



ALLIANCE *for*
JOURNALISTS'
FREEDOM

MEDIA FREEDOM ACT

NOVEMBER 2024

With light, **TRUST**

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Media Freedom Bill 2025

An Act to maintain the free flow of information to the public by protecting and promoting journalists' endeavours and recognising and protecting freedom of expression, freedom of opinion and the public's right to know as basic human rights.

November 2024 draft

Prepared by Thomson Geer for the Alliance for Journalists' Freedom

Part 1 - Preliminary

1 Short title

This Act may be cited as the Media Freedom Act 2025.

2 Commencement

Each provision of this Act commences, or is taken to have commenced, the day after this Act receives the Royal Assent.

3 Simplified outline of this Act

Part 1 contains definitions and terms relating to journalism. It sets out the matters that a judge must consider under Part 3 when issuing a warrant that covers *journalistic material*¹; that is, any document or thing acquired or created by a *journalist* for the purposes of *engaging in journalism*.

Part 2 sets out the key concept of ‘media freedom’ and the four outcomes necessary for the recognition, protection and promotion of media freedom.

Courts are required, while exercising federal jurisdiction, to interpret and apply Commonwealth laws in a way that is most consistent with those outcomes.

Part 3 creates a new regime for the issuing and execution of Commonwealth warrants for the seizure of *journalistic material*. Different rules apply depending on whether the person who acquired or created the *journalistic material* is a *member journalist* or not. Only a judge of a federal court (acting in a personal capacity) can issue such a warrant.

Division 2 of Part 3 provides that, except where an emergency exists, a *member journalist* or person associated with a *member journalist* must be given the opportunity to make representations to the issuing judge why a warrant covering *journalistic material* should not, in the public interest, be issued.

Division 3 of Part 3 provides that, except where an emergency exists, a *journalist* or a person associated with a *journalist* has a right to object to a judge, in the public interest, to the accessing and examination of *journalistic material* under a warrant.

Amendments are also made to the *Human Rights (Parliamentary Scrutiny) Act 2011*. Statements of compatibility required to be prepared for every bill introduced into the Parliament will have to identify any provisions that are not consistent with the media freedom outcomes. All such inconsistencies will have to be identified, and recommendations for mitigation to be included, in the report to the Parliament on the bill by the Parliamentary Joint Committee on Human Rights.

4 Crown to be bound

This Act binds the Crown in each of its capacities.

¹ Words and phrases that are in italics are defined expressions.

5 Definitions

In this Act:

engaging in journalism has the meaning given in section 6.

journalist means a person who is engaging in journalism.

news medium means a medium for the dissemination to the public or a section of the public, of news and observations on news. ²

6 Engaging in journalism

- (1) For the purposes of this Act, a person is **engaging in journalism** if, for the purpose of disseminating, communicating or publishing reports, commentary, opinion or analysis to the public or a section of the public in a news medium:
 - (a) the person gathers, collects, photographs, films, records, investigates, analyses, researches, assesses, verifies or otherwise deals with things or information for the purpose of writing, preparing, editing or otherwise presenting such reports, commentary, opinion or analysis; and
 - (b) the reports, commentary, opinion or analysis relate to local, national or international events or other matters of public interest.
- (2) In determining whether a person is engaging in journalism, consideration may be given to the following matters:
 - (a) whether the person regularly engages in some or all of the activities mentioned in subsection (1); and
 - (b) whether the person complies with a recognised professional standard or code of practice in carrying out the activities; and
 - (c) whether the publisher of the news medium complies with a recognised professional standard or code of practice in publishing information in the news medium; and
 - (d) any other matter considered relevant.
- (3) [The fact that a person does not engage in all the activities mentioned in subsection (1) at any particular time, or the person engages in activities at any particular time of a similar kind to those to those listed in that subsection, is not determinative of whether the person is or is not engaging in journalism.]

7 Concurrent application of journalist privilege

Nothing in this Act is to be construed to limit the application of Divisions 1C and 4 of Part 3.10 of the *Evidence Act 1995* or equivalent provisions in State and Territory legislation.

² Precedents for this definition can be found in section 126J of the Commonwealth *Evidence Act 1995* and section 126J of the Victorian *Evidence Act 2008*.

Part 2 – Protection of journalists in Australia

8 Media freedom

- (1) The recognition, protection and promotion of a free media is essential in order to support and enhance:
 - (a) freedom of expression and opinion; and
 - (b) democracy by fostering the communication of information and ideas about public and political issues, including between citizens, residents, elected representatives and candidates; and
 - (c) the media's crucial role of informing the public about threats to peace and security and other matters of public interest, and in helping to ensure accountability and transparency in government and society.
- (2) The recognition, protection and promotion of media freedom is achieved by:
 - (a) the media being able to access and receive information, including on public affairs, political issues and matters of public interest, on the basis of which it can carry out its functions; and
 - (b) the public being able to receive information, commentary, opinions, analysis and ideas from a diverse and independent range of media sources; and
 - (c) the promotion and maintenance of media independence and editorial freedom; and
 - (d) not precluding or discouraging journalists and the media, whether by law or otherwise, from carrying out their legitimate activities.

9 Interpretation of laws

- (1) Courts while exercising federal jurisdiction must, to the extent possible, interpret and apply the laws of the Commonwealth in a way that is compatible with the outcomes referred to in subsection 8(2).
- (2) If a statutory provision cannot be interpreted in a way that is compatible with the outcomes referred to in subsection 8(2), the provisions must, to the extent possible that is consistent with their purpose, be interpreted in a way that is most compatible with those outcomes.
- (3) This section does not affect the validity of –
 - (a) an Act or provision of an Act that is not compatible with the outcomes referred to in subsection 8(2); or
 - (b) a statutory instrument or provision of a statutory instrument that is not compatible with the outcomes referred to in subsection 8(2).

Part 3 – Warrants for journalistic material

Division 1 – Preliminary – definitions and general concepts relevant to this Part

10 Definitions used in this Part

In this Part:

associated person is defined in section 11.

chief executive officer, in relation to an *investigating agency*, means the chief executive officer (however described) of that agency.

confidential journalistic material, in relation to a *journalist* means *journalistic material* possessed or held by the *journalist* under an undertaking, restriction or obligation of confidence.

damage, in relation to data, includes damage by erasure of data or addition of other data.

evidential material means a thing relevant to an indictable offence or a thing relevant to a summary offence, including such a thing in electronic form.

identity card in relation to an *investigating officer*, means any identity card issued to the *investigating officer* by the *investigating agency* of which the *investigating officer* is an officer or employee.

informant, in relation to a *journalist*, means a person who gives information to the *journalist* in the normal course of the *journalist's* work in circumstances where the *journalist* understands that the identity of the person is to remain confidential.

investigating agency means an agency of the Commonwealth [or of a State or Territory], an officer or employee of which is authorised under the law of the Commonwealth to apply for a warrant under this Part.

investigating officer means an officer or employee of an *investigating agency* who, under a law of the Commonwealth, is authorised to apply for a warrant under this Part.

issuing officer has the meaning given in section 12.

journalistic material has the meaning given in section 13.

member journalist has the meaning given in section 14.

non-member journalist means a *journalist* who is not a *member journalist*.

premises includes the following:

- (a) a structure, building, vehicle, vessel or aircraft;
- (b) a place (whether or not enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b).

