Public Interest Monitor Bill 2011

Introduction Print

EXPLANATORY MEMORANDUM

General


Clause Notes

PART 1—PRELIMINARY

Clause 1 sets out the purposes of the Bill, which are to establish the Principal Public Interest Monitor and Deputy Public Interest Monitors and to give them functions under the Major Crime (Investigative Powers) Act 2004, the Surveillance Devices Act 1999, the Telecommunications (Interception) (State Provisions) Act 1998, and the Terrorism (Community Protection) Act 2003.

Clause 2 provides for the Bill, once passed, to come into operation on a day or days to be proclaimed. The Bill does not have a default commencement day as the commencement of the Bill will need to wait until the enactment of complementary Commonwealth legislation.

Clause 3 sets out the object of the Bill which is to provide a further safeguard for applications for—

- coercive powers orders;
- surveillance device warrants;
• retrieval warrants;
• assistance orders;
• approval of emergency authorisations;
• telecommunications interception warrants;
• covert search warrants;
• preventative detention orders;
• prohibited contact orders;
• an extension, variation, renewal or revocation of an order, warrant or approval referred to in paragraphs (a) to (i).

Clause 4 sets out the definitions of key words or terms used in the Bill.

assistance order has the same meaning as it has in the Surveillance Devices Act 1999;

Australian legal practitioner has the same meaning as it has in the Legal Profession Act 2004;

coevasive powers order has the same meaning as it has in the Major Crime (Investigative Powers) Act 2004;

covert search warrant means a covert search warrant under Part 2 of the Terrorism (Community Protection) Act 2003;

Deputy Public Interest Monitor means a Deputy Public Interest Monitor appointed under clause 7;

emergency authorisation has the same meaning as it has in the Surveillance Devices Act 1999;

preventative detention order has the same meaning as it has in Part 2A of the Terrorism (Community Protection) Act 2003;

prohibited contact order has the same meaning as it has in Part 2A of the Terrorism (Community Protection) Act 2003;

Principal Public Interest Monitor means the Principal Public Interest Monitor appointed under clause 6;

Public Interest Monitor means the Principal Public Interest Monitor or a Deputy Public Interest Monitor;
relevant application means an application for—

- a coercive powers order;
- a surveillance device warrant;
- a retrieval warrant;
- an assistance order;
- approval of an emergency authorisation;
- a telecommunications interception warrant;
- a covert search warrant;
- a preventative detention order;
- a prohibited contact order;
- an extension, variation, renewal or revocation of an order, warrant or approval referred to in the preceding paragraphs;

retrieval warrant has the same meaning as it has in the Surveillance Devices Act 1999;
surveillance device warrant has the same meaning as it has in the Surveillance Devices Act 1999;
telecommunications interception warrant has the same meaning as warrant has in the Telecommunications (Interception) (State Provisions) Act 1988.

Clause 5 provides that the Bill, when passed, will bind the Crown in right of the State of Victoria, and to the extent that the legislative power of the Parliament permits, in all its other capacities.

PART 2—APPOINTMENT OF PUBLIC INTEREST MONITOR

Clause 6 enables the Governor in Council to appoint a person as the Principal Public Interest Monitor.

Clause 7 enables the Governor in Council to appoint one or more persons as Deputy Public Interest Monitors.
Clause 8  sets out the requirements for a person to be eligible to be appointed as a Public Interest Monitor, and sets out the classes of persons who are ineligible to be appointed.

Subclause (1) provides that a Public Interest Monitor must be an Australian legal practitioner.

Subclause (2) provides that a person who is a member of the Parliament of Victoria or of the Commonwealth or of another State or Territory is not eligible to be appointed as a Public Interest Monitor.

Subclause (3) provides that a Public Interest Monitor must not be any of the following—

- the Director of Public Prosecutions;
- the Solicitor for Public Prosecutions;
- any person appointed under the Public Prosecutions Act 1994;
- a person who is employed in, or seconded to, the Office of Public Prosecutions;
- a person who—
  - is eligible to make a relevant application; or
  - is employed in or by, or seconded to, a body that is eligible to make a relevant application.

Clause 9  sets out the terms and conditions of a Public Interest Monitor's appointment.

Subclause (1) provides that an appointment is to be for a period, not exceeding 3 years, as set out in the instrument of appointment.

