

Explanatory Memorandum Sentencing Legislation Amendment (Persons Linked to Terrorism) Bill 2021

Overview of the Bill

The Sentencing Legislation Amendment (Persons Linked to Terrorism) Bill 2021 (the Bill) amends the *Sentence Administration Act 2003*, *Young Offenders Act 1994*, *Criminal Procedure Act 2004*, and the *Freedom of Information Act 1992*.

The Bill implements the 2017 Council of Australian Governments (COAG) agreement for a presumption against early release for persons with links to terrorism.

The Bill creates a presumption against early release by mandating that exceptional reasons be shown before a young offender or prisoner with links to terrorism, is granted an early release order. This is known as the exceptional reasons test. To guide the exceptional reasons test, the Bill introduces special considerations which require an assessment of particular matters such as:

- the degree of risk posed to the community should the person be released; and
- the nature and seriousness of the current links to terrorism and terrorism related activities.

The Bill provides for a Commissioner of Police report, which is a report to the Prisoners Review Board (the Board), or Supervised Release Review Board (SRRB), as the case may be, dealing with these special considerations.

The Bill also enables the immediate cancellation of an early release order in the event of a prisoner or young offender becoming subject to defined terrorism-related charges, orders or convictions and in other specified circumstances.

New confidentiality provisions are introduced in the Bill to protect 'terrorist intelligence information' that may be contained within the Commissioner of Police report.

The new confidentiality provisions increase confidence in information sharing between Australian intelligence and law enforcement agencies by reducing the number of people exposed to 'terrorist intelligence information' and providing protections against disclosure that may impact current or ongoing national security investigations.

Part 1 – Preliminary

Clause 1 - Short title

This clause provides that this is the *Sentencing Legislation Amendment (Persons Linked to Terrorism) Act 2021* (Act).

Clause 2 – Commencement

Paragraph (a) provides that Part 1 will come into operation on the day on which the Act receives Royal Assent.

Paragraph (b) provides that the rest of the Act will come into operation on a day fixed by proclamation. This is to provide sufficient time to ensure that the computer systems have the functionality to tag any offenders who may fall under this legislation.

Part 2 – Sentence Administration Act 2003 amended

Clause 3 – Act amended

This clause provides that Part 2 of the Act will amend the *Sentence Administration Act 2003* (SAA).

Clause 4 – Section 4 amended

Clause 4 inserts definitions into subsection 4(2) of the SAA to support the application of a presumption against early release orders for prisoners with links to terrorism.

‘category 1 prisoner’ – Clause 4 inserts a definition of a ‘category 1 prisoner’ to define one type of prisoner who will be regarded as a ‘prisoner with links to terrorism’.

This definition will capture a prisoner who has been charged with, or convicted of, a past or current terrorism offence; is subject to, or has been subject to, an interim or confirmed control order; or is a prisoner for whom an interim control order is being sought. If a prisoner’s terrorism charge is dismissed or discontinued, the prisoner is no longer captured under this definition.

The meaning of ‘has been charged with’ reflects a current charge and does not cover historical charges.

The definition captures a prisoner who has been subject to an interim or confirmed control order at any time during the period of the prisoner’s current sentence, or the period of 10 years ending on the day on which the prisoner’s current sentence begins, or is taken to have begun.

‘category 2 prisoner’ – Clause 4 inserts a definition of a ‘category 2 prisoner’ to define a further type of prisoner who will be regarded as a ‘prisoner with links to terrorism’.

This definition captures a prisoner who has been charged with, or convicted of, a past or current offence against the Commonwealth *Criminal Code Act 1995* (Commonwealth Criminal Code) section 80.2C(1) – which provides offences for persons who advocate the doing of a terrorist act; or the commission of a terrorism offence. A person advocates if the person counsels, promotes, encourages, or urges the doing of a terrorist act or the commission of a terrorist offence. If a prisoner’s charge is dismissed or discontinued, the prisoner is no longer captured under this definition.

The meaning of ‘has been charged with’ reflects a current charge and does not cover historical charges.

‘chairperson’ – Clause 4 inserts a definition of a ‘chairperson’ to mean a person appointed under section 103(1)(a) of the SAA as chairperson of the Board.

‘Commissioner of Police report’ – Clause 4 inserts a definition of a ‘Commissioner of Police report’ to mean a written report referred to in subsections 66H(1) or (4).

The Board is required to make a written request for a Commissioner of Police report when considering whether to order the release of a ‘category 1 prisoner’ (subsection 66H(1)).

The Commissioner of Police may also give to the Board such a report in relation to any prisoner (subsection 66H(4)).

‘Commonwealth Criminal Code’ – Clause 4 inserts a definition of ‘Commonwealth Criminal Code’ to mean the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* (Commonwealth). This term is used throughout the Bill for the purpose of other newly inserted definitions such as ‘confirmed control order’, ‘interim control order’, ‘prisoner with links to terrorism’ and ‘terrorism offence’.

‘confirmed control order’ – Clause 4 inserts a definition of ‘confirmed control order’ to have the same meaning given in the Commonwealth Criminal Code section 100.1(1).

This term is used for the purposes of determining a ‘category 1 prisoner’.

‘interim control order’ – Clause 4 inserts a definition of ‘interim control order’ to have the same meaning given in the Commonwealth Criminal Code section 100.1(1).

This term is used for the purposes of determining a ‘category 1 prisoner’.

‘prisoner with links to terrorism’ – Clause 4 inserts a definition of a ‘prisoner with links to terrorism’, to identify prisoners for whom the presumption against early release orders will apply.

The definition captures a prisoner who is a ‘category 1 prisoner’; and a ‘category 2 prisoner’ who is the subject of a Commissioner of Police report. It also captures a prisoner who is subject to a Commissioner of Police report, where the Board (constituted by the chairperson alone) is satisfied, having regard to the report, that the prisoner has made statements or carried out activities that support, or advocated support for, terrorist acts.

Section 80.2C(1) of the Commonwealth Criminal Code, which applies to category 2 prisoners, does not have the requisite element of ‘action’ or ‘threat of action’ which is used to define a ‘terrorist act’ and as such, the Board relies on the provision of a Commissioner of Police report before designating this category of prisoner as a ‘prisoner with links to terrorism’.

‘terrorism offence’ – Clause 4 inserts a definition of a terrorism offence to capture specific Commonwealth terrorism offences. The definition additionally provides a general provision to capture terrorism offences in a law of the Commonwealth, another State, Territory, or country that substantially corresponds to the listed relevant Commonwealth terrorism offences. The definition also includes offences of attempting, inciting or conspiring to commit the listed offences.

This term is used throughout the Bill and in other newly inserted definitions such as ‘category 1 prisoner’ and ‘terrorist intelligence information’.

‘terrorist act’ – Clause 4 inserts a definition of terrorist act to have the meaning given in the *Terrorism (Commonwealth Powers) Act 2002* section 3 – which includes an action that is done, or a threat that is made with the intention of advancing a political, religious or ideological cause through coercing or influencing by intimidation.