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

State and **State offence** have the same meaning as in section 3C of the *Crimes Act 1914*.

Territory has the same meaning as in section 3 of the *Crimes Act 1914*.

thing relevant to an indictable offence means:

- (a) either of the following:

- (i) anything with respect to which an indictable offence against any law of the Commonwealth or of a Territory has been committed or is suspected, on reasonable grounds, to have been committed;
- (ii) anything with respect to which a *State offence* that has a federal aspect, and that is an indictable offence against the law of that State, has been committed or is suspected, on reasonable grounds, to have been committed; or
- (b) anything as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of any such offence; or
- (c) anything as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing any such offence.

thing relevant to a summary offence means:

- (a) either of the following:
 - (i) anything with respect to which a summary offence against any law of the Commonwealth or of a Territory has been committed or is suspected, on reasonable grounds, to have been committed;
 - (ii) anything with respect to which a State offence that has a federal aspect, and that is a summary or simple offence against the law of that State, has been committed or is suspected, on reasonable grounds, to have been committed; or
- (b) anything as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of any such offence; or
- (c) anything as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing any such offence.

11 Associated person

For the purposes of this Part, a person is an **associated person** of a *journalist* in relation to particular *journalistic material* if the person was:

- (a) the employer of the *journalist*; or
- (b) a person who has engaged the *journalist* under a contract for services; or
- (c) a person who worked with the *journalist*,

as follows:

- (d) at a time when the *journalistic material* was acquired or created by the *journalist*; and
- (e) the association of the person with the *journalist* was in relation to the acquisition or creation of the *journalist material*.

12 Issuing officer

An **issuing officer** is a person who is:

- (a) a Judge of the Federal Court of Australia, a Judge of the Federal Circuit and Family Court of Australia (Division 2), or a Judge of the Supreme Court of a State or Territory; and
- (b) in relation to whom a consent under subsection 18(1), and a declaration under subsection 18(2), are in force.

13 Journalistic material

(1) For the purposes of this Part, journalistic material, in relation to a *journalist*, means any document³ or other material acquired or created by the *journalist* for the purposes of *engaging in journalism*.

(2) Material is only journalistic material for the purposes of this Part if it is in the possession, custody or power of a person who acquired or created it for the purposes of *engaging in journalism*.

(3) A person who receives material from someone who intends for the recipient to use it for the purposes of journalism is to be taken to have acquired it for those purposes.

14 Member journalist

(1) A person is a member journalist if, at the relevant time, the person is a *journalist* and, as a *journalist*, is a member of, or an associate to, an organisation, committee, council or governing body that:

- (a) promotes recognised professional standards of journalism practice; and
- (b) investigates and responds to complaints made by the public about journalism practice; and
- (c) has a system in place whereby journalists and news media can be held to account for breaches of those standards, including by the publication of findings in response to complaints.

(2) A person who does not fall within the definition of member journalist in subsection (1) is a member journalist if the person is a *journalist* and, as a *journalist*, is employed or commissioned by an organisation which implements a standard or code of conduct that:

- (a) promotes recognised professional standards of journalism practice; and
- (b) investigates and responds to complaints made by the public about journalism practice; and
- (c) has a system in place whereby journalists can be held to account for breaches of those standards, including by the publication of findings in response to complaints.

(3) A person who does not fall within the definition of member journalist in subsection (1) or (2) is a member journalist if the person is a *journalist* and, as a *journalist*, is employed or commissioned by an organisation which is a member of, or an associate to, an organisation, committee, council or governing body that:

- (a) promotes recognised professional standards of journalism practice;
- (b) investigates and responds to complaints made by the public about journalism practice; and
- (c) has a system in place whereby journalists and news media can be held to account for breaches of those standards, including by the publication of findings in response to complaints.

Presumptions in relation to member journalists

(4) If a person is a *member journalist* under subsection (1), (2) or (3) it is presumed that any document⁴ or material in the possession of the journalist that is the subject of an

³ See definition in section 2B of the *Acts Interpretation Act 1901*.

⁴ See footnote 3.

application for a warrant under [a law of the Commonwealth] is *journalistic material* for the purposes of this Act unless the person challenging that presumption proves otherwise.

15 Warrants for *journalistic material* may be issued under this Part and not under any other law

Warrants for *journalistic material* may be issued under this Part

(1) An *investigating officer* may obtain access to *journalistic material* for the purposes of a criminal investigation under a law of the Commonwealth by making an application under this Part and in accordance with this Part.

Warrants for *journalistic material* may not be issued under any other law

(2) Any Act of the Commonwealth passed before this Act under which a search of *premises* or a person for the purposes of a criminal investigation could be authorised by the issue of a warrant ceases to have effect so far as it relates to the authorisation of searches for *journalistic material* in relation to a *journalist*.

16 Warrants for *journalistic material* issued only under this Part

Warrant for *journalistic material* of *member journalist* only under this Part

(1) For the purposes of a criminal investigation under a law of the Commonwealth, an *investigating officer* may only obtain a warrant authorising searches on *premises* for *journalistic material* in relation to a *member journalist* under Division 2 of this Part.

Warrant for *journalistic material* of *non-member journalist* only under this Part

(2) For the purposes of a criminal investigation under a law of the Commonwealth, an *investigating officer* may only obtain a warrant authorising searches on *premises* for *journalistic material* in relation to a *journalist* who is a *non-member journalist* under Division 3 of this Part.

17 Powers of issuing officers

Powers conferred personally

(1) A power conferred on an *issuing officer* by this Part is conferred on the issuing officer:

- (a) in a personal capacity; and
- (b) not as a court or a member of a court.

Powers need not be accepted

(2) The *issuing officer* need not accept the power conferred.

Protection and immunity

(3) An *issuing officer* exercising a power conferred by this Part has the same protection and immunity as if the *issuing officer* were exercising the power:

- (a) as the court of which the *issuing officer* is a member; or
- (b) as a member of the court of which the *issuing officer* is a member.

18 Consent of Judges

(1) A person may, by writing, consent to be declared an issuing officer by the Minister administering the *Judiciary Act 1903* under subsection (2).

