



Intelligence Services Act 2001

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About this compilation

This compilation

This is a compilation of the *Intelligence Services Act 2001* that shows the text of the law as amended and in force on 12 December 2015 (the **compilation date**).

This compilation was prepared on 22 January 2016.

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw (www.comlaw.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to the Australian intelligence services, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Intelligence Services Act 2001*.

2 Commencement

This Act commences 28 days after the day on which it receives the Royal Assent.

3 Definitions

In this Act, unless the contrary intention appears:

AFP means the Australian Federal Police.

agency means ASIS, AGO or ASD.

agency head means:

- (a) in relation to ASIS—the Director-General; and
- (b) in relation to AGO—the Director of AGO; and
- (c) in relation to ASD—the Director of ASD.

AGO means that part of the Defence Department known as the Australian Geospatial-Intelligence Organisation.

APS Agency means an Agency within the meaning of the *Public Service Act 1999*.

ASD means that part of the Defence Department known as the Australian Signals Directorate.

ASIO means the Australian Security Intelligence Organisation.

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ASIS means the Australian Secret Intelligence Service.

Australia, when used in a geographical sense, includes the external Territories.

Australian person means a person who is:

- (a) an Australian citizen; or
- (b) a permanent resident.

Chair means the Chair of the Committee.

Committee means the Parliamentary Joint Committee on Intelligence and Security.

Commonwealth authority includes:

- (a) an Agency within the meaning of the *Public Service Act 1999*; and
- (b) a Department within the meaning of the *Parliamentary Service Act 1999*; and
- (c) the Defence Force; and
- (d) a body (whether incorporated or not) established, or continued in existence, for a public purpose by or under a law of the Commonwealth; and
- (e) a body corporate in which the Commonwealth or a body referred to in paragraph (d) has a controlling interest.

court includes a tribunal, authority or person that has power to require the production of documents or the answering of questions.

Defence Department means the Department of State that deals with defence and that is administered by the Defence Minister.

Defence Minister means the Minister administering section 1 of the *Defence Act 1903*.

DIO means that part of the Defence Department known as the Defence Intelligence Organisation.

Director-General means the Director-General of ASIS.

Director-General of Security means the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*.

emergency response function includes, but is not limited to, a function in relation to:

- (a) search and rescue; or
- (b) emergency rescue; or
- (c) response to natural disasters.

Foreign Affairs Minister means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

foreign power has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

IGIS official (short for Inspector-General of Intelligence and Security official) means:

- (a) the Inspector-General of Intelligence and Security; or
- (b) a member of the staff referred to in subsection 32(1) of the *Inspector-General of Intelligence and Security Act 1986*.

Immigration and Border Protection Department means the Department administered by the Minister administering the *Australian Citizenship Act 2007*.

incidentally obtained intelligence means intelligence:

- (a) that is obtained by ASIS in the course of obtaining intelligence under subsection 6(1) (other than intelligence obtained solely in the course of obtaining intelligence under paragraph 6(1)(da)), by AGO in the course of obtaining intelligence under paragraph 6B(a), (b) or (c) or by ASD in the course of obtaining intelligence under paragraph 7(a); and
- (b) that is not intelligence of a kind referred to in those provisions.

Inspector-General of Intelligence and Security means the Inspector-General of Intelligence and Security appointed under the *Inspector-General of Intelligence and Security Act 1986*.

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intelligence information means the following:

- (a) information obtained by ASIS under subsection 6(1) (other than information obtained solely under paragraph 6(1)(da));
- (b) information obtained by AGO under paragraph 6B(a), (b) or (c);
- (c) information obtained by ASD under paragraph 7(a);
- (d) incidentally obtained intelligence.

member means a member of the Committee, and includes the Chair.

ONA means the Office of National Assessments established by the *Office of National Assessments Act 1977*.

operational security of ASIS means the protection of the integrity of operations undertaken by ASIS from:

- (a) interference by a foreign person or entity; or
- (b) reliance on inaccurate or false information.

paramilitary activities means activities involving the use of an armed unit (or other armed group) that is not part of a country's official defence or law enforcement forces.

permanent resident means:

- (a) a natural person who is a permanent resident within the meaning of the *Australian Security Intelligence Organisation Act 1979*; or
- (b) a body corporate incorporated under a law in force in a State or Territory, other than a body corporate whose activities one or more of the following controls, or is in a position to control, whether directly or indirectly:
 - (i) a foreign power;
 - (ii) a natural person who is neither an Australian citizen nor a person covered by paragraph (a);
 - (iii) a group of natural persons, none of whom is an Australian citizen or a person covered by paragraph (a).

police functions means:

- (a) the arrest, charging or detention of suspected offenders; or
- (b) any other activity undertaken for the purposes of prosecuting, or for determining whether to prosecute, an offence.

record means a document, or any other object by which words, images, sounds or signals are recorded or stored or from which information can be obtained, and includes part of a record.

Note: For the definition of ***document***, see section 2B of the *Acts Interpretation Act 1901*.

responsible Minister means:

- (a) in relation to ASIO—the Minister responsible for ASIO; and
- (b) in relation to an agency—the Minister responsible for the agency; and
- (ba) in relation to DIO—the Minister responsible for DIO; and
- (c) in relation to ONA—the Minister responsible for ONA.

retained data activity means an activity relating to information, or documents, that a service provider has been required to keep under Part 5-1A of the *Telecommunications (Interception and Access) Act 1979*.

serious crime means conduct that, if engaged in within, or in connection with, Australia, would constitute an offence against the law of the Commonwealth, a State or a Territory punishable by imprisonment for a period exceeding 12 months.

service provider has the same meaning as in the *Telecommunications (Interception and Access) Act 1979*.

signals includes electromagnetic emissions.

staff member means:

- (a) in relation to ASIO—a member of the staff of ASIO (whether an employee of ASIO, a consultant or contractor to ASIO, or a person who is made available by another Commonwealth or State authority or other person to perform services for ASIO); and

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- (b) in relation to an agency—a member of the staff of the agency (whether an employee of the agency, a consultant or contractor to the agency, or a person who is made available by another Commonwealth or State authority or other person to perform services for the agency).

State authority includes:

- (a) a Department of State of a State or Territory or a Department of the Public Service of a State or Territory; and
- (b) a body (whether incorporated or not) established, or continued in existence, for a public purpose by or under a law of a State or Territory; and
- (c) a body corporate in which a State, Territory or a body referred to in paragraph (b) has a controlling interest.

3A References to Ministers

Despite section 19A of the *Acts Interpretation Act 1901*, in this Act:

- (a) a reference to the responsible Minister in relation to a relevant agency is a reference only to the most senior responsible Minister in relation to that agency; and
- (b) a reference to the Prime Minister or the Attorney-General is a reference only to the Minister with that title; and
- (c) a reference to the Defence Minister is a reference only to the most senior Defence Minister; and
- (d) a reference to the Foreign Affairs Minister is a reference only to the most senior Foreign Affairs Minister; and
- (e) a reference to the Minister responsible for administering the *Australian Security Intelligence Organisation Act 1979* is a reference only to the most senior such Minister.