This term is used throughout the Bill and in other newly inserted definitions such as ‘prisoner with links to terrorism’ and ‘prohibited act’ (inserted at new section 4(2C) and explained below) for the purpose of ‘terrorist intelligence information’.

‘terrorist intelligence information’ – Clause 4 inserts a definition of ‘terrorist intelligence information’. This definition is created for the purposes of provisions in the Bill aimed at protecting such information.

Clause 4 additionally provides a definition of '**prohibited act**' for the purpose of the 'terrorist intelligence information' definition. The definition limits information that can be considered 'terrorist intelligence information' to information that relates only to the following prohibited acts:

- a terrorism offence;
- an offence against the Commonwealth Criminal Code section 80.2C(1); or
- a terrorist act (whether in this State or elsewhere).

Clause 5 – Section 6 amended

This clause is administrative in nature and corrects an error in section 6 of the SAA, by deleting the reference to non-existent subsection 87(d) of the *Sentencing Act 1995* and inserting the correct reference of subsection 87(1)(d).

Clause 6 – Section 12 amended

Under section 12 of the SAA, the Board must give the Minister a written report about a prisoner whenever it considers it necessary to do so, and whenever it gets a written request to do so from the Minister. When the Minister requests a report, the report must contain a recommendation on whether the Governor should release the prisoner.

Clause 6 inserts a reference to new subsection 66G(1), which provides that the Board must not make a release decision, or take release action in respect of a prisoner with links to terrorism unless the exceptional reasons test has been satisfied. The effect of this amendment is that the Board must not make a recommendation to release a prisoner with links to terrorism unless the Board (which is constituted by the chairperson alone), is satisfied that there are exceptional reasons why the prisoner should be released.

Clause 7 – Section 12A amended

Section 12A of the SAA provides that the Board must give the Minister a written report about a Schedule 3 prisoner, regardless of whether or not a report has been given about the prisoner under section 12.

Clause 7 inserts a reference to new subsection 66G(1). As with clause 6 above, the effect of this amendment is that the report must not make a recommendation to the Governor to release a prisoner with links to terrorism unless the Board (which is constituted by the chairperson alone) is satisfied that there are exceptional reasons why the prisoner should be released.

Clause 8 – Section 12C inserted

The purpose of this clause is to insert new section 12C, with heading "References to Board", which defines references to the 'Board' for the purposes of Part 2, Division 4 of the SAA. It provides that the Board will be constituted by the chairperson alone when a prisoner with links to terrorism is being assessed for inclusion in a re-socialisation programme.

Clause 9 – Section 13 amended

Section 13 of the SAA provides the considerations for recommending a re-socialisation programme for Schedule 3 prisoners.

This clause amends subsection 13(5) and inserts new subsection 13(5B) to provide that, in the case of a Schedule 3 prisoner with links to terrorism who is subject to a Commissioner of Police report, the Board can only endorse a re-socialisation programme if the Board, after

having regard to the report, is satisfied that the prisoner is suitable for inclusion in the programme.

Subsection 13(5B) is only enlivened when a schedule 3 prisoner falls within the definition of a prisoner with links to terrorism and is subject to a Commissioner of Police report.

A Commissioner of Police report can be provided by the Commissioner of Police in accordance with subsection 66H(4) for the purposes of the Board's consideration of re-socialisation programmes.

Clause 10 – Section 14 amended

Section 14 of the SAA provides the considerations for recommending a re-socialisation programme for a prisoner who is not a Schedule 3 prisoner, or a prisoner sentenced to a fixed term of less than the length prescribed for the purposes of section 11A of the SAA. (Regulation 3A of the *Sentence Administration Regulations 2003* prescribes a length of 14 years in relation to a prisoner sentenced before 31 August 2003; and 9 years for a prisoner sentenced on or after 31 August 2003).

This clause amends subsection 14(5) and inserts new subsection 14(5A) to provide that in the case of a prisoner with links to terrorism who is subject to a Commissioner of Police report, the Board can only endorse a re-socialisation programme if, after having regard to the report, it is satisfied that the prisoner is suitable for inclusion in the programme.

Subsection 14(5A) is only enlivened when the prisoner falls within the definition of a prisoner with links to terrorism and is subject to a Commissioner of Police report.

A Commissioner of Police report can be provided by the Commissioner of Police in accordance with subsection 66H(4) for the purposes of the Board's consideration of re-socialisation programmes.

Clause 11 – Section 20 amended

Section 20 of the SAA contains the parole provisions relating to fixed term prisoners which require the Board to have regard to certain considerations when deciding whether to release a prisoner on parole.

This clause amends subsection 20(2)(aa) of the SAA to refer to the newly created subsection 66G(1). This amendment will direct the Board to the new requirements which provide that the Board must not release a prisoner with links to terrorism on parole unless the Board is satisfied that there are exceptional reasons why the prisoner should be released.

Clause 12 – Section 23 amended

Section 23 of the SAA relates to the consideration by the Board of a prisoner's eligibility to be released on parole in the case of short-term sentences.

The purpose of this clause is to amend subsection 23(2a)(aa) and 23(3) to refer to new subsection 66G(1). This amendment will direct the Board to the new requirements which provide that the Board must not release a prisoner with links to terrorism on parole unless the Board is satisfied that there are exceptional reasons why the prisoner should be released.

Clause 13 – Section 44 amended

Section 44 of the SAA provides that the Board *may* cancel a parole order at any time during the parole period.

This clause amends subsection 44(4) to provide that the exceptions to cancellation in relation to a parole order (unsupervised) do not apply when new section 67A is applicable. New section 67A relates to circumstances when the Board must cancel an early release order (explained below).

Clause 14 – Section 48 amended

Section 48 of the SAA requires the Board to notify the Minister as soon as practicable if a parole order made by the Governor is amended, suspended, or cancelled.

This clause amends subsection 48(1)(d) to provide that the Board (constituted by the chairperson alone), must also notify the Minister as soon as practicable if a parole order is cancelled in accordance with newly inserted section 67A.

Clause 15 – Section 52 amended

Section 52 of the SAA provides that the Board must consider the case of every prisoner who applies to be released under a re-entry release order.

This clause amends subsection 52(2) to refer to new subsection 66G(1). This amendment will direct the Board to the new requirements which provide that the Board must not make a re-entry release order in respect of a prisoner with links to terrorism, unless the board is satisfied that there are exceptional reasons why the order should be made.

Clause 16 – Part 5 Division 1B inserted

The purpose of clause 16 is to insert a new Division 1B, with heading “Prisoners with links to terrorism or subject to Commissioner of Police reports”, which introduces new provisions dealing with early release orders for prisoners with links with terrorism, or prisoners who are subject to Commissioner of Police reports.