The Minister administering the *Judiciary Act 1903* may, by writing, declare a Judge in

(3) relation to whom a consent under subsection (1) is in force to be an issuing officer for the purposes of this Part.

A consent or declaration under this section is not a legislative instrument.

19 Basic criteria for issuing warrant under this Part

The following are the basic criteria to be considered by an issuing officer under this Part in relation to the issuing of a warrant under this Part:

- (a) the *evidential material* sought in the application for the warrant is:
 - (i) *journalistic material* in relation to a *journalist*; and
 - (ii) on the *premises* the subject of the application or will be in the next 72 hours; and
 - (iii) is likely to be of [substantial] evidential value (whether by itself or with other material) to the investigation [and is evidence that would be admissible in evidence at a trial for the offence]; and
- (b) other methods of obtaining the *evidential material* sought in the application for the warrant have been tried and failed, or have not been tried because it reasonably appeared they were bound to fail; and
- (c) whether the extent and scope of the *journalistic material* being sought is appropriate given its nature and the nature of offence under investigation; and
- (d) it is in the public interest, having regard to the benefit likely to accrue to the investigation and the circumstances in which the person in possession of the *journalistic material* holds it, that access should be given under the warrant to the material.

20 Public interest criteria – journalistic material that is confidential

The following are the public interest criteria to be considered by an *issuing officer* under this Part in relation to *confidential journalistic material*:

- (a) the public interest in a democracy of the public's right to know information, commentary, opinion or analysis that concerns local, national or international events or other matters of public interest and the ability of journalists in the news media to communicate to the public information, commentary, opinion or analysis; and
- (b) the ability of journalists to access sources of information for the purposes set out in paragraph (a); and
- (c) the likely chilling effect that the issuing of the warrant or the examination or accessing of the material would have, and the extent to either of those events is likely to deter other persons from giving information to journalists; and ⁵
- (d) where the *confidential journalistic material* would disclose the identity of an *informant*, or enable their identity to be ascertained ⁶,
 - (i) any likely adverse effect of the disclosure on the *informant* or any other person, and whether the effect can be mitigated ⁷;
 - (ii) the nature and seriousness of the offence under investigation, the probative value of the evidence sought to be obtained and the underlying purpose of the investigation, including whether its purpose is to identify a whistleblower; ⁸

⁵ See generally, discussion of criteria by Ananian-Welsh and Bosland in the 2023 MULR article of *R v Rice Media* at footnotes 140 to 145. See subsection 14ZF(4) of the Qld *Evidence Act 1977* in relation to matters to be considered

by judge when

⁶ deciding whether sealed/stored journalistic material should dealt with as per the warrant. See also section 14Y of that Act about matters to be considered when deciding whether evidence should be given notwithstanding a journalist's privilege re identity of informant.

⁷ See for instance, criteria set out in subsection 14Y(2) of the Qld *Evidence Act 1977* re journalist privilege.

⁸ See Ananian-Welsh and Bosland 2023 MULR paper quoting *R v National Post* [2010] 1 SCR 477) at footnote 159.

- (iii) the importance of the material and the *informant's* identity to the investigation and the availability of other evidence in relation to the material; and
 - (iv) the purposes for which the material and the *informant's* identity are intended to be used; and
 - (v) whether the *informant's* identity as the source of the material information is already in the public domain; and
- (e) any other matter the issuing officer considers relevant.

21 Public interest criteria – journalistic material that is not confidential

The following are the public interest criteria to be considered by an *issuing officer* in relation to *journalistic material* that is not *confidential journalistic material*:

- (a) the public interest in a democracy of the public's right to know information, commentary, opinion or analysis that concerns local, national or international events or other matters of public interest and the communication to the public of information, commentary, opinion or analysis by journalists in the news media; and
- (b) the ability of journalists to access sources of information for that purpose; and
- (c) the extent to which the issuing of the warrant or the examination or accessing of *journalistic material* under the warrant is likely to deter other persons from giving information to *journalists*; and
- (d) whether the material is already in the public domain; and
- (e) any other matter the *issuing officer* considers relevant.

22 Public interest criteria – other matters

The following are other public interest criteria to be considered by an *issuing officer* under this Part in relation to *journalistic material*:

- (a) the public interest in the enforcement of the criminal law; and
- (b) the seriousness of the alleged offence; and
- (c) fairness to any potential defendant (the material could be exculpatory); and
- (d) any other matter the *issuing officer* considers relevant. ⁹

23 Criteria for issuing of warrant without notification or opportunity to object

- (1) The criteria listed in subsection (2) are those to be considered by an *issuing officer* in relation to:
- (a) the issuing of a warrant under section 25 in relation to *journalistic material* (without notification to a *member journalist*); and
 - (b) the issuing of a warrant under section 29 under which an *investigating officer* is authorised to examine and access *journalistic material* seized under the warrant without being required to inform the relevant *non-member journalist* that the person has a right to object.
- (2) The criteria are whether:
- (a) the circumstances of the relevant investigation require urgency because of the risk of serious injury or death to any person; or

⁹ Note that the issue of whether other methods of obtaining the material have been tried etc. is part of the basic criteria – thus if other methods have not been tried, then the issuing officer could reject the warrant application on that basis and the public interest test would not have to be considered.

- (b) other than where the relevant *journalistic material* is already in the public domain, publication or other disclosure of the *journalistic material* would seriously undermine Australia's security within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*;¹⁰

OR

- (b) other than where the relevant *journalistic material* is already in the public domain, publication or other disclosure of the *journalistic material* would be likely to [seriously] prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).¹¹

Division 2 – Warrants for journalistic material of member journalists

24 Application for warrant

Investigating officer may apply for warrant

(1) An *investigating officer* may apply to an *issuing officer* for a warrant under section 25 or 26 in relation to *premises* in relation to *journalistic material* of a *member journalist*.

Content of application

- (2) The application must:
- (a) state the offence to which the application relates; and
 - (b) describe the *premises* to which the warrant relates; and
 - (c) specify the kinds of *evidential material* to be searched for under the warrant; and
 - (d) describe what kinds of *evidential material* is *journalistic material* and the basis on which it is believed to be *journalistic material*; and

¹⁰ "**Security**" means:

- (a) the protection of, and of the people of, the Commonwealth and the several States and Territories from:
 - (i) espionage;
 - (ii) sabotage;
 - (iii) politically motivated violence;
 - (iv) promotion of communal violence;
 - (v) attacks on Australia's defence system; or
 - (vi) acts of foreign interference;

whether directed from, or committed within, Australia or not; and

- (aa) the protection of Australia's territorial and border integrity from serious threats; and
- (b) the carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a) or the matter mentioned in paragraph(aa).