Note: A reference to a Minister mentioned in this section may include a reference to a person acting as that Minister (see section 19 of the *Acts Interpretation Act 1901*).

4 Extension to external Territories

This Act extends to every external Territory.

5 Application of *Criminal Code*

- (1) Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to all offences against this Act.

Part 2—Functions of the agencies

Division 1—Functions of the agencies

6 Functions of ASIS

- (1) The functions of ASIS are:
 - (a) to obtain, in accordance with the Government's requirements, intelligence about the capabilities, intentions or activities of people or organisations outside Australia; and
 - (b) to communicate, in accordance with the Government's requirements, such intelligence; and
 - (ba) to provide assistance to the Defence Force in support of military operations and to cooperate with the Defence Force on intelligence matters; and
 - (c) to conduct counter-intelligence activities; and
 - (d) to liaise with intelligence or security services, or other authorities, of other countries; and
 - (da) to co-operate with and assist bodies referred to in section 13A in accordance with that section; and
 - (db) to undertake activities in accordance with section 13B; and
 - (e) to undertake such other activities as the responsible Minister directs relating to the capabilities, intentions or activities of people or organisations outside Australia.
- (2) The responsible Minister may direct ASIS to undertake activities referred to in paragraph (1)(e) only if the Minister:
 - (a) has consulted other Ministers who have related responsibilities; and
 - (b) is satisfied that there are satisfactory arrangements in place to ensure that, in carrying out the direction, nothing will be done beyond what is necessary having regard to the purposes for which the direction is given; and
 - (c) is satisfied that there are satisfactory arrangements in place to ensure that the nature and consequences of acts done in

carrying out the direction will be reasonable having regard to the purposes for which the direction is given.

(3) A direction under paragraph (1)(e) must be in writing.

Note: If the Minister gives a direction under paragraph (1)(e), the Minister must give a copy of the direction to the Inspector-General of Intelligence and Security as soon as practicable after the direction is given to the head of ASIS (see section 32B of the *Inspector-General of Intelligence and Security Act 1986*).

(3A) A direction under paragraph (1)(e) is not a legislative instrument.

(4) In performing its functions, ASIS must not plan for, or undertake, activities that involve:

- (a) paramilitary activities; or
- (b) violence against the person; or
- (c) the use of weapons;

by staff members or agents of ASIS.

Note 1: This subsection does not prevent ASIS from being involved with the planning or undertaking of activities covered by paragraphs (a) to (c) by other organisations provided that staff members or agents of ASIS do not undertake those activities.

Note 2: For other limits on the agency's functions and activities see sections 11 and 12.

Note 3: For *paramilitary activities* see section 3.

(5) Subsection (4) does not prevent:

- (a) the provision of weapons, or training in the use of weapons or in self-defence techniques, in accordance with Schedule 2; or
- (b) the use of weapons or self-defence techniques in accordance with Schedule 2.

(6) ASIS must not provide weapons, or training in the use of weapons or in self-defence techniques, other than in accordance with Schedule 2.

(7) In performing its functions, ASIS is not prevented from providing assistance to Commonwealth authorities and to State authorities.

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6A Committee to be advised of other activities

If the responsible Minister gives a direction under paragraph 6(1)(e), the Minister must as soon as practicable advise the Committee of the nature of the activity or activities to be undertaken.

Note: For *Committee* see section 3.

6B Functions of AGO

The functions of AGO are:

- (a) to obtain geospatial and imagery intelligence about the capabilities, intentions or activities of people or organisations outside Australia from the electromagnetic spectrum or other sources, for the purposes of meeting the requirements of the Government for such intelligence; and
- (b) to obtain geospatial and imagery intelligence from the electromagnetic spectrum or other sources for the purposes of meeting the operational, targeting, training and exercise requirements of the Defence Force; and
- (c) to obtain geospatial and imagery intelligence from the electromagnetic spectrum or other sources for the purposes of supporting Commonwealth authorities and State authorities in carrying out national security functions; and
- (d) to communicate, in accordance with the Government's requirements, intelligence referred to in paragraph (a), (b) or (c); and
- (e) to provide to Commonwealth authorities, State authorities and bodies approved in writing by the Minister, the following:
 - (i) imagery and other geospatial products, not being intelligence obtained under paragraph (a), (b) or (c);
 - (ii) assistance in relation to the production and use of imagery and other geospatial products;
 - (ia) assistance in relation to the production and use of imagery and other geospatial technologies;

- (iii) assistance in relation to the performance by those authorities or bodies of emergency response functions; and
- (f) to co-operate with and assist bodies referred to in section 13A in accordance with that section; and
- (g) to provide assistance to the Defence Force in support of military operations and to cooperate with the Defence Force on intelligence matters.

Note: For limits on the agency's functions and activities see sections 11 and 12.

7 Functions of ASD

The functions of ASD are:

- (a) to obtain intelligence about the capabilities, intentions or activities of people or organisations outside Australia in the form of electromagnetic energy, whether guided or unguided or both, or in the form of electrical, magnetic or acoustic energy, for the purposes of meeting the requirements of the Government, and in particular the requirements of the Defence Force, for such intelligence; and
- (b) to communicate, in accordance with the Government's requirements, such intelligence; and
- (c) to provide material, advice and other assistance to Commonwealth and State authorities on matters relating to the security and integrity of information that is processed, stored or communicated by electronic or similar means; and
- (d) to provide assistance to the Defence Force in support of military operations and to cooperate with the Defence Force on intelligence matters; and
- (e) to provide assistance to Commonwealth and State authorities in relation to:
 - (i) cryptography, and communication and computer technologies; and
 - (ii) other specialised technologies acquired in connection with the performance of its other functions; and

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- (iii) the performance by those authorities of search and rescue functions; and
- (f) to co-operate with and assist bodies referred to in section 13A in accordance with that section.

Note: For limits on the agency's functions and activities see sections 11 and 12.

8 Ministerial directions

- (1) The responsible Minister in relation to ASIS, the responsible Minister in relation to AGO and the responsible Minister in relation to ASD, must issue a written direction under this subsection to the relevant agency head. The direction must:
 - (a) require the agency to obtain an authorisation under section 9, 9A or 9B (as the case requires) before:
 - (i) undertaking an activity, or a series of activities, for the specific purpose, or for purposes which include the specific purpose, of producing intelligence on an Australian person; or
 - (ia) undertaking, in the course of providing assistance to the Defence Force in support of military operations under paragraph 6(1)(ba), an activity, or a series of activities, for the specific purpose, or for purposes which include the specific purpose, of producing intelligence on one or more members of a class of Australian persons; or
 - (ib) undertaking, in the course of providing assistance to the Defence Force in support of military operations under paragraph 6(1)(ba), an activity, or a series of activities, that will, or is likely to, have a direct effect on one or more members of a class of Australian persons; or
 - (ii) undertaking, in accordance with a direction under paragraph 6(1)(e), an activity, or a series of activities, that will, or is likely to, have a direct effect on an Australian person; and
 - (b) specify the circumstances in which the agency must, before undertaking other activities or classes of activities, obtain an authorisation under section 9, 9A or 9B (as the case requires).

