a matter that is material in a judicial proceeding that is either on foot or intended to be commenced, and the judicial proceeding is a federal judicial proceeding. The prescribed penalty is 5 years' imprisonment. Absolute liability will apply to the requirement that the judicial proceeding is a federal judicial proceeding, and strict liability applies to the requirement (or element) that the matter is material in the judicial proceeding.<sup>11</sup>

Furthermore, **proposed subsection 35(4)** provides that the following factors are **not** relevant to the offence:

- whether the testimony is given, on oath, or not on oath, orally or in writing
- whether the court or judicial tribunal to which the testimony is given is properly constituted or held in the proper place
- whether the person who gave the testimony is a competent witness, and
- whether the testimony is admissible.

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11. A strict liability offence is one for which the prosecution does not have to prove any fault element in relation to the relevant physical relevant physical element, although the defence of reasonable mistake is available. If strict liability applies to one or more physical elements of an offence, the evidentiary burden on the prosecution is significant less, making it easier to gain a conviction.

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It would seem perhaps to be incongruous that a testimony may be inadmissible, or that the witness may not be competent and yet their testimony can be considered to be *material* in the judicial proceeding. However, it depends on the individual case.<sup>12</sup>

Fabricating evidence, intimidation and corruption of witnesses

It is proposed that current sections 36, 36A and 37 be reframed in order to align them with Chapter 2 of the Criminal Code.

The proposed sections create offences for fabricating evidence, intimidation and corruption of witnesses respectively. The offences are strict liability offences where the judicial proceeding in question is a federal judicial proceeding and they each carry a penalty of 5 years' imprisonment.

Deceiving witnesses

It is proposed that current section 38 be reframed and thus aligned with Chapter 2 of the Criminal Code.

**Proposed section 38** makes it an offence for a person to deceive an actual or prospective witness by means of any fraud, deceit, false statement, representation, token or writing, with the intention of affecting the testimony of the witness, in a federal judicial proceeding. Absolute liability applies to the fact that the judicial proceeding is a federal judicial proceeding and the offence carries a penalty of 2 years' imprisonment.

Destroying evidence

It is proposed that current section 39 be reframed and thus aligned with Chapter 2 of the Criminal Code.

**Proposed section 39** makes it an offence for a person to destroy evidence that is or may be required in a federal judicial proceeding, with the intention of preventing that evidence from being used in such a proceeding. Absolute liability applies to the fact that the judicial proceeding is a federal judicial proceeding, and the offence carries a penalty of 5 years' imprisonment.

Preventing a witness from attending court

It is proposed that current section 40 be reframed and thus aligned with Chapter 2 of the Criminal Code.

**Proposed section 40** makes it an offence for a person to prevent another person subpoenaed or summoned to attend as a witness, or from producing anything in evidence,

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12. See for example, section 13 of the *Evidence Act 1995*, which deals with the competence of a witness who lacks capacity to understand a question or to give an answer.

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pursuant to the subpoena or summons, in a federal judicial proceeding. Absolute liability applies to the fact that the proceeding is a federal judicial proceeding, and the offence carries a penalty of 1 year's imprisonment.

Proposed Division 4 – Perverting the course of justice

**Items 13 – 16:** The following subsections are repealed and reframed so as to align them with Chapter 2 of the Criminal Code.

- subsection 41(1) – conspiring to charge or cause any person to be falsely charged with an offence against the law of the Commonwealth or a Territory
- subsections 42(1) and 42(2) – conspiring to obstruct, prevent, pervert or to defeat the course of justice in relation to the judicial power of the Commonwealth
- subsections 43(1) and 43(2) – attempting to conspire, obstruct, prevent, pervert or to defeat the course of justice in relation to the judicial power of the Commonwealth.

Absolute liability applies to the fact the judicial power is the judicial power of the Commonwealth, or the original offence is an indictable offence against a Commonwealth or Territory law. Each of the proposed offences carries a penalty of 10 years' imprisonment.