¹¹ See definitions of 'national security', 'security', 'international relations' and 'law enforcement interests' in sections 8 to 11 of that Act. 'NS' is defined as Australia's defence, security, international relations or law enforcement interests. 'Security' is that defined in section 4 of the ASIO Act; international relations is defined as 'political, military and economic relations with foreign governments and international organisations'; law enforcement interests is defined as **including**:

- (a) avoiding disruption to national and international efforts relating to law enforcement, criminal intelligence, criminal investigation, foreign intelligence and security intelligence;
- (b) protecting the technologies and methods used to collect, analyse, secure or otherwise deal with, criminal intelligence, foreign intelligence or security intelligence;
- (c) the protection and safety of informants and of persons associated with informants;
- (d) ensuring that intelligence and law enforcement agencies are not discouraged from giving information to a nation's government and government agencies.

This formulation used in sections 3UEB, 3ZZOA and 3ZZOB of the Crimes Act to describe information that must not be included in an application under the section so (presumably) it is regarded as information of the most sensitive kind.

- (e) identify any person believed to be a *member journalist* and any *associated person* of the *member journalist* in relation to the *journalistic material* and their relationship with the *premises*; and
- (f) provide the name of the *investigating officer* who is to be responsible for executing the warrant; and
- (g) state whether the *investigating officer* is proposing that the warrant be issued ex parte under section 25 by reason of the matters set out in section 23; and
- (h) if the *investigating officer* is proposing that the warrant be issued ex parte, the basis on which it is asserted that any of the matters set out in section 23 are made out.

25 Issue of warrant – hearing ex parte

When a warrant may be issued ex parte

(1) Where:

- (a) an *investigating officer* has proposed in an application for a warrant that the warrant be issued ex parte under this section; or
- (b) after notice has been served by an *investigating officer* in accordance with section 26:
 - (i) an application for an inter partes hearing on the application has not been made to an *issuing officer* by the recipient of the notice within 7 days from the service of the notice; or
 - (ii) such an application has been made within the 7 days but it has been withdrawn before the hearing commences,

an *issuing officer* may issue a warrant under this section that authorises the seizure of *journalistic material* in relation to a *member journalist* if satisfied by the information in the application on oath or affirmation:

- (c) that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, *evidential material* on the *premises* in relation to a *member journalist*; and
- (d) of the matters set out in section 19 (the basic criteria); and
- (e) where paragraph (a) applies, of the matters set out in section 23 (urgent etc.); and
- (f) that, having considered the criteria set out in sections 20, 21 and 22, the public interest in access being given under the warrant to the *journalistic material* for the purposes of a criminal investigation outweighs the public interest in the communication of facts and opinion to the public by the news media and, accordingly also, in the ability of the news media to access sources of facts.

More information may be required

(2) The *issuing officer* must not issue the warrant unless the *investigating officer* or some other person has given to the *issuing officer*, either orally or by affidavit, such further information (if any) as the *issuing officer* requires concerning the grounds on which the issue of the warrant is being sought.

Reasons for decision must be given

(3) The *issuing officer* must state the reasons for issuing a warrant or refusing to issue a warrant under this section.

26 Issue of warrant – hearing inter partes

Warrant not to be issued ex parte

(1) This section applies when the *investigating officer* has not proposed in the application for a warrant for the seizure of *journalistic material* on *premises* that the warrant be issued ex parte under section 25.

Investigating officer to give notice of application

(2) The *investigating officer* must serve notice in writing of the application on the *member journalist*, and any *associated person* of the *member journalist*, identified in the application:

- (a) describing the *journalistic material* referred to in the application; and
- (b) stating that:
 - (i) the person has 7 days to apply to an *issuing officer* to object to the issue of the warrant; and
 - (ii) if an application has not been made to an *issuing officer* within 7 days, or an application has been made but withdrawn before any hearing on the application, the *issuing officer* may, under section 25, issue the warrant ex parte; and
 - (iii) if an application is made to an *issuing officer* within 7 days, it will be heard by the *issuing officer* and the person may be represented by a lawyer; and
 - (iv) it is an offence to destroy *journalistic material* referred to in the application. ¹²

Parties to hearing of application

(3) The following are parties at an inter partes hearing by an *issuing officer* of the application for a warrant:

- (a) the person who made the application for the hearing;
- (b) if that person is not the *member journalist* in relation to the *journalistic material* identified in the application, the *member journalist*;
- (c) the *investigating officer* (or any other officer or employee of the relevant *investigating agency* nominated by the *chief executive officer* of the agency); and
- (d) with the agreement of the *issuing officer*, any *associated person* of the *member journalist* in relation to the *journalistic material* identified in the application.

When a warrant may be issued after inter partes hearing

¹² Section 39 of the *Crimes Act 1914*:

Destroying evidence

- (1) A person commits an offence if:
 - (a) the person knows that a book, document or thing of any kind is, or may be, required in evidence in a judicial proceeding; and
 - (b) the person:
 - (i) destroys the book, document or thing; or
 - (ii) renders the book, document or thing illegible, undecipherable or incapable of identification; and
 - (c) the person does so with the intention of preventing the book, document or thing from being used in evidence; and
 - (d) the judicial proceeding is a federal judicial proceeding.Penalty: Imprisonment for 5 years.
- (2) Absolute liability applies to the paragraph (1)(d) element of the offence.
Note: For absolute liability, see section 6.2 of the *Criminal Code*.

(4) The *issuing officer* may issue a warrant under this section that authorises the seizure of *journalistic material* in relation to a *member journalist* if satisfied:

- (a) that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, *evidential material* on the *premises* in relation to a *member journalist*; and
- (b) of the matters set out in section 16 (the basic criteria); and
- (c) that, having considered the criteria set out in sections 20, 21 and 22, the public interest in access being given under the warrant to the *journalistic material* for the purposes of a criminal investigation outweighs the public interest in the communication of facts and opinion to the public by the news media and, accordingly also, in the ability of the news media to access sources of facts.

Onus of proof generally

(5) Subject to subsection (6), the onus of proof is on the *investigating officer* in relation to the matters set out in subsection (4).

Evidential burden in relation to *confidential journalistic material*

(6) Where it is claimed that the *journalistic material* proposed to be seized under the warrant is or contains *confidential journalistic material*, the *member journalist* bears the evidential burden in relation to those matters.

Reasons for decision must be given

(7) The *issuing officer* must state the reasons for issuing a warrant or refusing to issue a warrant under this section.