- (2) The responsible Minister may give written directions to be observed:
 - (a) in the performance by the relevant agency of its functions; or
 - (b) in the case of ASIS—in the exercise of the powers of the Director-General under section 33 or 34.
- (3) Each agency head must ensure that the agency complies with any direction given by the responsible Minister under this section.
- (4) Directions under paragraph (2)(b) must not relate to a specific staff member.
- (5) A direction given under this section is not a legislative instrument.

Note: The Inspector-General of Intelligence and Security has oversight powers in relation to Ministerial directions and authorisations given under this Act. See in particular section 32B of the *Inspector-General of Intelligence and Security Act 1986* (which requires the Minister to give a copy of a direction under this section to the Inspector-General of Intelligence and Security as soon as practicable after the direction is given).

9 Ministerial authorisation

Preconditions for giving authorisation

- (1) Before a Minister gives an authorisation, the Minister must be satisfied that:
 - (a) any activities which may be done in reliance on the authorisation will be necessary for the proper performance of a function of the agency concerned; and
 - (b) there are satisfactory arrangements in place to ensure that nothing will be done in reliance on the authorisation beyond what is necessary for the proper performance of a function of the agency; and
 - (c) there are satisfactory arrangements in place to ensure that the nature and consequences of acts done in reliance on the authorisation will be reasonable, having regard to the purposes for which they are carried out; and

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- (d) for an authorisation for an activity, or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(ia) or (ib)—the Defence Minister has requested the authorisation in writing.
- (1A) Before a Minister gives an authorisation for an activity, or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(i), (ia), (ib) or (ii), the Minister must also:
 - (a) be satisfied that the Australian person, or the class of Australian persons, mentioned in that subparagraph is, or is likely to be, involved in one or more of the following activities:
 - (i) activities that present a significant risk to a person's safety;
 - (ii) acting for, or on behalf of, a foreign power;
 - (iii) activities that are, or are likely to be, a threat to security;
 - (iiia) activities that pose a risk, or are likely to pose a risk, to the operational security of ASIS;
 - (iv) activities related to the proliferation of weapons of mass destruction or the movement of goods listed from time to time in the Defence and Strategic Goods List (within the meaning of regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*);
 - (iva) activities related to a contravention, or an alleged contravention, by a person of a UN sanction enforcement law;
 - (v) committing a serious crime by moving money, goods or people;
 - (vi) committing a serious crime by using or transferring intellectual property;
 - (vii) committing a serious crime by transmitting data or signals by means of guided and/or unguided electromagnetic energy; and
 - (b) if the Australian person, or the class of Australian persons, is, or is likely to be, involved in an activity or activities that are, or are likely to be, a threat to security (whether or not covered by another subparagraph of paragraph (a) in addition to subparagraph (a)(iii))—obtain the agreement (orally or in

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writing, but subject to subsection (1AA)) of the Minister responsible for administering the *Australian Security Intelligence Organisation Act 1979*.

Note: For *serious crime*, see section 3.

Agreement of Minister administering the Australian Security Intelligence Organisation Act 1979

- (1AA) Without limiting paragraph (1A)(b), the Minister responsible for administering the *Australian Security Intelligence Organisation Act 1979* may, in writing:
- (a) specify classes of Australian persons who are, or are likely to be, involved in an activity or activities that are, or are likely to be, a threat to security; and
 - (b) give his or her agreement in relation to any Australian person in that specified class.
- (1AB) An agreement given in accordance with subsection (1AA) may:
- (a) relate to an authorisation for an activity, or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(i), (ia), (ib) or (ii); and
 - (b) specify the period during which the agreement has effect.
- (1AC) If an agreement relating to a specified class of Australian persons specifies a period in accordance with paragraph (1AB)(b), the agreement of the Minister responsible for administering the *Australian Security Intelligence Organisation Act 1979* is, for authorisations to be given after the period ends, taken not to have been obtained in relation to a person in that class.

Note: The agreement of the Minister would need to be obtained again in relation to such a person.

Content and form of authorisation

- (2) The Minister may give an authorisation in relation to:
- (a) an activity, or class of activities, specified in the authorisation; or

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- (b) acts of a staff member or agent, or a class of staff members or agents, specified (whether by name or otherwise) in the authorisation; or
 - (c) activities done for a particular purpose connected with the agency's functions.
- (3) An authorisation is subject to any conditions specified in it.
- (4) An authorisation must specify how long it will have effect. The period of effect specified in an authorisation for an activity, or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(i), (ia), (ib) or (ii) must not exceed 6 months.
- (4A) An authorisation must be in writing.

Requirement to keep copies

- (5) If a Minister gives an authorisation under this section in relation to an agency, the relevant agency head must ensure that copies of the following are kept by the agency and are available for inspection on request by the Inspector-General of Intelligence and Security:
 - (a) the authorisation;
 - (b) any record or copy of an agreement given under paragraph (1A)(b) (including any agreement given in accordance with subsection (1AA));
 - (c) if the authorisation is for an activity, or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(ia) or (ib)—the request from the Defence Minister referred to in paragraph (1)(d) of this section.

Status of instruments

- (6) A request under paragraph (1)(d), an agreement under paragraph (1A)(b) (if in writing), a request under subsection (5) (if in writing), and an authorisation under this section, are not legislative instruments.

Section 9A

Definitions

(7) In this section:

security has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

UN sanction enforcement law has the same meaning as in the *Charter of the United Nations Act 1945*.

9A Authorisations in an emergency—Ministerial authorisations

(1) This section applies if:

- (a) an emergency situation arises in which an agency head considers it necessary or desirable to undertake an activity or a series of activities (except an activity or a series of activities of a kind mentioned in subparagraph 8(1)(a)(ia) or (ib)); and
- (b) a direction under subsection 8(1) requires the agency to obtain an authorisation under section 9, 9A or 9B before undertaking that activity or series of activities.

Giving oral authorisations

(2) A Minister specified in subsection (3) may orally give an authorisation under this section for the activity or series of activities if (subject to section 9C) the conditions in subsections 9(1) and (1A) are met.

Note: The condition in paragraph 9(1A)(b) may not be required to be met if the Minister responsible for administering the *Australian Security Intelligence Organisation Act 1979* is unavailable (see section 9C).

(3) The Ministers who may orally give an authorisation are:

- (a) the responsible Minister in relation to the relevant agency; or
- (b) if the agency head is satisfied that the relevant responsible Minister is not readily available or contactable—any of the following Ministers:
 - (i) the Prime Minister;
 - (ii) the Defence Minister;

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- (iii) the Foreign Affairs Minister;
- (iv) the Attorney-General.

Note: An authorisation may be given by an agency head if none of those Ministers are readily available or contactable (see section 9B).

Period of effect of oral authorisation

- (4) An authorisation given under this section for an activity or series of activities ceases to have effect at the earlier of the following times:
 - (a) when an authorisation for the activity or series of activities is given under section 9;
 - (b) 48 hours from the time the authorisation was given under this section.