Subdivision 1 – Preliminary

Clause 16 inserts Subdivision 1 to introduce defined terms that will be used for the purposes of new Division 1B.

Section 66D – Terms used

‘release action’ – Clause 16 inserts a definition of release action which is defined as the making of a parole order under subsection 23(3)(b) of the SAA.

‘release decision’ – Clause 16 inserts a definition of release decision to mean a decision to make a re-entry release order, a parole order, or to release a prisoner on parole (subject to certain requirements and provisions) under subsections 52(1)(a), 20(2) or 23(3)(a) of the SAA.

The term ‘early release order’ is used in the Bill and is already defined in the SAA to mean a parole order or a re-entry release order.

Subdivision 2 – Early release orders in cases of prisoners with links to terrorism

Clause 16 inserts Subdivision 2 to introduce the core provisions that give operational effect to the presumption against early release orders in relation to prisoners with links to terrorism.

Section 66E – References to Board

Clause 16 inserts section 66E to define the Board for the purposes of Subdivision 2. It provides that the Board will be constituted by the chairperson alone when making a release decision, or taking a release action, for prisoners with links to terrorism, and when considering a Commissioner of Police report that contains terrorist intelligence information.

Section 66F – Additional release considerations

Section 66F is inserted by clause 16 to set out the ‘additional release considerations’ that must be taken into account by the Board in respect to a prisoner with links to terrorism (subsection 66G(2)(c)) and that must be dealt with in a Commissioner of Police report (subsection 66H(2)).

Section 66G – Making early release orders

Clause 16 inserts section 66G which is the core operative provision of the Bill giving effect to the presumption against early release orders for prisoners with links to terrorism. It provides that the Board must not make a release decision or take release action unless satisfied that there are exceptional reasons why the prisoner with links to terrorism should be released.

The Board must have regard to specific matters (including additional release considerations) set out in subsection 66G(2) when determining whether exceptional reasons exist. These matters do not limit the matters to which the Board may have regard when making a release decision or taking release action. For example, the Board may appoint a person with relevant knowledge or experience to provide a report, advice, or professional services to assist the Board in this task.

The Board must not have regard to a Commissioner of Police report if it has been withdrawn under new subsection 66I(2).

The Board as normally constituted would consider early release if the prisoner is found by the Board (constituted by the chairperson alone) not to be a prisoner with links to terrorism, or the Commissioner of Police report has been found not to contain terrorist intelligence information.

Section 66H – Commissioner of Police reports

Clause 16 inserts section 66H which introduces the concept of a Commissioner of Police report. These reports are provided to the Board and must deal with the additional release considerations and other matters in respect of a prisoner with links to terrorism as set out in subsection 66H(2). ‘Terrorist intelligence information’ contained within the report may be declared as such by the Commissioner.

Under subsection 66H(1) the Board is required to request a Commissioner of Police report when considering whether to make a release decision, or take release action for a category 1 prisoner, and in accordance with subsection 66H(3), the Commissioner of Police must give the Board the report within a reasonable amount of time.

Under subsection 66H(4) the Commissioner of Police has the discretion to give the Board a report in relation to any other prisoner; this can include prisoners who have already been released, or prisoners who are being considered for a re-socialisation programme.

Section 66I – Withdrawing Commissioner of Police reports

Clause 16 inserts section 66I, which applies if the Board (constituted by the chairperson alone) is satisfied that a prisoner who is the subject of a Commissioner of Police report is not a prisoner with links to terrorism, or that the report does not include terrorist intelligence information.

Where the Board forms a view that the report does not contain terrorist intelligence information, it must first consult with the Commissioner of Police before making a final determination. This provides the Commissioner of Police an opportunity to further explain why a declaration was made under subsection 66H(2)(b).

If either of the circumstances under subsection 66I(1) apply, the Board must give the Commissioner of Police an opportunity to withdraw the report prior to making a release decision or taking release action. Where the Commissioner of Police withdraws the report, the Board must not use any information in the report to inform its early release consideration and must prohibit the publication of, or a reference to, the report.

Subdivision 3 – Early release orders for other prisoners subject to Commissioner of Police reports

Clause 16 inserts Subdivision 3 to introduce provisions that deal with early release orders for prisoners who do not have links to terrorism but are subject to a Commissioner of Police report. Subdivision 3 provides ongoing protection over terrorist intelligence information that is contained within a Commissioner of Police report in the situation where the prisoner does not fall within the definition of a prisoner with links to terrorism.

Section 66J – Terms used: prisoner

‘**prisoner**’ – Clause 16 inserts a definition of ‘prisoner’ for the purposes of Subdivision 3. The effect of the definition is that Subdivision 3 applies only when dealing with a prisoner who does not fall under the definition of a prisoner with links to terrorism.

Section 66K – Releasing prisoners subject to Commissioner of Police report on parole

Clause 16 inserts section 66K, which applies when the Board is required to consider whether to release a prisoner on parole under subsection 20(1) of the SAA, where the prisoner does not fall within the definition of a prisoner with links to terrorism, but is subject to a Commissioner of Police report, which the Board (constituted by the chairperson alone) is satisfied includes terrorist intelligence information.

The intent of section 66K is to provide that the consideration of whether to release the above type of prisoner on parole will be undertaken by the chairperson alone. This protects terrorist intelligence information from disclosure to the whole of the Board.

Section 66L – Making parole order in respect of prisoner subject to Commissioner of Police report

Clause 16 inserts section 66L, which applies when the Board is required to decide whether to make a parole order in respect of a prisoner under subsection 23(3)(a) of the SAA, who does not fall within the definition of a prisoner with links to terrorism, but is subject to a Commissioner of Police report, which the Board (constituted by the chairperson alone) is satisfied includes terrorist intelligence information.

The intent of section 66L is to provide that the decision to make a parole order for the above type of prisoner will be made by the chairperson alone. This protects terrorist intelligence information from disclosure to the whole of the Board.

Section 66M – Making RRO in respect of prisoners subject to Commissioner of Police report

Clause 16 inserts section 66M, which applies when the Board is required to consider whether to make, or defer the making of, a re-entry release order in respect of a prisoner under subsection 52(1) of the SAA, who does not fall within the definition of a prisoner with links to terrorism, but is subject to a Commissioner of Police report, which the Board (constituted by the chairperson alone) is satisfied includes terrorist intelligence information.

The intent of section 66M is to provide that the decision to make, or defer the making of, a re-entry release order for the above type of prisoner will be by the chairperson alone. This protects terrorist intelligence information from disclosure to the whole of the Board.