27 Content of warrant

A warrant issued under this Division must:

- (a) state the offence to which the warrant relates; and
- (b) describe the *premises* to which the warrant relates; and
- (c) state that the warrant is issued under this Division; and
- (d) specify:
 - (i) the kinds of *evidential material* that are to be searched for under the warrant; and
 - (ii) the *journalistic material* that is to be searched for under the warrant; and
- (e) include the name of the *member journalist* in relation to that *journalistic material*; and
- (f) name the *investigating officer* who is to be responsible for executing the warrant; and
- (g) authorise the investigating officer:
 - (i) to enter the *premises*; and
 - (ii) to exercise the powers set out in this Part in relation to the *premises*; and
 - (iii) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
- (h) specify the day and time (not more than 1 week after the issue of the warrant) at which the warrant expires; and
- (i) state whether the warrant may be executed at any time or only during particular hours.

Division 3 – Warrants for journalistic material of non-member journalists

28 Application for warrant

Investigating officer may apply for warrant

(1) An *investigating officer* may apply to an *issuing officer* for a warrant under section 29 or section 31 in relation to *premises* in relation to *journalistic material* of a *member journalist*.

Content of application

(2) The application must include the following information:

- (a) state the offence provision or offence provisions to which the application relates; and
- (b) describe the *premises* to which the warrant relates; and
- (c) specify the kinds of *evidential material* to be searched for under the warrant; and
- (d) describe what kinds of *evidential material* is *journalistic material* and the basis on which it is believed to be *journalistic material*; and
- (e) identify any person believed to be a *non-member journalist* and any *associated person* of the *non-member journalist* in relation to the *journalistic material* and their relationship with the *premises*; and
- (f) the name of the *investigating officer* who is to be responsible for executing the warrant; and
- (g) state whether the *investigating officer* is proposing that the warrant be issued under section 29 and executed because of the matters set out in section 23; and
- (h) if the *investigating officer* is proposing that the warrant be issued under section 29, the basis on which it is asserted that the matters set out in section 23 are made out.

29 Issue of warrant on basis of urgency etc.

When a warrant may be issued on the basis of urgency etc.

(1) Where an *investigating officer* has proposed in an application for a warrant under this section be issued, an *issuing officer* may issue a warrant under this section [that authorises the seizure and examination of, and access to, *journalistic material*] in relation to a *non-member journalist* if satisfied by the information in the application on oath or affirmation:

- (a) that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the *premises* in relation to a *non-member journalist*; and
- (b) of the matters set out in section 19 (the basic criteria); and
- (c) of the matters set out in section 23 (urgent etc); and
- (d) that, having considered the criteria set out in in sections 20, 21 and 22, the public interest in access being given under the warrant to the *journalistic material* for the purposes of a criminal investigation outweighs the public interest in the communication of facts and opinion to the public by the news media and, accordingly also, in the ability of the news media to access sources of facts.

More information may be required

(2) The issuing officer must not issue the warrant unless the *investigating officer* or some other person has given to the *issuing officer*, either orally or by affidavit, such further information

(if any) as the *issuing officer* requires concerning the grounds on which the issue of the warrant is being sought.

Reasons for decision must be given

(3) The *issuing officer* must state the reasons for issuing a warrant or refusing to issue a warrant under this section.

30 Content of warrant issued under section 29

A warrant issued under section 29 must:

- (a) state the offence to which the warrant relates; and
- (b) describe the *premises* to which the warrant relates; and
- (c) state that the warrant is issued under section 29; and
- (d) specify:
 - (i) the kinds of *evidential material* that are to be searched for under the warrant; and
 - (ii) the *journalistic material* that is to be searched for under the warrant; and
- (e) include the name of the *non-member journalist* in relation to that *journalistic material*; and
- (f) name the *investigating officer* who, unless the name of another person is inserted in the warrant, is to be responsible for executing the warrant; and
- (g) authorise the *investigating officer*:
 - (i) to enter the *premises*; and
 - (ii) to exercise the powers set out in this Part in relation to the *premises*; and
 - (iii) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
- (h) specify the day and time (not more than 1 week after the issue of the warrant) at which the warrant expires; and
- (i) state whether the warrant may be executed at any time or only during particular hours.

31 Issue of warrant not on basis of urgency etc.

Issue of warrant where no urgency etc.

(1) This section applies when the *investigating officer* has proposed in the application that a warrant be issued under this section for the seizure of *journalistic material on premises*.

When a warrant may be issued

(2) An issuing officer may issue a warrant under this section that authorises the seizure of *journalistic material* in relation to a *non-member journalist* if satisfied:

- (a) that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the *premises* in relation to a *member journalist*; and
- (b) of the matters set out in section 19 (the basic criteria).

More information may be required

(3) The *issuing officer* must not issue the warrant unless the *investigating officer* or some other person has given to the *issuing officer*, either orally or by affidavit, such further information (if any) as the *issuing officer* requires concerning the grounds on which the issue of the warrant is being sought.

Reasons for decision must be given

(4) The *issuing officer* must state the reasons for issuing a warrant or refusing to issue a warrant under this section.

32 Content of warrant issued under section 31

A warrant issued under section 31 must:

- (a) state the offence to which the warrant relates; and
- (b) describe the *premises* to which the warrant relates; and
- (c) state that the warrant is issued under section 31; and
- (d) specify:
 - (i) the kinds of *evidential material* that are to be searched for under the warrant; and
 - (ii) the *journalistic material* that is to be searched for under the warrant; and
- (e) include the name of the *non-member journalist* in relation to that *journalistic material*; and
- (f) name the *investigating officer* who, unless the name of another person is inserted in the warrant, is to be responsible for executing the warrant; and
- (g) authorise the *investigating officer*:
 - (i) to enter the *premises*; and
 - (ii) subject to the matters in paragraph (h), to exercise the powers set out in this Part in relation to the *premises*; and
 - (iii) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
- (h) specify that if material that is believed to be *journalistic material* is identified in any search of *premises* under the warrant, the *investigating officer*:
 - (i) is required under section 33 to inform any person who is a *non-member journalist* in relation to the *journalistic material* and any *associate* of such a person, of certain matters; and
 - (ii) if any person objects to the examining or accessing by the *investigating officer* of the *journalistic material*, is required immediately to seal the material in a container, or store it in another secure way, to be held by the *investigating officer* for safekeeping; and
 - (iii) if such an objection has not been made within 24 hours or an application is not made within 7 days to an *issuing officer* to hear any objection which is made, may exercise all the powers set out in this Part in relation to the material; and
 - (iv) if an objection is made to the examination or accessing of the *journalistic material*, may not examine or access, or exercise any other powers set out in this Part under the warrant in relation to the *journalistic material* unless and until either the objection is withdrawn or an *issuing officer* authorises it under section 34; and
- (i) specify the day and time (not more than 1 week after the issue of the warrant) at which the warrant expires; and
- (j) state whether the warrant may be executed at any time or only during particular hours.