Record of oral authorisation

- (5) The agency head must:
 - (a) ensure that a written record of an authorisation given under this section is made as soon as practicable (but no later than 48 hours) after the authorisation is given; and
 - (b) give the Inspector-General of Intelligence and Security a copy of the record within 3 days after the authorisation is given.

9B Authorisations in an emergency—Ministers unavailable

- (1) This section applies if:
 - (a) an agency head considers it necessary or desirable to undertake an activity or a series of activities; and
 - (b) an authorisation is sought under section 9A; and
 - (c) the agency head is satisfied that none of the Ministers specified in subsection 9A(3) are readily available or contactable.
- (2) The agency head may give an authorisation under this section for the activity or series of activities if the agency head is satisfied that:

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- (a) the facts of the case would justify the relevant responsible Minister giving an authorisation under section 9 because (subject to section 9C) the agency head is satisfied that the conditions in subsections 9(1) and (1A) are met; and
- (b) the responsible Minister would have given the authorisation; and
- (c) if the activity or series of activities is not undertaken before an authorisation is given under section 9 or 9A:
 - (i) security (within the meaning of the *Australian Security Intelligence Organisation Act 1979*) will be, or is likely to be, seriously prejudiced; or
 - (ii) there will be, or is likely to be, a serious risk to a person's safety.

Note: The condition in paragraph 9(1A)(b) may not be required to be met if the Minister responsible for administering the *Australian Security Intelligence Organisation Act 1979* is unavailable (see section 9C).

Content and form of authorisation

- (3) An authorisation given under this section:
 - (a) may be given in relation to the same matters as an authorisation may be given under subsection 9(2); and
 - (b) is subject to the requirements of subsections 9(3) and (4A).

Period of effect of authorisation

- (4) An authorisation given under this section for an activity or series of activities ceases to have effect at the earliest of the following times:
 - (a) when an authorisation for the activity or series of activities is given under section 9 or 9A;
 - (b) when the authorisation given under this section is cancelled by the relevant responsible Minister under subsection (8) of this section;
 - (c) 48 hours from the time the authorisation was given under this section.

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Notifying the responsible Minister

- (4A) An agency head who gives an authorisation under this section for an activity or series of activities must notify the relevant responsible Minister of the authorisation within 8 hours after giving the authorisation.

Copies of authorisation and other documents

- (5) The agency head must also give the following documents to the relevant responsible Minister and the Inspector-General of Intelligence and Security:
- (a) a copy of the authorisation;
 - (b) a summary of the facts of the case that the agency head was satisfied justified giving the authorisation;
 - (c) an explanation of the Minister's obligation under subsection (7).
- (6) The documents must be given to the responsible Minister and the Inspector-General of Intelligence and Security as soon as practicable, but no later than the following time:
- (a) for documents given to the responsible Minister—48 hours after giving the authorisation;
 - (b) for documents given to the Inspector-General of Intelligence and Security—3 days after giving the authorisation.

Responsible Minister must consider cancelling authorisation or giving new authorisation

- (7) As soon as practicable after the responsible Minister is given the documents, the responsible Minister must consider whether to:
- (a) cancel the authorisation under subsection (8); or
 - (b) give a new authorisation for the activity or series of activities under section 9 or 9A.

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Responsible Minister may cancel authorisation

- (8) For the purposes of paragraph (4)(b), the relevant responsible Minister may, in writing, cancel an authorisation given under this section.

Oversight by Inspector-General of Intelligence and Security

- (8A) Within 30 days after the Inspector-General of Intelligence and Security is given the documents, the Inspector-General must:
- (a) consider whether the agency head complied with the requirements of this section in giving the authorisation; and
 - (b) provide the responsible Minister with a report on the Inspector-General's views of the extent of the agency head's compliance with the requirements of this section in giving the authorisation; and
 - (c) provide to the Committee a copy of the conclusions in the report.

Status of instruments

- (9) An authorisation, report and a cancellation under this section are not legislative instruments.

9C Authorisations in an emergency—Minister responsible for administering the *Australian Security Intelligence Organisation Act 1979* unavailable

- (1) This section applies if:
- (a) an agency head considers it necessary or desirable to undertake an activity or a series of activities; and
 - (b) an authorisation is sought under section 9A or 9B; and
 - (c) all of the following apply:
 - (i) the agreement of the Minister responsible for administering the *Australian Security Intelligence Organisation Act 1979* (the **ASIO Minister**) is required to be obtained under paragraph 9(1A)(b);
 - (ii) the agreement has not been obtained;

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- (iii) the agency head is satisfied that the ASIO Minister is not readily available or contactable.

Giving authorisation

- (2) Despite paragraph 9(1A)(b), the authorisation may (subject to subsection (3)) be given without obtaining the agreement of the ASIO Minister.

Obtaining the agreement of the Director-General of Security

- (3) Before an authorisation is given under section 9A or 9B, unless the agency head is satisfied that the Director-General of Security is not readily available or contactable, the agency head must obtain the agreement of the Director-General to the authorisation being given without the agreement of the ASIO Minister.

Notifying the ASIO Minister

- (4) The relevant agency head must notify the ASIO Minister and the Inspector-General of Intelligence and Security that an authorisation was given under section 9A or 9B (as the case requires) in accordance with this section. The notification must state whether the agreement of the Director-General of Security was obtained.
- (5) The notification must be given:
 - (a) for a notification given to the ASIO Minister—before the end of 8 hours after the authorisation is given under section 9A or 9B; and
 - (b) for a notification given to the Inspector-General of Intelligence and Security—as soon as practicable, but no later than 3 days after the authorisation is given under section 9A or 9B.

Oversight by Inspector-General of Intelligence and Security

- (6) Within 30 days after the Inspector-General of Intelligence and Security is given the notification, the Inspector-General must:

- (a) consider whether the agency head complied with the requirements of this section in giving the authorisation under section 9A or 9B; and
- (b) provide the responsible Minister with a report on the Inspector-General's views of the extent of the agency head's compliance with the requirements of this section in giving the authorisation under that section; and
- (c) provide to the Committee a copy of the conclusions in the report.

10 Period during which authorisation given under section 9 has effect etc.

Renewing authorisations

- (1) The Minister may, at any time before the day on which an authorisation given under section 9 would cease to have effect, renew it for the length of time specified in the renewal. However, the authorisation must not be renewed unless the Minister is satisfied that it is necessary, for the purpose for which the authorisation was given, for the authorisation to continue to have effect.
- (1A) The renewal (or any subsequent renewal) of an authorisation given under section 9 for an activity, or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(i), (ia), (ib) or (ii), must be for a period not exceeding 6 months.

Varying or cancelling authorisations

- (2) The Minister may vary or cancel an authorisation given under section 9 at any time.
- (2A) If, before an authorisation is cancelled under subsection (2) or otherwise ceases to have effect, the relevant agency head is satisfied that the grounds on which the authorisation was given under section 9 have ceased to exist:

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- (a) the agency head must inform the Minister accordingly, and must take the steps necessary to ensure that activities under the authorisation are discontinued; and
 - (b) as soon as practicable after being so informed, the Minister must consider cancelling the authorisation under subsection (2).
- (2B) Without limiting subsection (2A), if an authorisation is given under section 9 for an activity, or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(ia) or (ib), the grounds on which the authorisation was given cease to exist if:
 - (a) the Defence Force is no longer engaged in any military operations to which the request for the authorisation relates; or
 - (b) the Defence Minister withdraws the request for the authorisation.