Subclause (2) provides that the terms and conditions of the appointment are as set out in the instrument of appointment.

Subclause (3) provides that a Public Interest Monitor may be reappointed.

Subclause (4) provides that the Public Administration Act 2004 does not apply to a Public Interest Monitor.
Clause 10 establishes the remuneration to be paid to a Public Interest Monitor.

Subclause (1) establishes that each Public Interest Monitor is entitled to be paid the remuneration and allowances that are determined from time to time in respect of that Public Interest Monitor by the Governor in Council.

Subclause (2) provides that the remuneration of a Public Interest Monitor cannot be reduced during his or her period of appointment, unless he or she consents to the reduction.

Clause 11 provides for the appointment of an Acting Principal Public Interest Monitor in certain circumstances.

Subclause (1) provides that the Governor in Council may appoint a person qualified to be appointed as a Public Interest Monitor to act as the Principal Public Interest Monitor—

- during a vacancy in the office of the Principal Public Interest Monitor; or
- during any period, or all periods, when the Principal Public Interest Monitor is absent from duty or from the State or, for another reason, is unable to perform the duties of the office.

Subclause (2) provides that the appointment is to be for a period, not exceeding 6 months, set out in the instrument of appointment.

Subclause (3) provides that the appointment is to be on the same terms and conditions as the Principal Public Interest Monitor.

Clause 12 sets out the circumstances in which a Public Interest Monitor ceases to hold office. These include where a Public Interest Monitor—

- resigns by notice in writing delivered to the Governor; or
- becomes an insolvent under administration; or
- is convicted of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence; or
- nominates for election for the Parliament of Victoria or of the Commonwealth or of another State or Territory of the Commonwealth; or
is appointed as—

- the Director of Public Prosecutions; or
- the Solicitor for Public Prosecutions; or
- is appointed under the Public Prosecutions Act 1994; or
- is employed in, or seconded to, the Office of Public Prosecutions; or
- becomes a person who—
  - is eligible to make a relevant application; or
  - is employed in or by, or seconded to, a body that is eligible to make a relevant application; or
- ceases to be an Australian legal practitioner; or
- is removed from office under section 13.

Clause 13 provides for the suspension and removal from office of Public Interest Monitors.

Subclause (1) provides for the Governor in Council to suspend or remove the Principal Public Interest Monitor or a Deputy Public Interest Monitor from office on any ground on which the Governor in Council is satisfied that the Public Interest Monitor is unfit to hold office.

Subclause (2) provides that if the Principal Public Interest Monitor or a Deputy Public Interest Monitor is suspended under subclause (1), he or she is taken not to be the Principal Public Interest Monitor or Deputy Public Interest Monitor (as the case requires) during the period of suspension.

PART 3—FUNCTIONS OF A PUBLIC INTEREST MONITOR

Clause 14 provides that a Public Interest Monitor has the following functions—

- to appear at any hearing of a relevant application to test the content and sufficiency of the information relied on and the circumstances of the application; and
• for the purpose of testing the content and sufficiency of the information relied on and the circumstances of the application—
  • to ask questions of any person giving information in relation to the application; and
  • to make submissions as to the appropriateness of granting the application; and
• any other functions conferred on a Public Interest Monitor under any Act or law.

Clause 15 provides that the Principal Public Interest Monitor may issue guidelines about how a Deputy Public Interest Monitor is to perform his or her functions.

Clause 16 provides in subclause (1) that a Public Interest Monitor must avoid any actual or potential conflict of interest with his or her role as a Public Interest Monitor.

Subclause (2) provides that a Public Interest Monitor who believes that he or she has an actual or potential conflict of interest in relation to a matter may declare that he or she is unable to perform the functions of a Public Interest Monitor in relation to that matter.

Subclause (3) provides that if the Principal Public Interest Monitor makes a declaration under subclause (2), he or she may arrange for a Deputy Public Interest Monitor to perform the functions of the Principal Public Interest Monitor in relation to the matter.

Subclause (4) provides that if a Deputy Public Interest Monitor makes a declaration under subclause (2), the Principal Public Interest Monitor may arrange for another Public Interest Monitor to perform the functions of the Deputy Public Interest Monitor in relation to the matter.