Clause 17– Section 67A inserted

Clause 17 inserts section 67A, with heading “Cancellation automatic in case of prisoner with links to terrorism”, into Part 5 Division 2 of the SAA. Section 67A introduces the requirement that the Board must automatically cancel an early release order for a prisoner with links to terrorism who, during the period the prisoner is subject to the early release order:

- (i) is charged with or convicted of a terrorism offence, or an offence under section 80.2C(1) of the Commonwealth Criminal Code; or
- (ii) becomes subject to an interim or confirmed control order; or
- (iii) is a prisoner for whom an interim control order is being sought under section 104.3 of the Commonwealth Criminal Code; or
- (iv) becomes subject to a Commissioner of Police report and who the Board is satisfied has made statements or carried out activities that support, or advocate support for, terrorist acts.

Cancellation must also occur in respect of a prisoner who the Board is satisfied was a category 1 or category 2 prisoner at the time that the early release order was made, and this fact was not known by the person who made the order at the time the order was made.

The Board is to be constituted by the chairperson alone for the purposes of this section, to protect terrorist intelligence information from being disclosed to the whole of the Board.

Clause 18 – Section 71 amended

Provisions within section 71 of the SAA set out how time served is calculated when an early release order is cancelled after a prisoner is released.

The intent of this clause is to amend subsection 71(3)(b) to additionally include reference to newly inserted section 67A (automatic cancellation for prisoners with links to terrorism). The effect of this amendment will be to provide a method of calculating the day when an early release order is cancelled under section 67A, for the purposes of subsection 71(1). Subsection 71(3)(b) will now provide that, where cancelled by virtue of section 67 of the SAA, or newly inserted subsection 67A(2), an early release order will be considered cancelled on:

- (i) the day when the offence that resulted in the charge or conviction was committed;
or

- (ii) the day when the prisoner became subject to the interim control order or confirmed control order; or
- (iii) the day when the interim control order or confirmed control order was sought in respect of a prisoner; or
- (iv) the day when the Board's decision that resulted in the cancellation was made.

Due to the re-structure of this provision, clause 18 deletes the current subsection 71(3)(b)(ii) and replaces it with subsection (3A), to provide that if the day the *offence* was committed under subsection 71(3)(b)(i) cannot be ascertained – the day is taken to be the latest day on which that offence could have been committed, as determined by the CEO.

Clause 19 – Section 72 amended

Section 72 of the SAA provides that the Board may make a subsequent early release order for a prisoner whose previous order was cancelled by the Board under sections 43, 44, 63, or by virtue of section 67 of the SAA. The decision to make a subsequent early release order is subject to Parts 3 and 4.

The intent of this clause is to amend subsection 72(1)(b) to additionally include reference to newly inserted subsection 67A(2).

Clause 20 – Section 73 amended

Section 73 of the SAA provides that the Governor may make a subsequent early release order for a prisoner whose previous order was cancelled under sections 43, 44, or by virtue of section 67 of the SAA.

The intent of this clause is to amend subsection 73(1) to additionally include reference to newly inserted subsection 67A(2). This amendment will provide that the Governor may subsequently make another early release order in respect of a prisoner with links to terrorism, whose previous order was cancelled.

Clause 21 – Section 108 amended

Section 108 of the SAA relates, in part, to the arrangements for the signing of orders issued by the Board. It provides that an order giving an effect to a decision made by the Board is to be signed by two members.

Clause 21 inserts an exception to this in new subsection 108(2A) and amends subsection 108(2) to refer to the exception. New subsection 108(2A) provides that an order giving effect to a decision made, or action taken, by the Board under Part 5 Division 1B or section 67A must be signed by the chairperson alone.

The above amendments will ensure the protection of terrorist intelligence information.

Clause 22 – Section 112A inserted

Section 112 of the SAA provides that the Board is required to report annually to the Minister and stipulates the information that is to be included within that annual report.

Clause 22 inserts new section 112A, with heading "Information to be excluded from annual reports".

Subsection 112A(8) requires the following information to be included within the annual report (referred to as notifiable information), unless the Attorney General gives a direction to exclude information under 112A(5):

- (a) the number of release decisions made, and release actions taken, under Part 5 Division 1B during the previous financial year;
- (b) the number of times the Board refused to make a release decision, or to take release action, under Part 5 Division 1B during the previous financial year; and
- (c) the number of early release orders cancelled under subsection 67A(2) during the previous financial year.

Definitions are provided at subsection 112A(1) for 'release action', 'release decision', 'protected information' and 'sensitive information'. The definition of 'sensitive information' is wider than the definition of 'terrorist intelligence information', as it is not restricted to a 'prohibited act'.

New subsection 112A(2) ensures that when there were no relevant decisions made by the chairperson during the financial year, the requirements under section 112A do not apply.

Where the section applies, then in accordance with subsection 112A(3), before giving an annual report for the financial year, the chairperson must notify the Commissioner of Police and the Attorney General of the number of decisions that were made in relation to the abovementioned information set out in paragraphs (a)-(c).

Under subsection 112A(4) the Commissioner of Police is required to advise the Attorney General if, in the Commissioner's opinion, some or all of the information is, or is likely to be, sensitive information.

Subsection 112A(5) provides that if satisfied that some or all of the notifiable information is protected or sensitive information, the Attorney General must direct the chairperson to exclude the information from the annual report and insert a statement in the report to disclose that information has been excluded from the report.

The chairperson of the Board must comply with a direction from the Attorney General as per subsection 112A(6). Subsection 112A(7) provides confirmation that the Attorney General may obtain legal advice to assist with determining whether or not the notifiable information is sensitive or protected.

Clause 23 – Section 115 amended

Section 115 of the SAA sets out when the rules of natural justice (including any duty or procedural fairness) do not apply to or in relation to the commission of any act, matter, or thing under the SAA.

The intent of clause 23 is to amend section 115 to ensure that this section applies to prisoners with links to terrorism, by capturing terrorism related definitions within Part 1 of the SAA.

Clause 24 – Section 115A amended

Section 115A of the SAA describes the types of decisions made by the Board which are reviewable or not reviewable, and sets out the requirements for requesting reviews, the grounds for review and other relevant matters.

Clause 24 amends subsection 115A(4), which is the subsection dealing with non-reviewable decisions, to additionally provide that decisions by the chairperson alone, which relate to early release orders and re-socialisation programmes for prisoners with links to terrorism (as provided within newly inserted subsection 67A(2) and Division 1B within Part 5), are non-reviewable decisions.

These decisions can however be reconsidered in accordance with new section 115B.

Clause 25 – Section 115B inserted

Clause 25 inserts a new section 115B with heading “Decisions made by Board as constituted by chairperson alone may be reconsidered”. This new section is inserted in order to allow the chairperson to reconsider his or her own decision. This differs from a review under section 115A where the chairperson may review a Board decision.

Subsection 115B(2) will allow the Board, constituted by the chairperson alone, on request from a relevant prisoner, to reconsider decisions in relation to early release orders and re-socialisation programmes for prisoners with links to terrorism (as provided by newly inserted subsection 67A(2) and Division 1B in Part 5).

Subsections 115B(3) and (4) set out the requirements for a request for reconsideration and the grounds and mirror the similar provisions in section 115A.