Note: For the request for the authorisation, see paragraph 9(1)(d).

- (2C) For the purposes of subsection (2A), if an authorisation is given in reliance on an agreement that specifies a period in accordance with paragraph 9(1AB)(b), the grounds on which the authorisation was given are taken not to have ceased to exist merely because the period specified in the agreement ends.

Renewal, variation or cancellation to be in writing

- (3) A renewal, variation or cancellation of an authorisation given under section 9 must be in writing.

Relationship with the Acts Interpretation Act 1901

- (4) To avoid doubt, this section does not limit subsection 33(3) of the *Acts Interpretation Act 1901* to the extent that it applies to an authorisation given under section 9A or 9B.

10A Agency heads must report on authorised activities

- (1) An agency head must give to the responsible Minister in relation to the agency a written report in respect of each activity, or series of

activities, carried out by the agency in reliance on an authorisation under section 9, 9A or 9B.

- (2) The report must (subject to subsections (3) and (4)) be provided to the Minister within 3 months of the day on which the relevant authorisation ceased to have effect.
- (3) If the report is in respect of an activity, or series of activities, of a kind mentioned in subparagraph 8(1)(a)(ia) or (ib), the report must be provided to the Minister as soon as practicable, but no later than 3 months, after each of the following days:
 - (a) the day on which the relevant authorisation ceased to have effect;
 - (b) the day on which the relevant authorisation was renewed.
- (4) If the report is in respect of an activity, or series of activities, carried out by the agency in reliance on an authorisation under section 9A or 9B, the report must be provided to the Minister as soon as practicable, but no later than 1 month, after the day on which the authorisation ceased to have effect.

11 Limits on agencies' functions

- (1) The functions of the agencies are to be performed only in the interests of Australia's national security, Australia's foreign relations or Australia's national economic well-being and only to the extent that those matters are affected by the capabilities, intentions or activities of people or organisations outside Australia.
- (2) The agencies' functions do not include:
 - (a) the carrying out of police functions; or
 - (b) any other responsibility for the enforcement of the law.However, this does not prevent the agencies from:
 - (c) obtaining intelligence under paragraph 6(1)(a), 6B(a), (b), or (c) or 7(a) and communicating any such intelligence that is relevant to serious crime to the appropriate law enforcement authorities; or

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- (d) in the case of ASIS—performing the function set out in paragraph 6(1)(da) or providing assistance as mentioned in subsection 6(7); or
- (e) in the case of AGO—performing the functions set out in paragraphs 6B(e) and (f); or
- (f) in the case of ASD—performing the functions set out in paragraphs 7(e) and (f).

Note: For *police functions* and *serious crime* see section 3.

- (2AA) An agency may communicate incidentally obtained intelligence to appropriate Commonwealth or State authorities or to authorities of other countries approved under paragraph 13(1)(c) if the intelligence relates to the involvement, or likely involvement, by a person in one or more of the following activities:
 - (a) activities that present a significant risk to a person's safety;
 - (b) acting for, or on behalf of, a foreign power;
 - (c) activities that are a threat to security;
 - (d) activities related to the proliferation of weapons of mass destruction or the movement of goods listed from time to time in the Defence and Strategic Goods List (within the meaning of regulation 13E of the *Customs (Prohibited Exports) Regulations 1958*);
 - (e) committing a serious crime.
- (2A) The agencies' functions do not include undertaking any activity for the purpose of furthering the interests of an Australian political party or other Australian political organisation.
- (3) Subsection (1) does not apply to the functions described in paragraphs 6(1)(da), 6B(b), (c), (d), (e), (f) and (g), and 7(c), (d), (e) and (f).

12 Limits on agencies' activities

An agency must not undertake any activity unless the activity is:

- (a) necessary for the proper performance of its functions; or
- (b) authorised or required by or under another Act.

12A Special responsibilities of Directors and Director-General

The Director of AGO, the Director of ASD and the Director-General must take all reasonable steps to ensure that:

- (a) his or her agency is kept free from any influences or considerations not relevant to the undertaking of activities as mentioned in paragraph 12(a) or (b); and
- (b) nothing is done that might lend colour to any suggestion that his or her agency is concerned to further or protect the interests of any particular section of the community, or with undertaking any activities other than those mentioned in paragraph 12(a) or (b).

Division 2—Co-operation

13 Co-operation with other authorities in connection with performance of agency's own functions

- (1) Subject to any arrangements made or directions given by the responsible Minister, an agency may cooperate with:
- (a) Commonwealth authorities; and
 - (b) State authorities; and
 - (c) authorities of other countries approved by the Minister as being capable of assisting the agency in the performance of its functions;

so far as is necessary for the agency to perform its functions, or so far as facilitates the performance by the agency of its functions.

Note: For *Commonwealth authority* and *State authority* see section 3.

- (1A) However, an approval under paragraph (1)(c) does not enable ASIS to cooperate with an authority of another country in planning or undertaking:
- (a) activities covered by paragraphs 6(4)(a) to (c); or
 - (b) training in the use of weapons or in self-defence techniques;
- unless, before giving the approval, the Minister consults with the Prime Minister and the Attorney-General.
- (2) An approval under paragraph (1)(c) must be in writing.
- (3) Each agency head must ensure that a copy of any approval given by the relevant responsible Minister is kept by the agency and is available on request by the Inspector-General of Intelligence and Security.

13A Co-operation with intelligence agencies etc. in connection with performance of their functions

- (1) An agency may co-operate with and assist the following bodies in the performance of their functions:

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- (a) another agency;
 - (b) ASIO;
 - (c) a Commonwealth authority, or a State authority, that is prescribed by the regulations for the purposes of this paragraph.
- (2) However, the agency may only do so:
- (a) subject to any arrangements made or directions given by the responsible Minister; and
 - (b) on request by the head (however described) of the body referred to in subsection (1).

Note: The Inspector-General of Intelligence and Security has oversight powers in relation to Ministerial directions and authorisations given under this Act. See in particular section 32B of the *Inspector-General of Intelligence and Security Act 1986* (which requires the Minister to give a copy of a direction under this section to the Inspector-General of Intelligence and Security as soon as practicable after the direction is given).

- (3) Without limiting subsection (1), in co-operating with and assisting a body in accordance with this section, an agency may make the services of staff members, and other resources, of the agency available to the body.