Clause 17 sets out confidentiality provisions for Public Interest Monitors.

Subclause (1) provides the obligation of a Public Interest Monitor not to disclose information obtained or that came to the person's knowledge in the course of or as a result of the performance of his or her functions, as a Public Interest Monitor. Subclause (1) also specifies that breach of the obligation is subject to a penalty of 240 penalty units or imprisonment for 2 years or both.
Subclause (2) provides that, subject to subclause (3), subclause (1) does not apply to disclosure of information by a Public Interest Monitor in the performance of his or her functions as a Public Interest Monitor.

Subclause (3) clarifies that a Public Interest Monitor must not disclose information obtained or that came to his or her knowledge in the course of or as a result of the performance of his or her functions as a Public Interest Monitor except to the extent necessary—

- to enable a Deputy Public Interest Monitor to discuss his or her functions with the Principal Public Interest Monitor and for the Principal Public Interest Monitor to discuss his or her functions with a Deputy Public Interest Monitor; or
- to enable a Deputy Public Interest Monitor to discuss his or her functions with another Deputy Public Interest Monitor if the Principal Public Interest Monitor is unavailable; or
- for the purposes of another Public Interest Monitor undertaking the functions of the Public Interest Monitor if the Public Interest Monitor is unable to perform those functions; or
- to enable the Principal Public Interest Monitor to prepare an annual report under this Act.

Subclause (4) provides that a person who is or was a Public Interest Monitor is not compellable to disclose information obtained, or that came to the person's knowledge, in the course of or as a result of performing his or her functions as a Public Interest Monitor in any proceeding before a court, board, commission or tribunal.

PART 4—GENERAL

Clause 18 provides that a Public Interest Monitor is not, and cannot be declared to be, a prescribed authority for the purposes of the Freedom of Information Act 1982.
Clause 19 sets out in subclause (1) the Principal Public Interest Monitor's obligation to provide an annual report to the Minister on the performance of the functions of the Public Interest Monitor during each financial year.

Subclause (2) specifies that the report must be given as soon as practicable, but within 4 months after the end of the financial year.

Subclause (3) specifies that an annual report must include—

- the total number of relevant applications in respect of which a Public Interest Monitor appeared at a hearing during that year; and
- the number of relevant applications each law enforcement agency made in respect of which a Public Interest Monitor appeared at a hearing during that year; and
- the number of orders made, warrants issued and authorisations approved on relevant application by each law enforcement agency during that year; and
- the number of relevant applications made by telephone during that year; and
- the number of relevant applications by each law enforcement agency that were refused or withdrawn during that year.

Subclause (4) provides that a report must not contain information that—

- discloses or may lead to the disclosure of the identity of any person involved in an investigation relating to a relevant application made by a law enforcement agency; or
- indicates that a particular investigation has been, is being, or is to be conducted.

Subclause (5) defines law enforcement agency to mean a person or body who or which is eligible to apply for a relevant application.
Clause 20 sets out the process by which the Minister must lay annual reports before each House of the Parliament.

Subclause (1) provides that the Minister must cause the report to be laid before each House of the Parliament within 14 sitting days of the House after receiving the report.

Subclause (2) provides that if the Minister proposes to transmit the report to the Parliament on a day on which neither House of the Parliament is actually sitting, the Minister must—

• give a copy of the report to the clerk of each House of the Parliament; and

• publish the report on a Government Internet site as soon as practicable after giving it to the clerks.

Subclause (3) provides that the clerk of each House must—

• notify each member of the House of the receipt of the report under subclause (2)(a) on the same day that the clerk receives that report; and

• make copies of the report available to each member of the House as soon as practicable after the report is received under subclause (2)(a); and

• cause the report to be laid before the House on the next sitting day of the House.

Subclause (4) provides that a report that is given to the clerks under subclause (2)(a) is taken to have been published by order, or under the authority, of the Houses of Parliament.