Subsections 115B(5) and (6) require the chairperson to consider the submission, reconsider the decision and give the applicant written notice of any decision made. There is no provision that allows the chairperson to delegate the reconsideration function.

Subsection 115B(7) provides that any decision made under subsections 115B(5) is not subject to further reconsideration.

Clause 26 – Sections 119A to 119C inserted

Clause 26 inserts new sections 119A – 119C to protect terrorist intelligence information that is contained within a Commissioner of Police report.

Section 119A – Protection of Commissioner of Police reports that may be withdrawn

Clause 26 inserts new section 119A to provide the Commissioner of Police the opportunity to withdraw a report in circumstances when it has been determined by the Board (constituted by the chairperson alone), that a Commissioner of Police report does not contain terrorist intelligence information, or does not relate to a prisoner with links to terrorism.

Subsection 119A(1) provides that a reference to the Board is a reference to the Board as constituted by the chairperson alone for the purposes of section 119A.

Subsection 119A(2) stipulates that section 119A applies in circumstances where the Board must give the Commissioner of Police the opportunity to withdraw a report in accordance with subsection 66I(2).

Subsection 119A(3) requires the Board to take all reasonable steps to prohibit the publication of, or a reference to, the Commissioner of Police report, until the Commissioner of Police has been given a reasonable opportunity to withdraw the report.

Section 119B – Protection of Commissioner of Police reports containing terrorist intelligence information

Clause 26 inserts new section 119B to provide protections to restrict disclosure of Commissioner of Police reports.

Subsection 119B(1) provides that a reference to the Board is a reference to the Board as constituted by the chairperson alone for the purposes of section 119B.

Subsection 119B(2) requires the Board to take all reasonable steps, including steps set out in subsections 119B(2)(a)-(c), to maintain the confidentiality of a Commissioner of Police report that the Board is satisfied contains terrorist intelligence information.

Subsection 119B(3) provides that despite subsection 119(2), the Board may give the Commissioner of Police report to the Attorney General, a court, or a person to whom the Board authorises disclosure.

Subsection 119B(4) requires the Board to notify the Commissioner of Police in writing of the Board's intention to give the Commissioner of Police report to a court, or any other person authorised by the Board.

Section 119C – Protection of terrorist intelligence information in legal proceedings

Clause 26 inserts new section 119C to prevent the disclosure of terrorist intelligence information contained within a Commissioner of Police report in legal proceedings.

Subsection 119C(1) introduces definitions of 'court' and 'disclosure requirement' for the purposes of section 119C.

Subsection 119C(2) requires the court, in any legal proceeding relating to, or requiring the disclosure of information contained within a Commissioner of Police report, to comply with the disclosure restrictions set out in subsections 119C(2)(a)-(d). Subsection 119C(2) only applies to information contained within the Commissioner of Police report that the court is satisfied is terrorist intelligence information.

Subsection 119C(3) provides that before the court makes a determination regarding whether information contained in the Commissioner of Police report is terrorist intelligence information, the court must give the Commissioner of Police the opportunity to be heard by, or to make written submissions to the court. This requirement is inserted as a safeguard to provide the Commissioner of Police with an opportunity to be heard if the Commissioner has concerns with the proposed disclosure.

It is expected that a prosecutor will need to make application to the court under section 138 of the *Criminal Procedure Act 2004* where protection of terrorist intelligence information is required. Subject to the court's satisfaction, it is intended that the court would make an order for non-disclosure in accordance with this new provision.

Clause 27 – section 120A inserted

Clause 27 inserts new section 120A with heading "Delegation by Commissioner of Police" to provide the Commissioner of Police the power to delegate in writing any of the Commissioner's powers or duties under the SAA to a police officer of or above the rank of Commander.

Subsection 120A(3) provides that a police officer to whom the power or duty is delegated, cannot delegate that power or duty to any other person.

Clause 28 – Schedule 1 clause 5 amended

Clause 5 of Schedule 1 of the SAA sets out requirements that must be adhered to when the Board meets. Clause 5 specifies the number and type of members required to constitute the Board for its meetings.

Clause 28 inserts new subclause 5(1A) to provide that clause 5 does not apply in relation to a meeting of the Board held for the purpose of prisoners with links to terrorism, or prisoners subject to a Commissioner of Police report that contains terrorist intelligence information (as provided by newly inserted section 67A and Division 1B in Part 5).

The purpose of the amendment is to accommodate the newly inserted sections of the Bill that require release actions and release decisions in the above circumstances, to be considered by the Board constituted by the chairperson alone.

Part 3 – *Young Offenders Act 1994* amended

Clause 29 – Act amended

This clause provides that Part 3 of the Act will amend the *Young Offenders Act 1994* (YOA).

Clause 30 – Section 3 amended

Clause 30 inserts definitions into section 3 of the YOA to support the application of a presumption against supervised release orders for offenders with links to terrorism.

‘category 1 offender’ – Clause 30 inserts a definition of a ‘category 1 offender’ to define one type of offender who will be regarded as an ‘offender with links to terrorism’.

This definition will capture an offender who has been charged with or convicted of a past or current terrorism offence; is subject to, or has been subject to, an interim or confirmed control order; or is an offender for whom an interim control order is being sought. If an offender’s terrorism charge is dismissed or discontinued, the offender is no longer captured under this definition.

The meaning of ‘has been charged with’ reflects a current charge and does not cover historical charges.

The definition captures an offender who has been subject to an interim or confirmed control order at any time during the period of the offender’s current sentence, or the period of 4 years ending on the day on which the offender’s current sentence begins, or is taken to have begun.

‘category 2 offender’ – Clause 30 inserts a definition of a ‘category 2 offender’ to define a further type of offender who will be regarded as an ‘offender with links to terrorism’. This definition captures an offender who has been charged with, or convicted of, a past or current offence against the Commonwealth Criminal Code section 80.2C(1) – which provides offences for persons who advocate the doing of a terrorist act or the commission of a terrorism offence. A person advocates if the person counsels, promotes, encourages, or urges the doing of a terrorist act or the commission of a terrorism offence.

If an offender's charge is dismissed or discontinued, the offender is no longer captured under this definition. The meaning of 'has been charged with' reflects a current charge and does not cover historical charges.

'chairperson' – Clause 30 inserts a definition of 'chairperson' to mean a person appointed under section 152(1)(a) of the YOA as a chairperson of the Supervised Release Review Board (SRRB).

'Commissioner of Police report' – Clause 30 inserts a definition of a 'Commissioner of Police report' to mean a written report referred to in subsections 150D(1) or (4).

The SRRB is required to make a written request for a Commissioner of Police report when considering whether to order the release of a 'category 1 offender' (subsection 150D(1)).

The Commissioner of Police may also give to the SRRB such a report in relation to any offender (subsection 150D(4)).