Division 3—Activities undertaken in relation to ASIO

13B Activities undertaken in relation to ASIO

When an activity may be undertaken in relation to ASIO

- (1) Subject to section 13D, ASIS may undertake an activity, or a series of activities, if:
 - (a) the activity or series of activities will be undertaken for the specific purpose, or for purposes which include the specific purpose, of producing intelligence on an Australian person or a class of Australian persons; and
 - (b) the activity or series of activities will be undertaken outside Australia; and
 - (c) the activity or series of activities will be undertaken to support ASIO in the performance of its functions; and
 - (d) either:
 - (i) the Director-General of Security; or
 - (ii) a person who is authorised under section 13C for the purposes of this subparagraph;has, in writing, notified ASIS that ASIO requires the production of intelligence on the Australian person or class of Australian persons.
- (2) The undertaking of an activity or series of activities under subsection (1) is subject to any conditions specified in the notice under paragraph (1)(d).

When notice from ASIO not required—particular activity

- (3) Paragraph (1)(d) does not apply in relation to the undertaking of a particular activity in relation to a particular Australian person if a staff member of ASIS who:
 - (a) is authorised under subsection (7); and
 - (b) will be undertaking the activity;

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reasonably believes that it is not practicable in the circumstances for ASIO to notify ASIS in accordance with that paragraph before undertaking the activity.

- (4) If ASIS undertakes an activity in accordance with subsection (3), ASIS must, as soon as practicable, notify ASIO and the Inspector-General of Intelligence and Security, in writing, of the activity.

Effect of this section

- (5) ASIS may undertake an activity or series of activities under subsection (1) without an authorisation under section 9 for the activity or series of activities.

Incidental production of intelligence

- (6) An activity, or a series of activities, does not cease to be undertaken:
- (a) in accordance with this section; or
 - (b) for the specific purpose of supporting ASIO in the performance of its functions;
- only because, in undertaking the activity or series of activities, ASIS also incidentally produces intelligence that relates to the involvement, or likely involvement, of an Australian person in one or more of the activities set out in paragraph 9(1A)(a).

Authorised staff members

- (7) The Director-General may authorise, in writing, a staff member of ASIS, or a class of such staff members, for the purposes of paragraph (3)(a).

Instruments not legislative instruments

- (8) The following are not legislative instruments:
- (a) a notice under paragraph (1)(d);
 - (b) a notice under subsection (4);
 - (c) an authorisation made under subsection (7).

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13C Authorised persons for activities undertaken in relation to ASIO

Authorised persons

- (1) The Director-General of Security may authorise, in writing, a senior position-holder, or a class of senior position-holders, for the purposes of subparagraph 13B(1)(d)(ii).

Authorisation is not a legislative instrument

- (2) An authorisation made under subsection (1) is not a legislative instrument.

Definitions

- (3) For the purposes of this section, **senior position-holder** has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

13D Certain acts not permitted

If ASIO could not undertake a particular act in at least one State or Territory without it being authorised by warrant under Division 2 of Part III of the *Australian Security Intelligence Organisation Act 1979* or under Part 2-2 of the *Telecommunications (Interception and Access) Act 1979*, this Division does not allow ASIS to undertake the act.

13E Director-General to be satisfied of certain matters

The Director-General must be satisfied that:

- (a) there are satisfactory arrangements in place to ensure that activities will be undertaken in accordance with section 13B only for the specific purpose of supporting ASIO in the performance of its functions; and
- (b) there are satisfactory arrangements in place to ensure that the nature and consequences of acts done in accordance with

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section 13B will be reasonable, having regard to the purposes for which they are carried out.

13F Other matters relating to activities undertaken in relation to ASIO

ASIO to be consulted before communicating intelligence

- (1) If, in undertaking an activity or series of activities in accordance with section 13B, ASIS produces intelligence, ASIS must not communicate the intelligence outside ASIS (other than in accordance with subsection (2)) unless ASIO has been consulted.

Intelligence to be communicated to ASIO

- (2) If, in undertaking an activity or series of activities in accordance with section 13B, ASIS produces intelligence, ASIS must cause the intelligence to be communicated to ASIO as soon as practicable after the production.

Notices to be made available to the Inspector-General of Intelligence and Security

- (3) If a notice is given to ASIS under paragraph 13B(1)(d), the Director-General must ensure that a copy of the notice is kept by ASIS and is available for inspection on request by the Inspector-General of Intelligence and Security.

Reports about activities to be given to the responsible Minister

- (4) As soon as practicable after each year ending on 30 June, the Director-General must give to the responsible Minister in relation to ASIS a written report in respect of activities undertaken by ASIS in accordance with section 13B during the year.

13G Guidelines relating to activities undertaken in relation to ASIO

- (1) The responsible Minister in relation to ASIO and the responsible Minister in relation to ASIS may jointly make written guidelines

Part 2 Functions of the agencies

Division 3 Activities undertaken in relation to ASIO

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relating to the undertaking of activities in accordance with section 13B.

- (2) Guidelines made under subsection (1) are not a legislative instrument.

Division 4—Other**14 Liability for certain acts**

- (1) A staff member or agent of an agency is not subject to any civil or criminal liability for any act done outside Australia if the act is done in the proper performance of a function of the agency.
- (2) A person is not subject to any civil or criminal liability for any act (whether done inside or outside Australia) if:
 - (a) the act is preparatory to, in support of, or otherwise directly connected with, overseas activities of the agency concerned; and
 - (b) the act:
 - (i) taken together with an act, event, circumstance or result that took place, or was intended to take place, outside Australia, could amount to an offence; but
 - (ii) in the absence of that other act, event, circumstance or result, would not amount to an offence; and
 - (c) the act is done in the proper performance of a function of the agency.
- (2A) Subsection (2) is not intended to permit any act in relation to premises, persons, computers, things, or telecommunications services in Australia, being:
 - (a) an act that ASIO could not do without a Minister authorising it by warrant issued under Division 2 of Part III of the *Australian Security Intelligence Organisation Act 1979* or under Part 2-2 of the *Telecommunications (Interception and Access) Act 1979*; or
 - (b) an act to obtain information that ASIO could not obtain other than in accordance with Division 3 of Part 4-1 of the *Telecommunications (Interception and Access) Act 1979*.
- (2AA) Subsections (1) and (2) have effect despite anything in a law of the Commonwealth or of a State or Territory, whether passed or made

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before or after the commencement of this subsection, unless the law expressly provides otherwise.

(2AB) Subsection (2AA) does not affect the operation of subsection (2A).

(2B) The Inspector-General of Intelligence and Security may give a certificate in writing certifying any fact relevant to the question of whether an act was done in the proper performance of a function of an agency.

(2C) In any proceedings, a certificate given under subsection (2B) is prima facie evidence of the facts certified.

(3) In this section:

act includes omission.

staff member includes the Director of AGO, the Director of ASD and the Director-General.

15 Rules to protect privacy of Australians

(1) The responsible Minister in relation to ASIS, the responsible Minister in relation to AGO and the responsible Minister in relation to ASD, must make written rules regulating the communication and retention by the relevant agency of intelligence information concerning Australian persons.

(2) In making the rules, the Minister must have regard to the need to ensure that the privacy of Australian persons is preserved as far as is consistent with the proper performance by the agencies of their functions.

Note: For *Australian person* see section 3.