Subclause (5) provides that publication of a report by the Minister under subclause (2)(b) is absolutely privileged and the provisions of sections 73 and 74 of the Constitution Act 1975 and any other enactment or rule of law relating to the publication of the proceedings of Parliament apply to and in relation to the publication of the report as if it were a report to which those sections applied and had been published by the Government Printer under the authority of Parliament.
Clause 21 provides that the Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary or convenient to be prescribed to give effect to the Act. The clause specifically provides that this includes regulations relating to the following—

- the requirements for transmission, disposal and storage of documents or information that a Public Interest Monitor receives in performing his or her functions;
- the notifications required to be given to a Public Interest Monitor under—
  - the *Major Crime (Investigative Powers) Act 2004*; and
  - the *Surveillance Devices Act 1999*; and
  - the *Telecommunications (Interception) (State Provisions) Act 1988*; and
  - the *Terrorism (Community Protection) Act 2003*.

PART 5—MAJOR CRIME (INVESTIGATIVE POWERS) ACT 2004

Clause 22 amends section 3 of the *Major Crime (Investigative Powers) Act 2004* to include the following definition—

*Public Interest Monitor* means a Public Interest Monitor within the meaning of the *Public Interest Monitor Act 2011*.

Clause 23 amends the *Major Crime (Investigative Powers) Act 2004* to insert a new Part 1A setting out the role of the Public Interest Monitor.

New section 3A provides that the Part applies if a person is required under that Act to give notice to the Public Interest Monitor of an application—

- a coercive powers order; or
- an extension, variation or revocation of a coercive powers order.

New section 3B sets out the information to be given to the Public Interest Monitor. Subsection (1) provides that if the application
is made in writing, the applicant must give the Public Interest Monitor a copy of the application and any affidavit required to be given to the Supreme Court judge in support of the application. Subsection (2) provides that if further information is required under section 5(5) to be given to the Supreme Court, the applicant must also give the Public Interest Monitor that information. Subsection (3) provides that if the application is to be made by telephone, the applicant must give the Public Interest Monitor the information required to be given to the Supreme Court judge on a telephone application. Subsection (4) provides that an obligation to maintain secrecy in relation to, or that otherwise restricts, the provision of information to the Public Interest Monitor, whether imposed under an Act or by a rule of law, does not apply to the provision of information under Part 1A.

New section 3C provides for full disclosure to the Public Interest Monitor. Subsection (1) provides that an applicant must fully disclose to the Public Interest Monitor all matters of which the applicant is aware that are adverse to the application. Subsection (2) makes it an offence to knowingly or recklessly fail to comply with subsection (1). The maximum penalty for this offence is 60 penalty units or imprisonment for 6 months or both.

New section 3D sets out the role of the Public Interest Monitor. Subsection (1) sets out the entitlement of the Public Interest Monitor—

- to appear at any hearing of the application to test the content and sufficiency of the information relied on and the circumstances of the application; and

- for the purpose of testing the content and sufficiency of the information relied on and the circumstances of the application—
  - to ask questions of any person giving information in relation to the application; and
  - to make submissions to the Supreme Court judge as to the appropriateness of granting the application.

While the Public Interest Monitor may make submissions, it is a matter for the Supreme Court judge to determine whether or not to grant the application.
Subsection (2) provides that, without limiting subsection (1), the Public Interest Monitor is entitled to make submissions to the Supreme Court in the presence of the judge or by phone, fax, email or any other reasonable way.

Subsection (3) provides that if a Public Interest Monitor is not reasonably able to be contacted for an application to which section 5(6) applies—

- the application may proceed without a Public Interest Monitor being notified; and
- a Public Interest Monitor must be notified as soon as possible and given any information requested by the Public Interest Monitor that the Public Interest Monitor would have been entitled to obtain for or during the application.

Subsection (4) provides that, as soon as practicable after the application is determined, the Public Interest Monitor must return to the applicant any documents given by the applicant to the Public Interest Monitor under section 3B, 3C or subsection (3) of this section in relation to the application.

Clause 24 amends the Major Crime (Investigative Powers) Act 2004 to insert a new section 5(5A) requiring the applicant for a coercive powers order to notify a Public Interest Monitor of the application in accordance with the regulations under the Public Interest Monitor Act 2011.

Clause 25 amends section 8 of the Major Crime (Investigative Powers) Act 2004 to insert a new provision providing for the Supreme Court judge to have regard to any submissions made by a Public Interest Monitor in making a coercive powers order.

Clause 26 amends section 9(1) of the Major Crime (Investigative Powers) Act 2004 (which sets out what a coercive powers order must state) to insert a reference to new section 8(b)(iii) inserted by clause 25.