'Commonwealth Criminal Code' – Clause 30 inserts a definition of Commonwealth Criminal Code to mean the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* (Commonwealth). This term is used throughout the Bill for the purpose of other newly inserted definitions such as 'confirmed control order', 'interim control order', 'offender with links to terrorism' and 'terrorism offence'.

'confirmed control order' – Clause 30 inserts a definition of 'confirmed control order' to have the same meaning given in the Commonwealth Criminal Code section 100.1(1).

This definition has been provided for the purposes of determining a 'category 1 offender'.

'interim control order' – Clause 30 inserts a definition of 'interim control order' to have the same meaning given in the Commonwealth Criminal Code section 100.1(1).

This definition has been provided for the purposes of determining a 'category 1 offender'.

'offender with links to terrorism' – Clause 30 inserts a definition of an 'offender with links to terrorism', to identify offenders for whom the presumption against supervised release orders will apply.

The definition is intended to capture an offender who is a 'category 1 offender'; and a 'category 2 offender' who is the subject of a Commissioner of Police report. It also captures an offender who is subject to a Commissioner of Police report, where the SRRB (constituted by the chairperson alone) is satisfied, having regard to the report, that the offender has made statements or carried out activities that support, or advocated support for, terrorist acts.

Section 80.2C(1) of the Commonwealth Criminal Code, which applies to 'category 2 offenders', does not have the requisite element of 'action' or 'threat of action' which is used to define a 'terrorist act' and as such, the SRRB relies on the provision of a Commissioner of Police report before designating this category of offender as an 'offender with links to terrorism'.

'terrorism offence' – Clause 30 inserts a definition of a 'terrorism offence' to capture specific Commonwealth terrorism offences. The definition additionally provides a general provision to capture terrorism offences in a law of the Commonwealth, another State, Territory, or country that substantially corresponds to the listed relevant Commonwealth terrorism offences. The definition also includes offences of attempting, inciting or conspiring to commit an offence.

This term is used throughout the Bill and in other newly inserted definitions such as ‘category 1 offender’ and ‘terrorist intelligence information’.

‘terrorist act’ – Clause 30 inserts a definition of ‘terrorist act’ to have the meaning given in the *Terrorism (Commonwealth Powers) Act 2002* section 3 – which includes an action that is done, or a threat that is made, with the intention of advancing a political, religious or ideological cause through coercing or influencing by intimidation.

This term is used throughout the Bill and in other newly inserted definitions such as ‘offenders with links to terrorism’ and ‘prohibited act’ (inserted at new section 3(2) and explained below) for the purpose of ‘terrorist intelligence information’.

‘terrorist intelligence information’ – Clause 30 inserts a definition of ‘terrorist intelligence information’. This definition is created for the purposes of provisions in the Bill aimed at protecting such information.

Clause 30 additionally provides a definition of **‘prohibited act’** at proposed new section 3(2) for the purpose of the ‘terrorist intelligence information’ definition. The definition limits information that can be considered ‘terrorist intelligence information’ to information that relates to the following prohibited acts:

- a terrorism offence;
- an offence against the Commonwealth Criminal Code section 80.2C(1); or
- a terrorist act (whether in this State or elsewhere).

Clause 31 – Sections 16B to 16D inserted

Clause 31 inserts new sections 16B – 16D to protect ‘terrorist intelligence information’ that is contained within a Commissioner of Police report.

Section 16B – Protection of Commissioner of Police reports that may be withdrawn

Clause 31 inserts new section 16B to provide the Commissioner of Police the opportunity to withdraw a report in circumstances where it has been determined by the SRRB (constituted by the chairperson alone), that a Commissioner of Police report does not contain terrorist intelligence information, or does not relate to an offender with links to terrorism.

Subsection 16B(1) provides that a reference to the SRRB is a reference to the SRRB as constituted by the chairperson alone for the purposes of section 16B.

Subsection 16B(2) stipulates that section 16B applies in circumstances where the SRRB must give the Commissioner of Police the opportunity to withdraw a report in accordance with subsection 150E(2).

Subsection 16B(3) requires the SRRB to take all reasonable steps to prohibit the publication of, or a reference to, the Commissioner of Police report, until the Commissioner of Police has been given a reasonable opportunity to withdraw the report.

Section 16C – Protection of Commissioner of Police reports containing terrorist intelligence information

Clause 31 inserts new section 16C to provide protections to restrict the disclosure of Commissioner of Police reports containing terrorist intelligence information.

Subsection 16C(1) provides that a reference to the SRRB is a reference to the SRRB as constituted by the chairperson alone for the purposes of section 16C.

Subsection 16C(2) requires the Board to take all reasonable steps, including steps set out in subsections 16C(2)(a)-(c) to maintain the confidentiality of a Commissioner of Police report that the SRRB is satisfied contains terrorist intelligence information.

Subsection 16C(3) provides that despite subsection 16C(2), the SRRB may give the Commissioner of Police report to the Attorney General, a court, or a person to whom the SRRB authorises disclosure.

Subsection 16C(4) requires the SRRB to notify the Commissioner of Police in writing of the SRRB's intention to give the Commissioner of Police report to a court, or any other person authorised by the SRRB.

Section 16D – Protection of terrorist intelligence information in legal proceedings

Clause 31 inserts new section 16D to prevent the disclosure of terrorist intelligence information contained within a Commissioner of Police report in legal proceedings.

Subsection 16D(1) introduces definitions of 'court' and 'disclosure requirement' for the purposes of section 16D.

Subsection 16D(2) requires the court, in any legal proceeding relating to, or requiring the disclosure of information contained within a Commissioner of Police report, to comply with the disclosure restrictions set out in subsections 16D(2)(a)-(d). Subsection 16D(2) only applies to that information contained within the Commissioner of Police report that the court is satisfied is terrorist intelligence information.

Subsection 16D(3) provides that before the court makes a determination regarding whether information contained in the Commissioner of Police report is terrorist intelligence information, the court must give the Commissioner of Police the opportunity to be heard by, or to make written submissions to the court. This requirement is inserted as a safeguard to provide the Commissioner of Police with an opportunity to be heard if the Commissioner has concerns with the proposed disclosure.

It is expected that a prosecutor will need to make application to the court under section 138 of the *Criminal Procedure Act 2004* where protection of terrorist intelligence information is required. Subject to the court's satisfaction, it is intended that the court would make an order for non-disclosure in accordance with this new provision.

Clause 32 – Section 132 amended.

Section 132 of the YOA relates to the making, by the SRRB, of supervised released orders for offenders.

This clause amends subsection 132(1) to provide that newly inserted Division 2A is an exception to subsection 132(1), which provides that the SRRB may order the release of an offender. The amendment will direct the Board to the new requirements within Division 2A,

providing that the SRRB must not make a supervised release order for an offender with links to terrorism, unless the SRRB is satisfied that there are exceptional reasons why the offender should be released.