#### **Item 16 — Compounding offences and unauthorised or false advertisements**

Sections 44 and 45 of the Crimes Act of are reframed so as to align them with Chapter 2 of the Criminal Code.

**Proposed section 44** makes it an offence for a person to:

- ask for, receive, or obtain any property or benefit for themselves or another person, or
- agree to receive or obtain any property or benefit for themselves or another person.

where the person agrees or understands that in doing so, they are:

- compounding or concealing an offence
- abstaining from, discontinuing or delaying a prosecution for an offence, or
- withholding evidence of an offence.

The offence carries a penalty of 3 years' imprisonment.

**Proposed section 45** makes it an offence to insert an unauthorised advertisement purporting to be published under the authority of a court, knowing that the advertisement is false.

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Absolute liability applies to the fact the advertisement purports to be published under the authority of a relevant court. The offence carries a penalty of 2 years' imprisonment.

Proposed Division 5 – Escape from criminal detention

**Item 17** of Schedule 2 provides definitions of 'criminal detention' and 'federal criminal detention'.

**Item 18** repeals current sections 46-48 of the Crimes Act. These sections have been reframed and inserted by the Bill so that they are aligned with Chapter 2 of the Criminal Code. The sections relate to the offences listed below and are consistent with criminal law policy as described in the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*. A similar amendment has been done by **item 20 (proposed section 49)**, containing the offence of removing property under seizure.

The amendments in **proposed Division 5** of Part III of the Crimes Act deal with the following issues:

- aiding a prisoner to escape or attempt to escape from criminal detention (section 46)
- conveying a thing into a prison or other place of criminal detention with the intention of aiding a prisoner to escape from that detention (section 46A)
- escaping from criminal detention (section 47)
- rescuing a prisoner from criminal detention (section 47A)
- person lawfully in criminal detention being unlawfully at large (section 47B)
- permitting escape (section 47C)
- harbouring etc. an escapee (section 48).

### Schedule 3— *Director of Public Prosecutions Act 1983*

The *Director of Public Prosecutions Act 1983* (DPP Act) establishes the Office of the Commonwealth Director of Public Prosecutions (CDPP) and sets out the powers and functions of the Office.

**Items 1 and 2** amend subsection 31(1) of the DPP Act to clarify that the Director may delegate any or all of his or her functions under the Act, though retaining the current exceptions in relation to powers under subsections 6(2D),<sup>13</sup> 9(2)<sup>14</sup> and 9(6D)<sup>15</sup>. **Item 4**

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13. The power Where the Director institutes a prosecution on indictment for an offence against a law of the Commonwealth, the indictment shall be signed:
- (a) by the Director; or

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inserts a new subsection 31(1B) to also provide for a delegation of certain functions and powers to certain persons or classes or persons, as necessary for the conduct of a joint trial.<sup>16</sup>

**Item 8** amends subsection 31(3) to clarify that Director is not prevented from performing a function delegated under section 31.

**Item 9** inserts a new provision 32A so as to provide immunity from civil proceedings to certain individuals arising out of their performing or exercising functions, powers, duties or services in good faith under the DPP Act.

#### Schedule 4— *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

Money laundering is a significant problem with estimates placing the amount of money laundered in Australia at around \$4.5 billion annually.<sup>17</sup> Part 4 of the *Anti-Money Laundering and Counter-Terrorism Financing Act (AML/CTF Act)*<sup>18</sup> imposes reporting obligations on persons involved in certain cross-border transfers of physical currency and international funds transfers.