Clause 27 amends the Major Crime (Investigative Powers) Act 2004 to insert a new section 10(3A) to provide that the Supreme Court must have regard to any submissions made by a Public Interest Monitor before making a decision under section 10(4) to extend or vary a coercive powers order.
Clause 28 amends the **Major Crime (Investigative Powers) Act 2004** to insert a new section 11(2A) providing that the Chief Commissioner or delegate must give to a Public Interest Monitor a copy of a notice under section 11(1) that a coercive powers order is no longer required.

Clause 29 amends the **Major Crime (Investigative Powers) Act 2004** to insert a new section 12C(ab) providing that if the Supreme Court revokes a coercive powers order or a notice under section 11(1) is filed, the Court must cause a notice of the revocation to be given to a Public Interest Monitor.

**PART 6—AMENDMENT OF SURVEILLANCE DEVICES ACT**

Clause 30 amends section 3(1) of the **Surveillance Devices Act 1999** to insert the following definitions—

- *Public Interest Monitor* means a Public Interest Monitor within the meaning of the **Public Interest Monitor Act 2011**;
- *relevant application* means an application referred to in section 12A.

Clause 31 amends Part 4 of the **Surveillance Devices Act 1999** to insert a new Division 1AA setting out the role of the Public Interest Monitor.

New section 12A provides that the Division applies if a person is required under Part 4 to give notice to the Public Interest Monitor of an application for—

- a surveillance device warrant; or
- an extension or variation of a surveillance device warrant; or
- a revocation of a surveillance device warrant; or
- a retrieval warrant; or
- a revocation of a retrieval warrant; or
- an assistance order; or
- approval of an emergency authorisation.
New section 12B sets out the information to be given to the Public Interest Monitor. Subsection (1) provides that if the application is made in writing, the applicant must give the Public Interest Monitor a copy of the application and any affidavit required to be given to the Supreme Court judge or a magistrate in support of the application. Subsection (2) provides that if the application is to be made by telephone, the applicant must give the Public Interest Monitor the information required to be given to the Supreme Court judge or a magistrate on a telephone application. Subsection (3) provides that an obligation to maintain secrecy in relation to, or that otherwise restricts, the provision of information to the Public Interest Monitor, whether imposed under an Act or by a rule of law, does not apply to the provision of information under Division 1AA.

New section 12C provides for full disclosure to the Public Interest Monitor. Subsection (1) provides that an applicant must fully disclose to the Public Interest Monitor all matters of which the applicant is aware that are adverse to the application. Subsection (2) makes it an offence to knowingly or recklessly fail to comply with subsection (1). The maximum penalty for this offence is 60 penalty units or 6 months imprisonment or both.

New section 12D sets out the entitlement of the Public Interest Monitor to appear.

Subsection (1) provides that the Public Interest Monitor is entitled—

- to appear at any hearing of a relevant application to test the content and sufficiency of the information relied on and the circumstances of the application; and
- for the purpose of testing the content and sufficiency of the information relied on and the circumstances of the application—
  - to ask questions of any person giving information in relation to the application; and
  - to make submissions to the Supreme Court judge or magistrate as to the appropriateness of granting the application.
While the Public Interest Monitor may make submissions, it is a matter for the Supreme Court judge or magistrate to determine whether or not to grant the application.

Subsection (2) provides that, without limiting subsection (1), the Public Interest Monitor is entitled to make submissions to the Supreme Court judge or magistrate in the presence of the judge or magistrate, or by phone, fax, email or any other reasonable way.

Subsection (3) provides that, as soon as practicable after the application is determined, the Public Interest Monitor must return to the applicant any documents given by the applicant to the Public Interest Monitor under section 12B or 12C in relation to the application.

Clause 32 amends the Surveillance Devices Act 1999 to insert a new section 15(6A), providing that the applicant for a surveillance device warrant must notify a Public Interest Monitor of the application in accordance with the regulations under the Public Interest Monitor Act 2011.

Clause 33 amends the Surveillance Devices Act 1999 to insert a new section 17(2)(f) requiring the Supreme Court judge or magistrate to have regard to any submissions made by a Public Interest Monitor in determining whether a surveillance device warrant should be issued.