33 Execution of warrant issued under section 31

Obligation on investigating officer to provide information about execution of warrant

(1) Before examining or accessing any material that is believed to be *journalistic material* in relation to a *non-member journalist* identified in any search of *premises* under the authority of a warrant issued under section 31, the *investigating officer* must inform the relevant *non-member journalist* in writing and any *associated person* of the *non-member journalist* that:

- (a) if the non-member journalist or associated person informs the *investigating officer* in writing within 24 hours that they object to the examining or accessing by the *investigating officer* of the *journalistic material*, the *investigating officer* must immediately seal the material in a container, or store it in another secure way, to be held by the investigating officer for safekeeping; and
- (b) if the person so objects, the person has 7 days from when the objection is made to apply to an *issuing officer* for an inter partes hearing on the objection; and
- (c) if an application is made to an *issuing officer* it will be heard by the *issuing officer* and the person may be represented by a lawyer; and
- (d) if an application is not made to an *issuing officer* within 7 days, the material may be examined and accessed, and all other powers available by the *investigating officer* under this Part in relation to the material may be exercised in accordance with the warrant; and
- (e) it is an offence to destroy the *journalistic material* referred to in the warrant.

Obligation to seal or store *journalistic material* securely if objection made

(2) If an objection is made by a person within 24 hours of being informed of the matters in subsection (1) to the accessing by the *investigating officer* of *journalistic material* identified in any search, the *investigating officer* must immediately seal the material in a container, or store it in another secure way to be held by the *investigating officer* for safekeeping.

Where no objection is made

(3) The *investigating officer* may not examine or access any *journalistic material* identified in any search during the period of 24 hours after informing any person of the matters in subsection (1) but if no objection is made by the end of that period, the *investigating officer* may exercise all powers available to the *investigating officer* under this Part in relation to the *journalistic material* in accordance with the warrant.

Application to issuing officer objecting to examination of/access to *journalistic material*

(4) If an application is made to an *issuing officer* within 7 days for an inter partes hearing in relation to an objection to the examining or accessing by the *investigating officer* of *journalistic material*, the *investigating officer* must ensure that the sealed or stored material is given to the registrar of the court of which the *issuing officer* is a member for safekeeping until the application is decided.

Where no application made to issuing officer

(5) If an application is not made to an *issuing officer* in relation to sealed or stored *journalistic material*:

- (a) the *investigating officer* must ensure the sealed or stored *journalistic material* is kept in safe custody until the end of the period mentioned in subsection (3); and
- (b) the sealed or stored *journalistic material* may, after the period has ended, be examined and accessed, and all other powers available to the *investigating officer* under this Part in relation to the material may be exercised in accordance with the warrant.

34 Inter partes hearing of objection

Parties to hearing of objection

(1) The following are parties at an inter partes hearing by an *issuing officer* of the application objecting to the examining and accessing of *journalistic material* under a warrant issued under section 31:

- (a) the person who made the application for the hearing;
- (b) if that person is not the *non-member journalist* in relation to the *journalistic material* proposed to be accessed, the *non-member journalist*;
- (c) the *investigating officer* (or any other officer or employee of the relevant *investigating agency* nominated by the *chief executive officer* of the agency); and
- (d) with the agreement of the *issuing officer*, any *associated person* of the *non-member journalist* in relation to the *journalistic material* identified in the application.

When journalistic material may be examined/accessed after hearing

(2) If:

- (a) satisfied that, having considered the criteria set out in sections 20, 21 and 22, the public interest in access being given under the warrant to the *journalistic material* for the purposes of a criminal investigation outweighs the public interest in the communication of facts and opinion to the public by the news media and, accordingly also, in the ability of the news media to access sources of facts, the *issuing officer* may authorise an *investigating officer* to examine and access the sealed or stored *journalistic material* seized under the warrant; and
- (b) not so satisfied, the *issuing officer* may order that the relevant *chief executive officer* return the seized *journalistic material* to the person from whom it was seized.

Note: Except where a hearing is held under this section in relation to *journalistic material* seized under a warrant issued under this Division, section 44 applies in relation to *journalistic material* seized under a warrant issued under this Part.

Onus of proof generally

(3) Subject to subsection (4), the onus of proof is on the *investigating officer* in relation to the matters set out in subsection (2).

Evidential burden in relation to *confidential journalistic material*

(4) Where it is claimed that the *journalistic material* proposed to be examined and accessed under the warrant is or contains *confidential journalistic material*, the *non-member journalist* bears the evidential burden in relation to those matters.

Reasons for decision must be given

(5) The *issuing officer* must state the reasons for authorising or refusing to authorise under this section the examination of, or access to, *journalistic material* under a warrant issued under section 31.

Division 4 – Powers etc. exercisable under this Part

Subdivision 1 – Powers of investigating officer¹³

35 General powers of *investigating officer* under warrant

The following powers may be exercised by an *investigating officer* in relation to premises under a warrant issued under this Part:

- (a) the power to enter and search the *premises* and any thing on the premises for the kind of *evidential material* specified in the warrant; and
- (b) the power to seize *evidential material* of that kind if the *investigating officer* finds it on the *premises*; and
- (c) the power to inspect, examine, take measurements of or conduct tests on *evidential material* referred to in paragraph (a) or (b); and
- (d) the power to make any still or moving image or any recording of the *premises* or *evidential material* referred to in paragraph (a) or (b); and
- (e) the power to take onto the *premises* such equipment and materials as the *investigating officer* requires for the purpose of exercising powers in relation to the premises; and
- (f) the powers set out in subsections 36(1) and 37(1) below.

36 Operating electronic equipment

Powers in relation to electronic equipment

(1) The powers that may be exercised under a warrant issued under this Part in relation to electronic equipment include the power to:

- (a) operate electronic equipment on the premises; and
- (b) use a disk, tape or other storage device that:
 - (i) is on the premises; and
 - (ii) can be used with the equipment or is associated with it;if the *investigating officer* suspects on reasonable grounds that the electronic equipment, disk, tape or other storage device is or contains *evidential material*; and
- (c) seize the equipment and such a disk, tape or other storage device; and
- (d) operate electronic equipment on the premises to put the *evidential material* in documentary form and remove the documents so produced from the premises; and
- (e) operate electronic equipment on the premises to transfer the evidential material to a disk, tape or other storage device that:
 - (i) is brought to the *premises* for the exercise of the power; or
 - (ii) is on the *premises* and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the *premises*.

Powers only exercisable if can be done without damaging equipment

(2) An *investigating officer* may operate electronic equipment as mentioned in subsection (1) or (2) only if the *investigating officer* believes on reasonable grounds that the operation of the equipment can be carried out without *damage* to the equipment.

Note: For compensation for *damage* to electronic equipment, see subsection 40(3).

Seizing only if other options not available

¹³ See Division 2 of Part 3 of the Regulatory Powers Act.