Division 2A additionally sets requirements that the SRRB must follow when dealing with other offenders who do not fall within the definition of a prisoner with links to terrorism but are subject to Commissioner of Police reports.

Clause 33 – Section 142 amended

Section 142 of the YOA provides that the SRRB may cancel or amend a supervised release order at any time, in accordance with specified requirements.

This clause amends subsection 142(1) to provide that the exceptions to cancellation in relation to a supervised release order do not apply when new section 142A is applicable. New section 142A relates to circumstances when the Board must cancel a supervised release order (explained below).

Clause 34 – Section 142A and 142B inserted

Section 142A – Cancellation automatic in case of offender with links to terrorism.

Clause 34 inserts section 142A, which introduces the requirement that the SRRB must automatically cancel a supervised release order for an offender with links to terrorism who, during the period the offender is subject to a supervised release order:

- (i) is charged with or convicted of a terrorism offence, including an offence under section 80.2C(1) of the Commonwealth Criminal Code; or
- (ii) becomes subject to an interim or confirmed control order; or
- (iii) is an offender for whom an interim control order is being sought under section 104.3 of the Commonwealth Criminal Code; or
- (iv) becomes subject to a Commissioner of Police report and is a person who the SRRB is satisfied has made statements or carried out activities that support, or advocate support for, terrorist acts.

Cancellation must also occur in respect of an offender who the Board is satisfied, at the time that the supervised release order was made, was a category 1 or category 2 offender, and this fact was not known by the person who made the order at the time the order was made.

The SRRB is to be constituted by the chairperson alone for the purposes of this section, to protect terrorist intelligence information from being disclosed to the whole of the SRRB.

Section 142B – Supervised release order, when cancellation under section 142A takes effect.

Clause 34 inserts section 142B to stipulate when cancellation of a supervised release order is to take effect under section 142A(2). Section 142B is inserted to provide a method of calculating the day when a supervised release order is cancelled under section 142A(2), for the purposes of subsection 149(4) of the YOA. Section 142B(1) will provide that an early release order under section 142A(2) is taken to be cancelled:

- (i) if the cancellation results from a charge or conviction – on the day when the offence that resulted in the charge or conviction was committed; or

- (ii) if the cancellation results from an offender becoming subject to the interim control order or confirmed control order – on the day when the offender became subject to the order; or
- (iii) if the cancellation results from an interim control order or confirmed control order being sought in respect of an offender – on the day when the order was sought; or
- (iv) if the cancellation results from a decision by the Board - the day when the decision was made.

Section 142B(2) additionally provides that if the day the offence was committed under subsection 142B(1)(a) cannot be ascertained – the day is taken to be the latest day on which that offence could have been committed, as determined by the CEO.

Clause 35 – Section 149 amended.

Clause 35 will amend section 149 of the YOA to insert a reference to newly created subsection 142A(2). The effect of this amendment is that if the CEO cancels a supervised release order under section 142A(2), the CEO is to issue a warrant for the offender to be apprehended and returned to the custody from which the offender was released under the order.

Clause 36 – Part 8 Division 2A inserted

The purpose of clause 36 is to insert a new Division 2A with heading “Offenders with links to terrorism or subject to Commissioner of Police reports”, which introduces provisions dealing with supervised release orders for offenders with links with terrorism, or offenders who are subject to Commissioner of Police reports.

Subdivision 1 – Preliminary

Clause 36 inserts Subdivision 1 to introduce ‘release considerations’ that will be used for the purposes of new Division 2A.

Section 150A – Release considerations

Section 150A is inserted by clause 36 to set out the ‘release considerations’ that must be taken into account by the SRRB in respect to an offender with links to terrorism (subsection 150C(2)(c)(i)) and that must be dealt with in a Commissioner of Police report (subsection 150D(2)).

Subdivision 2 – Supervised release orders in cases of offenders with links to terrorism

Clause 36 introduces Subdivision 2 to introduce the core provisions that give operational effect to the presumption against supervised release in relation to offenders with links to terrorism.

Section 150B – References to Board

Clause 36 inserts section 150B to define the SRRB for the purposes of Subdivision 2. It provides that the SRRB will be constituted by the chairperson alone when considering a supervised release order for offenders with links to terrorism, and when considering a Commissioner of Police report that contains terrorist intelligence information.

Section 150C – Making supervised release orders

Clause 36 inserts section 150C which is the core operative provision of the Bill to give effect to the presumption against a supervised release order for offenders with links to terrorism. It

provides that the SRRB must not make a supervised release order unless satisfied that there are exceptional reasons why the offender with links to terrorism should be released.

The SRRB must have regard to specific matters (including release considerations) set out in subsection 150C(2) when determining whether exceptional reasons exist. These matters do not limit the matters to which the SRRB may have regard when making a decision.

The SRRB is not required to apply the general principles of juvenile justice referred to in subsections 7(h) and (k) of the YOA when making a decision under subsection 150C(1).

Subsection 150C(4) provides that the SRRB must not have regard to a Commissioner of Police report if it has been withdrawn under new subsection 150E(2) (explained below).

The SRRB as normally constituted would consider supervised release if the SRRB (constituted by the chairperson alone) finds that the offender does not fall within the definition of an offender with links to terrorism, or the Commissioner of Police report has been found not to contain terrorist intelligence information.

Section 150D – Commissioner of Police reports

Clause 36 inserts section 150D which introduces the concept of a Commissioner of Police report which is provided to the SRRB and must deal with release considerations and other matters in respect to an offender with links to terrorism as set out in subsection 150D(2). 'Terrorist intelligence information' contained within the report may be declared as such by the Commissioner.

Under subsection 150D(1) the SRRB is required to request a Commissioner of Police report when considering whether to make a release order for a category 1 offender, and in accordance with subsection 150D(3), the Commissioner of Police must give the SRRB the report within a reasonable amount of time.

Under subsection 150D(4), the Commissioner of Police has the discretion to give the SRRB a report in relation to any other offender, this can include offenders who have already been released.

Section 150E – Withdrawing Commissioner of Police reports

Clause 36 inserts section 150E, which only applies if the SRRB (constituted by the chairperson alone), is satisfied that the offender who is the subject of a Commissioner of Police report is not an offender with links to terrorism, or the report does not include terrorist intelligence information.

Where the SRRB forms a view that the report does not contain terrorist intelligence information, it must first consult with the Commissioner of Police before making a final determination. This provides the Commissioner of Police an opportunity to further explain why a declaration was made under new subsection 150D(2).

If either of the circumstances under subsection 150E(1) apply, the SRRB must give the Commissioner of Police an opportunity to withdraw the report prior to deciding whether to release the offender. Where the Commissioner of Police withdraws the report, the SRRB must not use any information in the report to inform its decision and must prohibit the publication of, or a reference to, the report in accordance with subsection 150E(3).