Clause 34 amends the Surveillance Devices Act 1999 to insert a new section 20A(4) which provides that a judge or magistrate must give notice of the revocation of a surveillance device warrant to a Public Interest Monitor in accordance with the regulations under the Public Interest Monitor Act 2011.

Clause 35 amends the Surveillance Devices Act 1999 to insert a new section 20C(6A) which requires that the applicant for a retrieval warrant must notify a Public Interest Monitor of the application in accordance with the regulations under the Public Interest Monitor Act 2011.

Clause 36 amends the Surveillance Devices Act 1999 to insert a new section 20E(2)(c) requiring the Supreme Court judge or magistrate to have regard to any submissions made by a Public Interest Monitor in determining whether a retrieval warrant should be issued.
Clause 37 amends the *Surveillance Devices Act 1999* to insert a new section 20H(5), requiring that notice of the revocation of a retrieval warrant must be given to a Public Interest Monitor in accordance with the regulations under the *Public Interest Monitor Act 2011*.

Clause 38 amends section 21 of the *Surveillance Devices Act 1999*. Subclause (1) inserts a new section 21(2A) requiring the applicant for an assistance order to notify a Public Interest Monitor of the application in accordance with the regulations under the *Public Interest Monitor Act 2011*. Subclause (2) amends section 21(3) of the *Surveillance Devices Act 1999*, to ensure that notice is given to a Public Interest Monitor.

Clause 39 amends the *Surveillance Devices Act 1999* to insert a new section 22(2)(c) providing for the Supreme Court to have regard to any submissions made by a Public Interest Monitor in determining whether or not to make an assistance order.

Clause 40 amends the *Surveillance Devices Act 1999* to insert a new section 28(2A) requiring that the applicant for approval of exercise of powers under emergency authorisation must give the Public Interest Monitor notice of the application in accordance with the regulations under the *Public Interest Monitor Act 2011*.

Clause 41 amends the *Surveillance Devices Act 1999*. The clause inserts new sections 29(1)(g) and 29(2)(d) providing for the Supreme Court judge to consider any submissions made by a Public Interest Monitor in deciding an application for approval of an emergency authorisation given under section 26 or 27 of that Act.

Clause 42 amends section 30K of the *Surveillance Devices Act 1999* to insert new subsections (2)(e) and (3)(e) to provide that where a chief officer of a law enforcement agency revokes a surveillance device warrant or a retrieval warrant he or she is required to provide a report to a judge or magistrate stating whether a Public Interest Monitor was notified of the revocation and the reasons why the device was no longer required. This clause inserts new sections 30K(5) and (6) to enable a judge or magistrate who receives a report to ask a Public Interest Monitor to make submissions as to how the information or record referred to in section 30K(4) is used. On receiving the request, the Public Interest Monitor is entitled to make submissions to the judge or
PART 7—AMENDMENT OF TELECOMMUNICATIONS (INTERCEPTION) (STATE PROVISIONS) ACT 1988

Clause 43 amends the Telecommunications (Interception) (State Provisions) Act 1988 to insert a new Part 1A setting out the functions of the Public Interest Monitor.

New section 4 provides that Part 1A applies if an officer of the Police Force or the Office of Police Integrity intends to apply under the Telecommunications (Interception and Access) Act 1979 of the Commonwealth for a Part 2-5 warrant or a renewal of a Part 2-5 warrant.

New section 4A(1) provides that the officer must notify a Public Interest Monitor of the application in accordance with the regulations made under the Public Interest Monitor Act 2011. Subsection (2) provides that if the officer intends to make the application in writing, the officer must give the Public Interest Monitor—

- a copy of the written application; and
- a copy of the affidavit required under section 42 of the Commonwealth Act to accompany the written application.

Subsection (3) provides that, if the officer intends to make the application by telephone the officer must give the Public Interest Monitor the information required under section 43 of the Telecommunications (Interception and Access) Act 1979 (Cth) to be given on a telephone application.

New section 4B provides for full disclosure to the Public Interest Monitor. Subsection (1) provides that an applicant must fully disclose to the Public Interest Monitor all matters of which the applicant is aware that are adverse to the application. Subsection (2) makes it an offence to knowingly or recklessly fail to comply with subsection (1). The maximum penalty for this offence is 60 penalty units or imprisonment for 6 months or both.
New section 4C sets out the requirement that the Public Interest Monitor is to be given further information. If further information is required under section 44 of the Telecommunications (Interception and Access) Act 1979 (Cth) to be given to the issuing authority in connection with the application, the officer must also give the Public Interest Monitor the information.