(3) Before making the rules, the Minister must consult with:

- (a) in the case of ASIS—the Director-General; and
- (ab) in the case of AGO—the Director of AGO; and
- (b) in the case of ASD—the Director of ASD; and

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- (c) in any case—the Inspector-General of Intelligence and Security and the Attorney-General.
- (4) For the purpose of consultations under paragraph (3)(c), the Minister must provide a copy of the rules the Minister is proposing to make to the Inspector-General of Intelligence and Security and to the Attorney-General.
- (5) The agencies must not communicate intelligence information concerning Australian persons, except in accordance with the rules.
- Note: For *intelligence information* see section 3.
- (6) The Inspector-General of Intelligence and Security must brief the Committee on the content and effect of the rules if:
- (a) the Committee requests the Inspector-General of Intelligence and Security to do so; or
 - (b) the rules change.
- Note: For *Committee* see section 3.
- (7) Rules made under subsection (1) are not legislative instruments.

Part 3—Establishment of ASIS and role of Director-General

Division 1—Establishment and control of ASIS

16 Establishment of ASIS on a statutory basis

- (1) The organisation known as the Australian Secret Intelligence Service is continued in existence in accordance with this Act.
- (2) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
 - (a) ASIS is a listed entity; and
 - (b) the Director-General is the accountable authority of ASIS; and
 - (c) the following persons are officials of ASIS:
 - (i) the Director-General;
 - (ii) the staff of ASIS referred to in subsection 33(1); and
 - (d) the purposes of ASIS include the functions of ASIS referred to in section 6.

17 Appointment of Director-General

- (1) There is to be a Director-General of ASIS.
- (2) The Director-General is to be appointed by the Governor-General.
- (3) Before a recommendation is made to the Governor-General for the appointment of a person as Director-General, the Prime Minister must consult with the Leader of the Opposition in the House of Representatives.
- (4) The person who, immediately before the commencement of this Act, held office as the Director-General of ASIS continues, subject to this Act, to hold the office for the remainder of the term for which he or she was appointed.

18 Control of ASIS

- (1) ASIS is under the control of the Director-General.
- (2) The Director-General, under the Minister, is responsible for managing ASIS and must advise the Minister in matters relating to ASIS.

19 Briefing the Leader of the Opposition about ASIS

The Director-General must consult regularly with the Leader of the Opposition in the House of Representatives for the purpose of keeping him or her informed on matters relating to ASIS.

Division 2—Administrative provisions relating to the Director-General

20 Period of appointment

- (1) The Director-General holds office for the period specified in the instrument of appointment, but is eligible for re-appointment.
- (2) The period must not be longer than 5 years.

21 Remuneration etc.

- (1) The remuneration and other conditions of appointment of the Director-General are as determined in writing by the responsible Minister.
- (2) For each determination, the responsible Minister must seek the advice of the Remuneration Tribunal and take that advice into account.
- (3) Each determination must be published in the *Gazette* within 14 days after the determination is made.

22 Resignation

The Director-General may resign by giving a signed notice of resignation to the Governor-General.

23 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Director-General for misbehaviour or physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of the Director-General if:
 - (a) the Director-General:
 - (i) becomes bankrupt; or

- (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the Director-General is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Director-General engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or
 - (d) the Director-General fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.
- (3) The Governor-General may, with the Director-General's consent, retire the Director-General from office on the ground of incapacity if the Director-General is:
- (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or
 - (c) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*.

24 Acting Director-General

- (1) The Minister may appoint a person to act as the Director-General if there is a vacancy in the office of the Director-General.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) The Minister may appoint a person to act as the Director-General during any period, or during all periods, when the Director-General is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Part 3 Establishment of ASIS and role of Director-General

Division 2 Administrative provisions relating to the Director-General

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Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

25 Outside employment

The Director-General must not engage in paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the Director-General's duties.

27 Delegation

- (1) The Director-General may delegate to a staff member (other than a consultant or contractor) all or any of the powers of the Director-General that relate to the management of the staff of ASIS or the financial management of ASIS.

Note: See sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* on delegations.

- (2) The delegation must be in writing.

Part 4—Committee on Intelligence and Security

28 Committee on Intelligence and Security

- (1) A Committee to be known as the Parliamentary Joint Committee on Intelligence and Security is to be established after the commencement of the first session of each Parliament.
- (2) The Committee is to consist of 11 members, 5 of whom must be Senators and 6 of whom must be members of the House of Representatives.
- (3) A majority of the Committee's members must be Government members.

Note: For more detailed provisions on the appointment of members see Part 3 of Schedule 1.

29 Functions of the Committee

- (1) The functions of the Committee are:
 - (a) to review the administration and expenditure of ASIO, ASIS, AGO, DIO, ASD and ONA, including the annual financial statements of ASIO, ASIS, AGO, DIO, ASD and ONA; and
 - (b) to review any matter in relation to ASIO, ASIS, AGO, DIO, ASD or ONA referred to the Committee by:
 - (i) the responsible Minister; or
 - (ii) a resolution of either House of the Parliament; and
 - (baa) to monitor and to review the performance by the AFP of its functions under Part 5.3 of the *Criminal Code*; and
 - (bab) to report to both Houses of the Parliament, with such comments as it thinks fit, upon any matter appertaining to the AFP or connected with the performance of its functions under Part 5.3 of the *Criminal Code* to which, in the opinion of the Committee, the attention of the Parliament should be directed; and

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- (bac) to inquire into any question in connection with its functions under paragraph (baa) or (bab) that is referred to it by either House of the Parliament, and to report to that House upon that question; and
- (bb) to review, by 7 March 2018, the operation, effectiveness and implications of the following:
 - (i) Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979* and any other provision of that Act as far as it relates to that Division;
 - (ii) Division 3A of Part IAA of the *Crimes Act 1914* and any other provision of that Act as far as it relates to that Division;
 - (iii) Divisions 104 and 105 of the *Criminal Code* and any other provision of the *Criminal Code Act 1995* as far as it relates to those Divisions;
 - (iv) sections 119.2 and 119.3 of the *Criminal Code* and any other provision of the *Criminal Code Act 1995* as far as it relates to those sections; and
- (bc) to conduct the review under section 187N of the *Telecommunications (Interception and Access) Act 1979*; and
- (bd) subject to subsection (5), to review any matter that:
 - (i) relates to the retained data activities of ASIO; and
 - (ii) is included, under paragraph 94(2A)(c), (d), (e), (f), (g), (h), (i) or (j) of the *Australian Security Intelligence Organisation Act 1979*, in a report referred to in subsection 94(1) of that Act; and
- (be) subject to subsection (5), to review any matter that:
 - (i) relates to the retained data activities of the AFP in relation to offences against Part 5.3 of the *Criminal Code*; and
 - (ii) is set out, under paragraph 186(1)(e), (f), (g), (h), (i), (j) or (k) of the *Telecommunications (Interception and Access) Act 1979*, in a report under subsection 186(1) of that Act; and
- (ca) to review, by 1 December 2019, the operation, effectiveness and implications of sections 33AA, 35, 35AA and 35A of the

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Australian Citizenship Act 2007 and any other provision of that Act as far as it relates to those sections; and