Subdivision 3 – Supervised release orders for other offenders subject to Commissioner of Police reports

Clause 36 inserts Subdivision 3 to introduce section 150F that deals with supervised release orders for offenders who do not have links to terrorism but are subject to a Commissioner of Police report. Subdivision 3 provides ongoing protection over terrorist intelligence information contained within a Commissioner of Police report in the situation where the offender does not fall within the definition of an offender with links to terrorism.

Section 150F – Releasing offender subject to Commissioner of Police report under supervised release order

‘offender’ – Clause 36 inserts a definition of offender for the purposes of section 150F. The effect of the definition is that this section applies only when dealing with an offender who does not fall under the definition of an offender with links to terrorism.

Section 150F applies when the SRRB is required to consider whether to release an offender on a supervised release order under section 132 of the YOA, who does not fall within the definition of an offender with links to terrorism, but is subject to a Commissioner of Police report, which the SRRB (constituted by the chairperson alone), is satisfied includes terrorist intelligence information.

The intent of section 150F is to provide that the consideration to release the above type of offender on a supervised release order will be undertaken by the chairperson alone and in accordance with Division 2 (subsection 150F(3)). This is to protect terrorist intelligence information from disclosure to the whole of the SRRB.

Subdivision 4 – Review

Clause 36 inserts Subdivision 4 to introduce section 150G, which will require the operation and effectiveness of newly inserted Division 2A to be reviewed.

Section 150G – Review of Division

Clause 36 inserts section 150G to provide that the Minister must review the operation and effectiveness of Division 2A and prepare a report based on the review as soon practicable after the 5th anniversary of the commencement of the *Sentencing Legislation Amendment (Persons Linked to Terrorism) Act 2021* and in intervals of not more than five years after that (subsection 150G(1)).

In accordance with subsection 150G(2), the Minister must cause the report to be laid before each house of Parliament as soon as practicable after it is prepared, but not later than 12 months after the fifth anniversary, or the expiry of the period of five years.

Clause 37 – Section 157 amended

Subsection 157(1) of the YOA provides that three members are required to be present during a meeting of the SRRB to constitute a quorum.

Clause 37 inserts subsection 157(2) to provide that subsection 157(1) does not apply when a meeting of the SRRB is held to make decisions for the purposes of sections 16B, 142A, or Part 8 Division 2A and the meeting must be constituted by the chairperson alone.

The above amendments will ensure the protection of terrorist intelligence information.

Clause 38 – Section 165A inserted

Section 165 of the YOA provides that the SRRB is required to report annually to the Minister and stipulates the information that is to be included within that annual report.

Clause 38 inserts new section 165A titled “Information to be excluded from annual reports”.

Subsection 165A(8) requires the following information to be included within the annual report (referred to as notifiable information), unless the Minister gives a direction to exclude information under subsection 165A(5):

- (a) the number of supervised release orders made under Part 8 Division 2A during the previous financial year;
- (b) the number of times the SRRB refused to make a supervised release order, under Part 8 Division 2A during the previous financial year; and
- (c) the number of supervised release orders cancelled under section 142A during the previous financial year.

Definitions are provided at subsection 165A(1) for ‘protected information’ and ‘sensitive information’. The definition of ‘sensitive information’ is wider than the definition of ‘terrorist intelligence information’, as it is not restricted to a prohibited act.

New subsection 165A(2) ensures that when there are no relevant decisions made by the chairperson during the financial year, the requirements under section 165A do not apply.

Where the section applies, then in accordance with subsection 165A(3), before giving an annual report for the financial year, the chairperson is required to notify the Commissioner of Police and the Minister of the number of decisions that were made in relation to the abovementioned information set out in paragraphs (a)–(c).

In accordance with subsection 165A(4) the Commissioner of Police must advise the Minister if, in the Commissioner’s opinion, some or all the information is, or is likely to be, sensitive information.

Subsection 165A(5) provides that if satisfied that some or all of the notifiable information is protected or sensitive information, the Minister must direct the chairperson to exclude the information from the annual report and insert a statement in the report to disclose that information has been excluded from the report.

The chairperson of the SRRB must comply with a direction from the Minister as per subsection 165A(6). Subsection 165A(7) provides confirmation that the Minister may obtain legal advice to assist with determining whether or not the notifiable information is sensitive or protected.

Clause 39 – Section 197A inserted

Clause 39 inserts new section 197A titled “Delegation by Commissioner of Police” to provide the Commissioner of Police the power to delegate in writing, any of the Commissioner’s powers or duties under the YOA to a police officer of or above the rank of Commander.

Subsection 197A(3) provides that a police officer to whom the power or duty is delegated, cannot delegate that power or duty to any other person.

Clause 40 – Various references to "Chairman" amended

Clause 40 is administrative in nature and amends sections 152(1)(a), 152(5), 154(3), 156, 158(1), 158(2) and 160(2) of the YOA, by replacing the term 'Chairman' with the term 'chairperson'.

Part 4 – *Criminal Procedure Act 2004* amended

Clause 41 – Act amended

This clause provides that Part 4 of the Act will amend the *Criminal Procedure Act 2004* (CPA).

Clause 42 – Section 35 amended

Section 35 of the CPA provides initial disclosure obligations for a prosecutor. These initial disclosure obligations are subject to any orders (including non-disclosure orders) that may be made under section 138 of the CPA.

Clause 42 amends subsection 35(2) to provide that the initial disclosure obligations are additionally subject to subsections 119C(2)(a) of the SAA and 16D(2)(a) of the YOA. The intent of this amendment is to ensure the prosecutor does not disclose 'terrorist intelligence information' without first applying for a non-disclosure order under section 138 of CPA.

Clause 43 – Section 137A amended

Section 137A of the CPA provides exceptions for the full disclosure obligations that are provided for pre-trials, indictable offences, and simple or either way offences.

Clause 43 amends section 137A to insert subsections 137A(aa) and (ab) to provide that the above full disclosure obligations are additionally subject to subsections 119C(2)(a) of the SAA and 16D(2)(a) of the YOA.

The intent of this amendment is to ensure the prosecutor does not disclose 'terrorist intelligence information' without first applying for a non-disclosure order under section 138 of the CPA.

Part 5 – *Freedom of Information Act 1992* amended

Clause 44 – Act amended

This clause provides that Part 5 of the Act will amend the *Freedom of Information Act 1992* (FOI Act).

Clause 45 – Schedule 1 clause 5 amended

Schedule 1 of the FOI Act lists matter that will be exempt from disclosure. Specifically, clause 5 of Schedule 1 lists law enforcement matter that is exempt from disclosure.

Clause 45 amends Schedule 1, clause 5 of the FOI Act to insert a new subclause 5(3A). This amendment will provide that a Commissioner of Police report is exempt matter for the purposes of disclosure under the FOI Act.

Clause 45 additionally amends the defined terms within subclause 5(5) of the FOI Act to insert a definition of a Commissioner of Police report to refer to the introduced Commissioner of Police report within the SAA and the YOA.