New section 4D sets out the role of the Public Interest Monitor. Subsection (1) provides that the Public Interest Monitor is entitled—

- to appear at the hearing of the application to test the content and sufficiency of the information relied on and the circumstances of the application; and

- for the purpose of testing the content and sufficiency of the information relied on and the circumstances of the application—
  - to ask questions of any person giving information to the issuing authority; and
  - to make submissions to the issuing authority about the appropriateness of issuing the warrant; and

- to make submissions to the issuing authority about the following matters—
  - in relation to an application for a warrant in relation to a telecommunications service—the matters referred to in section 46(2)(a) to (f) of the Telecommunications (Interception and Access) Act 1979 (Cth);
  - in relation to an application for a warrant in relation to a person—the matters referred to in section 46A(2)(a) to (f) of the Telecommunications (Interception and Access) Act 1979 (Cth).

While the Public Interest Monitor may make submissions, it is a matter for the issuing authority to determine whether or not to issue the warrant.
Subsection (2) provides that, without limiting subsection (1), the Public Interest Monitor is entitled to make submissions to the issuing authority in the presence of the issuing authority, or by phone, fax, email or any other reasonable way.

Subsection (3) provides that, as soon as practicable after the application is determined, the Public Interest Monitor must return to the applicant any documents given by the applicant to the Public Interest Monitor under section 4A, 4B or 4C in relation to the application.

New section 4E provides that confidentiality provisions normally constraining an officer of the Police Force or the Office of Police Integrity, and a person mentioned in section 4D(1)(b)(i) of the Public Interest Monitor Act 2011 do not apply. Subsection (2) provides that an obligation to maintain secrecy in relation to, or that otherwise restricts, the disclosure of information or the production of documents in the possession of the person, whether imposed under an Act or by a rule of law, does not apply to the disclosure of information or the production of a document under this Part.

PART 8—AMENDMENT OF TERRORISM (COMMUNITY PROTECTION) ACT 2003

Clause 44 inserts a new Part 1A in the Terrorism (Community Protection) Act 2003 setting out the role of the Public Interest Monitor.

New section 4C provides that Part 1A applies if a person is required under the Act to give notice to a Public Interest Monitor of an application for—

- a covert search warrant; or
- a preventative detention order; or
- an extension of a preventative detention order; or
- a variation or revocation of a preventative detention order; or
- a prohibited contact order; or
- a variation or revocation of a prohibited contact order.
New section 4D sets out the information to be given to Public Interest Monitor. Subsection (1) makes it clear that if the application is made in writing, the applicant must give the Public Interest Monitor a copy of the application and any affidavit required to be given to the Supreme Court in support of the application.

Subsection (2) provides that if the application is to be made by telephone, the applicant must give the Public Interest Monitor the information required to be given to the Supreme Court on a telephone application.

Subsection (3) provides that an obligation to maintain secrecy in relation to, or that otherwise restricts, the provision of information to the Public Interest Monitor, whether imposed under an Act or by a rule of law, does not apply to the provision of information under Part 1A.

New section 4E provides for full disclosure to a Public Interest Monitor. Subsection (1) requires that the applicant must fully disclose to a Public Interest Monitor all matters of which the applicant is aware that are adverse to the issuing of the warrant. Subsection (2) makes it an offence for an applicant to knowingly or recklessly fail to comply with subsection (1). The maximum penalty for this offence is 60 penalty units or imprisonment for 6 months or both.

New section 4F sets out the role of the Public Interest Monitor and the entitlement of the Public Interest Monitor to appear. Subsection (1) provides that the Public Interest Monitor is entitled—

- to appear at any hearing of the application to test the content and sufficiency of the information relied on and the circumstances of the application; and

- for the purpose of testing the content and sufficiency of the information relied on and the circumstances of the application—
  - to ask questions of any person giving information in relation to the application; and
  - to make submissions to the Supreme Court as to the appropriateness of granting the application.
While the Public Interest Monitor may make submissions, it is a matter for the Supreme Court to determine whether or not to grant the application.