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- (b) for and on behalf of the Director, by a person authorized by the Director, by instrument in writing, to sign indictments to institute a prosecution of a person on indictment for an indictable offence against the laws of the Commonwealth in respect of which the person has not been examined or committed for trial.
14. Where the Director institutes a prosecution on indictment for an offence against a law of the Commonwealth, the indictment shall be signed:
- (a) by the Director; or
- (b) for and on behalf of the Director, by a person authorized by the Director, by instrument in writing, to sign indictments.
15. The Director may, if the Director considers it appropriate to do so, give to a person an undertaking that the person will not be prosecuted (whether on indictment or summarily):
- (a) for a specified offence against a law of the Commonwealth; or
- (b) in respect of specified acts or omissions that constitute, or may constitute, an offence against a law of the Commonwealth.
16. Where a person has been charged with Commonwealth and State or Territory offences arising out of the same related facts, a joint trial enables a single prosecuting authority to conduct the prosecutions for all charges.
17. Inspex Compliance Information Services at <http://www.inspexinfo.com.au/html/aml.html>, accessed on 2 February 2009.
18. The AML/CTF Act is designed to meet Australia's commitment to have an AML/CTF regime that conforms with the international standards set down by the Financial Action Task Force (FATF). FATF is an international, inter-governmental body with a set up to develop and promote international policies to combat money laundering and terrorist financing.

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**Items 1, 2 and 3** of Schedule 4 contain amendments which basically provide for greater flexibility for arrangements relating to communicating to travellers, notice about their reporting obligations in relation to cross-border movement of physical currency or bearer negotiable instruments.

**Item 5** amends subsections 128(4) and (9) of the AML/CTF Act (which limits when AUSTRAC information may be passed on by an official of a designated agency), to make reports of suspect transactions obtained under section 16 of the *Financial Transaction Reports Act 1988* (FTR Act) subject to the same prohibition on disclosure as suspicious matters reports under section 41 of the AML/CTF Act. Thus, an official of a designated agency is not authorised to disclose AUSTRAC information obtained under section 16 of the FTR Act, where the disclosure is for the purpose of court or tribunal proceedings or obtaining legal advice.

**Items 6 and 7** amend sections 130 and 131 of the AML/CTF Act in order to guard against disclosure of sensitive AUSTRAC information relating to suspicious matters and suspect transaction reports, by an official from a non-designated Commonwealth agency.

#### Schedule 5 — *Australian Federal Police Act 1979*

Recognising the professional standards and competency expected of AFP employees, Division 8 of Part IV of the AFP Act provides the statutory basis for drug and alcohol testing for all AFP appointees. The amendments to Division 8 will allow the AFP to make use of alcohol screening tests as a preliminary form of testing pursuant to sections 40M (random workplace testing) and 40N (critical incident testing), which is currently not permitted. Currently, only an ‘alcohol breath test’ using an ‘approved breath analysis instrument’ (which requires a specialist operator and is not very portable) can be used. The change will enable a portable and user friendly device to be used, thus permitting more timely testing.

#### Schedule 6 — *Judiciary Act 1903*

**Item 1** repeals section 55D of the *Judiciary Act 1903*, which is outdated and problematic in terms of its potential practical operation. Section 55D of the Act was enacted when there was no ACT (and Norfolk Island) law dealing with admission to legal practice. Over time, this section has ceased to have operational effect in all jurisdictions (except the ACT and Norfolk Island) because these jurisdictions enacted their own legislation to regulate the legal profession, which included a requirement that legal practitioners hold a practising certificate. The effect of this provision is that it is theoretically possible for a person whose name appears on a Supreme Court or the High Court’s roll of lawyers to practise in a federal court (including the High Court of Australia) without holding a practising certificate. This provision is no longer relevant and should be repealed.

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## Schedule 7 — *Privacy Act 1988*

**Item 4** amends the definition of ‘enforcement body’ in the *Privacy Act 1988* to include the Office of Police Integrity of Victoria (OPI), thus giving it the same status as comparable law enforcement bodies under the Act. In operational terms, this means that a private sector entity which is subject to the Act will be able to use or disclose personal information where ‘it reasonably believes that it is necessary for one of the functions or activities’ listed in the [National Privacy Principles 2.1\(h\)](#),<sup>19</sup> where these are carried out on or behalf of the OPI.

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19. NPP 2.1(h) deals with the disclosure and use of personal information by or to law enforcement bodies. The National Privacy Principles are available as Schedule 3 to the *Privacy Act 1988*. They are also available on the website of the Office of the Privacy Commissioner at [www.privacy.gov.au](http://www.privacy.gov.au), accessed on 3 February 2009.

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