(3) An *investigating officer* may seize equipment or a disk, tape or other storage device as mentioned in paragraph (1)(c) only if:

- (a) it is not practicable to put the *evidential material* in documentary form as mentioned in paragraph (1)(d) or to transfer the *evidential material* as mentioned in paragraph (1)(e); or
- (b) possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of the Commonwealth.

37 Other powers exercisable by the *investigating officer*

Securing electronic equipment to obtain expert assistance

(1) The powers listed in subsections 51(2) to (7) of the Regulatory Powers Act are exercisable by an *investigating officer* in relation to a warrant issued under this Part as if:

- (a) the reference to investigation powers were a reference to the powers exercisable by an *investigating officer* under this Subdivision in relation to the warrant; and
- (b) the reference to premises were a reference to *premises* within the meaning of this Part; and
- (c) the reference to authorised person were a reference to the *investigating officer*; and
- (d) the reference to evidential material were a reference *evidential material* within the meaning of this Part; and
- (e) the reference to an issuing officer were a reference to an *issuing officer* within the meaning of this Part.

Extension of periods within which things secured

(2) Subsections 74(2) to (4) of the Regulatory Powers Act apply in relation to an application made by an *investigating officer* under the power referred to subsection 51(5) of that Act as applied by subsection (1) as if:

- (a) the reference to authorised person were a reference to the *investigating officer*; and
- (b) the reference to an issuing officer were a reference to an *issuing officer* within the meaning of this Part; and
- (c) the reference to evidential material were a reference *evidential material* within the meaning of this Part.

Persons assisting *investigating officer*

(3) An *investigating officer* may be assisted by other persons in exercising powers or performing functions or duties under this Part in relation to warrants issued under this Part if that assistance is necessary and reasonable.

Provisions about persons assisting

(4) For the purposes of subsection (3) and, subject to subsection (5), subsections 53(2) to (5) of the Regulatory Powers Act apply as if:

- (a) the reference to a person assisting were a reference to the person giving such assistance under subsection (3); and
- (b) the reference to premises were a reference to *premises* within the meaning of this Part; and
- (c) the reference to authorised person were a reference to the *investigating officer*; and

(d) the reference to evidential material were a reference *evidential material* within the meaning of this Part.

Limits on powers of person assisting

(5) A person assisting an *investigating officer* under this section in relation to a warrant issued under this Part may only exercise powers in relation to *journalistic material* that may be exercised by the *investigating officer* under the warrant.

Asking questions and seeking production of documents

(6) Subject to any obligations of an *investigating officer* under Division 3, an *investigating officer* may require any person on *premises*, entry to which is authorised by a warrant issued under this Part, to answer any questions, and produce any document ¹⁴relating to *evidential material* of the kind specified in the warrant.

Obligations on persons asked questions or required to produce documents

(7) Subsections 54(4) and (5) of the Regulatory Powers Act apply in relation any person required to answer a question or produce a document ¹⁵under subsection (4) as if the reference to subsection 54(3) of that Act were a reference to subsection (4).

Subdivision 2 - Obligations and incidental powers of investigating officer ¹⁶

38 Executing a warrant

Announcement before entry under warrant

(1) Before entering *premises* under a warrant issued under this Division, an *investigating officer* must:

- (a) announce that he or she is authorised to enter the *premises*; and
- (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
- (c) give any person at the premises an opportunity to allow entry to the premises.

Investigating officer to be in possession of warrant

(2) An *investigating officer* executing a warrant issued under this Division must be in possession of the warrant so issued or a copy of the warrant as so issued.

39 Details of warrant etc. to be given to occupier etc.

When a copy of the warrant must be provided

(1) An *investigating officer* must comply with subsection (2) if:

- (a) a warrant issued under this Part is being executed in relation to *premises* in relation to *journalistic material* of a *member journalist* or a *non-member journalist*; and
- (b) the:
 - (i) occupier of the *premises*; or
 - (ii) another person who apparently represents the occupier; or
 - (iii) the *member journalist* or the *non-member journalist*,is present at the premises.

Providing a copy of the warrant and information about rights and responsibilities

¹⁴ See footnote 3.

¹⁵ See footnote 3.

¹⁶ See Division 3 of Part 3 of the Regulatory Powers Act.

- (2) The *investigating officer* must, as soon as practicable:
- (a) make a copy of the warrant available to each of those persons; and
 - (b) inform each of those persons in writing of the rights and responsibilities of the occupier or other person under this Division.

40 Breaks in execution of warrant

Completing execution after temporary cessation

(1) Where an *investigating officer* and all persons assisting who are executing a warrant under this Part in relation to premises temporarily cease its execution and leave the premises (other than be reason of an objection being made of the kind referred to in section 33)), subsections 59(2) to (5) of the Regulatory Powers Act apply in relation to the execution of the warrant as if:

- (a) the reference to the authorised person were a reference to the *investigating officer*; and
- (b) the reference to an investigation warrant were a reference to the warrant issued under this Part; and
- (c) the reference to premises were a reference to *premises* within the meaning of this Part, the subject of the warrant; and
- (d) the reference to evidential material were a reference *evidential material* within the meaning of this Part; and
- (e) the reference to an issuing officer were a reference to an *issuing officer* within the meaning of this Part; and
- (f) the reference to person assisting were a reference to a person assisting the *issuing officer* as in accordance with subsection 37(3).

Completing execution of warrant stopped by court order

(2) An *investigating officer*, and any persons assisting, may complete the execution of a warrant that has been stopped by an order of a court if:

- (a) the order is later revoked or reversed on appeal; and
- (b) the warrant is still in force when the order is revoked or reversed.

Compensation for damage to electronic equipment

(3) If:

- (a) as a result of electronic equipment being operated as mentioned in this Division:
 - (i) *damage* is caused to the equipment; or
 - (ii) the data recorded on the equipment is *damaged*; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are *damaged* or corrupted; and
- (b) the *damage* or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment,

subsections (2), (3) and (4) of the Regulatory Powers Act apply as if

- (a) the reference to a relevant court were a reference to the Federal Court and the Federal Circuit and Family Court of Australia (Division 2); and
- (b) the reference to premises were a reference to *premises* within the meaning of this Part.