Subsection (2) provides that, without limiting subsection (1), the Public Interest Monitor is entitled to make submissions to the Supreme Court in the presence of the judge, or by phone, fax, email or any other reasonable way.

Subsection (3) provides that, if a Public Interest Monitor is not reasonably able to be contacted for an application (other than an application for a covert search warrant)—

- the application may proceed without a Public Interest Monitor being notified; and
- a Public Interest Monitor must be notified as soon as possible and given any information requested by the Public Interest Monitor that the Public Interest Monitor would have been entitled to obtain for or during the application.

Subsection (4) provides that as soon as practicable after the application is heard, the Public Interest Monitor must return to the applicant any documents given by the applicant to the Public Interest Monitor under section 4D or 4E or subsection (3) of this section in relation to the application.

Clause 45 inserts a new section 7A in the Terrorism (Community Protection) Act 2003 requiring the applicant for a covert search warrant to notify a Public Interest Monitor of the application in accordance with the regulations under the Public Interest Monitor Act 2011.

Clause 46 amends the Terrorism (Community Protection) Act 2003 to insert a new section 8(2)(e) requiring the Supreme Court to have regard to any submissions made by a Public Interest Monitor in determining an application for a covert search warrant.

Clause 47 inserts a new section 13DA into the Terrorism (Community Protection) Act 2003 requiring the applicant to notify the Public Interest Monitor to be notified of an application for a preventative detention order in accordance with the regulations under the Public Interest Monitor Act 2011.
Clause 48 amends the Terrorism (Community Protection) Act 2003 to insert new requirements in section 13E that, in making a preventative detention order, the Supreme Court must have regard to any submissions made by a Public Interest Monitor and that the applicant must notify a Public Interest Monitor of a resumed hearing in accordance with the regulations under the Public Interest Monitor Act 2011.

Clause 49 amends the Terrorism (Community Protection) Act 2003 to insert new requirements in section 13I that the applicant for an extension or further extension of a preventative detention order must notify a Public Interest Monitor of the application in accordance with the regulations under the Public Interest Monitor Act 2011. The clause also inserts a requirement that the Supreme Court must have regard to any submissions made by a Public Interest Monitor when determining whether an order should be made under section 13I.

Clause 50 amends the Terrorism (Community Protection) Act 2003 to insert new requirements in section 13L that the applicant for a prohibited contact order under that section must notify a Public Interest Monitor of the application in accordance with the regulations under the Public Interest Monitor Act 2011. The clause also inserts a requirement that the Supreme Court must have regard to any submissions made by a Public Interest Monitor when determining whether to make a prohibited contact order under section 13L. The clause also inserts new requirements in section 13M that the applicant for a prohibited contact order under that section must notify a Public Interest Monitor of the application in accordance with the regulations under the Public Interest Monitor Act 2011. The clause also inserts a requirement that the Supreme Court must have regard to any submissions made by a Public Interest Monitor when determining whether to make a prohibited contact order under section 13M.

Clause 51 amends the Terrorism (Community Protection) Act 2003 to insert new requirements in section 13O that the applicant for the revocation or variation of a preventative detention order or a prohibited contact order must notify a Public Interest Monitor of the application in accordance with the regulations under the Public Interest Monitor Act 2011. The clause also inserts a requirement that the Supreme Court must have regard to any
submissions made by a Public Interest Monitor when determining whether a preventative detention order or a prohibited contact order should be revoked or varied.

PART 9—AMENDMENT OF OTHER ACTS AND REPEAL OF AMENDING PROVISIONS

Clause 52 amends the Ombudsman Act 1973 to insert a new section 13(3)(bb) providing that nothing in the Act shall authorise the Ombudsman to enquire into or investigate an administrative action taken by a Public Interest Monitor.

Clause 53 amends the Whistleblowers Protection Act 2001 to insert a new section 4(2)(ga) providing that a Public Interest Monitor appointed under the Public Interest Monitor Act 2011 is not a public officer for the purpose of this Act.

Clause 54 provides that Parts 5, 6, 7, 8 and 9 are repealed on the day that is the first anniversary of the first day on which all of the provisions of this Act are in operation. The repeal of a Part, does not affect the continuing operation of the amendments made by that Part (see section 15(1) of the Interpretation of Legislation Act 1984).