Subdivision 3 – Occupier’s rights and responsibilities

41 Right to observe execution and responsibility to provide facilities etc.

Where an *investigating officer* is, on *premises*, executing a warrant issued under this Part in relation to *journalistic material* of a *member journalist* or a *non-member journalist*:

- (a) section 62 of the Regulatory Powers Act applies in relation to the execution of that warrant as if:
 - (i) the reference to premises were a reference to *premises* within the meaning of this Part, the subject of the warrant; and
 - (ii) the reference to an investigation warrant were a reference to the warrant issued under this Part; and
 - (iii) the reference to another person who apparently represents the occupier, includes a reference to the *member journalist* or the *non-member journalist*; and
 - (iv) the reference to person assisting were a reference to any person assisting the *investigating officer* in accordance with subsection 37(3).
- (b) section 63 of the Regulatory Powers Act applies as if:
 - (i) the reference to premises were a reference to *premises* within the meaning of this Part, the subject of the warrant;
 - (ii) the reference to an investigation warrant were a reference to the warrant issued under this Part;
 - (iii) the reference to authorised person were a reference to the *investigating officer*;
 - (iv) the reference to person assisting were a reference to a person referred to in subsection 37(2) who is assisting the *investigating officer*.

Subdivision 4 – General provisions relating to seizure ¹⁷

42 Copies of seized things to be provided

Where a warrant issued under this Part is being executed by an *investigating officer* in relation to *premises* and the *investigating officer* seizes one or more of the following from the *premises* in accordance with the warrant in relation to *journalistic material* of a *member journalist* or a *non-member journalist*:

- (a) a document ¹⁸, film, computer file or other thing that can be readily copied;
- (b) a storage device, the information in which can be readily copied,

then subsections 64(2), (3) and (4) of the Regulatory Powers Act apply as if:

- (c) the reference to premises were a reference to *premises* within the meaning of this Part, the subject of the warrant; and
- (d) the reference to another person who apparently represents the occupier, includes a reference to the *member journalist* or the *non-member journalist*; and
- (e) the reference to authorised person were a reference to the *investigating officer*.

¹⁷ See Division 5 of Part 3 of the Regulatory Powers Act.

¹⁸ See footnote 3.

43 Receipts for seized things

- (1) The *investigating officer* must provide a receipt for a thing that is seized under this Division.
- (2) One receipt may cover 2 or more things seized.

44 Return of seized things

Other than in relation to *journalistic material* the subject of a hearing under section 34, section 66 of the Regulatory Powers Act applies in relation to a thing seized by an *investigating officer* under this Division as if:

- (a) the reference to the relevant chief executive were a reference to the *chief executive officer* of the *investigating agency* of which the *investigating officer* is an officer or employee;
- (b) the reference to Part 3 of that Act were a reference to this Division;
- (c) the reference to an order under section 67 of that Act were a reference to an order made under that section as applied by section 45 of this Act.

45 Issuing officer may permit a thing to be retained

Section 67 of the Regulatory Powers Act applies in relation to a thing seized by an *investigating officer* under this Division under a warrant issued under this Division as if:

- (a) the reference to the relevant chief executive were a reference to the *chief executive officer* of the *investigating agency* of which the *investigating officer* is an officer or employee; and
- (b) the reference to an issuing officer were a reference to an *issuing officer* within the meaning of this Part; and
- (c) the reference to Part 3 of the Regulatory Powers Act were a reference to this Division; and
- (d) subsection 67(4) were replaced with the following subsection:
 - (4) The *issuing officer* may order that the thing may continue to be retained for a period specified in the order if the *issuing officer* is satisfied that it is necessary for the thing to continue to be retained for the purposes of the investigation as to whether the offence to which the warrant relates has been committed.

46 Disposal of things

Section 68 of the Regulatory Powers Act applies in relation to a thing seized by an *investigating officer* under this Division under a warrant issued under this Division as if:

- (a) the reference to the relevant chief executive were a reference to the *chief executive officer* of the *investigating agency* of which the *investigating officer* is an officer or employee; and
- (b) the reference to Part 3 of the Regulatory Powers Act were a reference to this Division.

47 Compensation for the acquisition of property

Section 69 of the Regulatory Powers Act applies as if:

- (a) the reference to section 68 of that Act were a reference to section 46 of this Act; and
- (b) the reference to a relevant court were a reference to the Federal Court and the Federal Circuit and Family Court of Australia (Division 2).

Amendments to the *Human Rights (Parliamentary Scrutiny) Act 2011*

Schedule 1 – Consequential amendments

Human Rights (Parliamentary Scrutiny) Act 2011 ¹⁹

1 Paragraphs 7(a), (b) and (c)

After “human rights”, insert “and the outcomes referred to in subsection 8(2) of the *Media Freedom Act 2025*”.

2 Section 7

Add:

(2) In any report under paragraph (1)(b), the Committee must:

- (a) state whether the statement of compatibility identifies all provisions of the Bill or legislative instrument that are not compatible with the outcomes referred to in subsection 8(2) of the *Media Freedom Act 2025*;
- (b) identify any additional provisions of the Bill or legislative instrument that are not compatible with the outcomes referred in subsection 8(2) of the *Media Freedom Act 2025* that are not identified in the statement of compatibility;
- (c) assess:
 - (i) whether the identified provisions are reasonable and proportionate; and
 - (ii) whether, and if so why, the public interest is better served by enacting those provisions as drafted; and
- (d) if:
 - (i) the identified incompatibilities are assessed to be either not reasonable or not proportionate; or
 - (ii) the Committee is of the view that the public interest is not better served by enacting the provisions as drafted,make recommendations about amendments to the Bill or legislative instrument which reduce or eliminate the identified incompatibilities, or are otherwise more consistent with the public interest.

3 Subsection 8(3)

At the end of the subsection, add “and the outcomes referred to in subsection 8(2) of the *Media Freedom Act 2025*”.

¹⁹ The amendments of section 7, 8 and 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011* are designed to ensure that the PJCHR, other members of Parliament and the public have more information about the compatibility of provisions of the relevant bill with the outcomes referred to in subsection 8(2) of the *Media Freedom Bill*. Such amendments could equally apply to the human rights listed in subsection 3(1) of the Act. It is beyond the scope of the media freedom proposals to extend these amendments to those human rights. However the Alliance for Journalists' Freedom would fully support such an extension.

4 After subsection 8(3)

Add:

(3A) If any of the provisions in the Bill are not compatible with the outcomes referred to in subsection 8(2) of the *Media Freedom Act 2025*, the statement of compatibility must also state:

- (a) why the relevant provisions in the Bill are necessary and proportionate; and
- (b) whether, and if so why, the public interest is better served by enacting those provisions.

5 Subsection 9(2)

At the end of the subsection, add “and the outcomes referred to in subsection 8(2) of the *Media Freedom Act 2025*”.

6 After subsection 9(2)

Add:

(2A) If any of the provisions in the legislative instrument are not compatible with the outcomes referred to in subsection 8(2) of the *Media Freedom Act 2025*, the statement of compatibility must also state:

- (a) why the relevant provisions in the instrument are necessary and proportionate; and
- (b) whether, and if so why, the public interest is better served by enacting those provisions.

NOTES:

*For more information
about our Act*
PLEASE CONTACT

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