- (c) to report the Committee's comments and recommendations to each House of the Parliament and to the responsible Minister.
- (2) The Committee may, by resolution, request the responsible Minister to refer a matter in relation to the activities of ASIO, ASIS, AGO, DIO, ASD or ONA (as the case may be) to the Committee, and the Minister may, under paragraph (1)(b), refer that matter to the Committee for review.
- (3) The functions of the Committee do not include:
 - (a) reviewing the intelligence gathering and assessment priorities of ASIO, ASIS, AGO, DIO, ASD or ONA; or
 - (b) reviewing the sources of information, other operational assistance or operational methods available to ASIO, ASIS, AGO, DIO, ASD or ONA; or
 - (c) reviewing particular operations that have been, are being or are proposed to be undertaken by ASIO, ASIS, AGO, DIO or ASD; or
 - (d) reviewing information provided by, or by an agency of, a foreign government where that government does not consent to the disclosure of the information; or
 - (e) reviewing an aspect of the activities of ASIO, ASIS, AGO, DIO, ASD or ONA that does not affect an Australian person; or
 - (f) reviewing the rules made under section 15 of this Act; or
 - (g) conducting inquiries into individual complaints about the activities of ASIO, ASIS, AGO, DIO, ASD, ONA, AFP or the Immigration and Border Protection Department; or
 - (h) reviewing the content of, or conclusions reached in, assessments or reports made by DIO or ONA, or reviewing sources of information on which such assessments or reports are based; or
 - (i) reviewing the coordination and evaluation activities undertaken by ONA; or

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- (j) reviewing sensitive operational information or operational methods available to the AFP; or
- (k) reviewing particular operations or investigations that have been, are being or are proposed to be undertaken by the AFP.

Note: For *Australian person* see section 3.

- (4) Subject to subsection (5), paragraphs (3)(c) and (k) do not apply to things done in the performance of the Committee's functions under paragraphs (1)(bd) and (be).
- (5) The Committee's functions under paragraphs (1)(bd) and (be):
 - (a) are to be performed for the sole purpose of assessing, and making recommendations on, the overall operation and effectiveness of Part 5-1A of the *Telecommunications (Interception and Access) Act 1979*; and
 - (b) do not permit reviewing the retained data activities of service providers; and
 - (c) may not be performed for any purpose other than that set out in paragraph (a).

Note: The performance of the Committee's functions under paragraphs (1)(bd) and (be) are also subject to the requirements of Schedule 1.

30 Agency heads and Inspector-General of Intelligence and Security to brief the Committee

For the purpose of performing its functions, the Committee may request the following people to brief the Committee:

- (a) the Director-General of Security;
- (b) the Director-General of ASIS;
- (baa) the Director of AGO;
- (bab) the Director of DIO;
- (ba) the Director of ASD;
- (bb) the Director-General of ONA;
- (c) the Inspector-General of Intelligence and Security;
- (d) the Commissioner of the AFP;

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(e) the Secretary of the Immigration and Border Protection Department.

Note: The Committee cannot require anyone briefing the Committee to disclose operationally sensitive information (see clause 1 of Schedule 1).

31 Annual report

As soon as practicable after each year ending on 30 June, the Committee must give to the Parliament a report on the activities of the Committee during the year.

32 Schedule 1

Schedule 1 contains further provisions about the Committee.

Part 5—Staff of ASIS

33 Employment of staff

- (1) The Director-General may, on behalf of the Commonwealth, employ by written agreement such employees of ASIS as the Director-General thinks necessary for the purposes of this Act.
- (2) The Director-General, on behalf of the Commonwealth, has all the rights, duties and powers of an employer in respect of the engagement, and employment, of employees of ASIS.
- (3) The Director-General may determine the terms and conditions on which employees are to be employed. Before making a determination the Director-General must consult with the employees who are to be subject to the terms and conditions of the determination.

34 Engagement of consultants

- (1) The Director-General may, on behalf of the Commonwealth, engage as consultants persons having suitable qualifications and experience.
- (2) The engagement of a consultant must be by written agreement.
- (3) The terms and conditions of engagement are those determined by the Director-General from time to time.

35 Applicability of principles of *Public Service Act 1999*

Although employees of ASIS are not employed under the *Public Service Act 1999*, the Director-General must adopt the principles of that Act in relation to employees of ASIS to the extent to which the Director-General considers they are consistent with the effective performance of the functions of ASIS.

36 Special provisions relating to existing staff

A person who, immediately before the commencement of this Act, was employed in ASIS under a written agreement continues to be employed on the terms and conditions specified in that agreement, unless he or she agrees to accept other terms and conditions.

36A Voluntary moves to APS

- (1) Section 26 of the *Public Service Act 1999* applies in relation to an employee of ASIS as if the employee were an APS employee and ASIS were an APS Agency.
- (2) An employee of ASIS who moves to an APS Agency under that section is entitled to have his or her employment, as an employee of ASIS, treated as if it were:
 - (a) employment as an APS employee; and
 - (b) at a corresponding classification, as agreed between the Director-General and the Public Service Commissioner.

37 Staff grievances

- (1) The Director-General must:
 - (a) establish procedures relating to the consideration of grievances of employees and former employees of ASIS; and
 - (b) determine the classes of ASIS actions that are to be subject to the grievance procedures.
- (2) In establishing the procedures and determining the classes of action, the Director-General must:
 - (a) adopt the principles of the *Public Service Act 1999* to the extent to which the Director-General considers they are consistent with the effective performance of the functions of ASIS; and
 - (b) consult with the employees of ASIS.
- (3) The procedures must include the following matters:

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- (a) initial consideration of grievances by the Director-General or a person authorised in writing by the Director-General;
 - (b) establishment of Grievance Review Panels chaired by independent Chairs to make determinations reviewing initial considerations of grievances.
- (4) The Director-General must implement a determination of a Grievance Review Panel to the extent that it is within his or her power to do so.
- (5) In this section:

action includes a refusal or failure to act.

ASIS action means action taken after the commencement of this Act by the Director-General or an employee of ASIS that relates to an ASIS employee's employment.

38 Application of Crimes Act

The Director-General and staff members of ASIS are Commonwealth officers for the purposes of the *Crimes Act 1914*.

Part 6—Miscellaneous

Division 1—Secrecy

39 Communication of certain information—ASIS

- (1) A person is guilty of an offence if:
- (a) the person communicates any information or matter that was acquired or prepared by or on behalf of ASIS in connection with its functions or relates to the performance by ASIS of its functions; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member or agent of ASIS; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ASIS; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ASIS; and
 - (c) the communication was not made:
 - (i) to the Director-General or a staff member by the person in the course of the person's duties as a staff member; or
 - (ii) to the Director-General or a staff member by the person in accordance with a contract, agreement or arrangement; or
 - (iii) by the person in the course of the person's duties as a staff member or agent, within the limits of authority conferred on the person by the Director-General; or
 - (iv) with the approval of the Director-General or of a staff member having the authority of the Director-General to give such an approval.

Penalty: Imprisonment for 10 years.

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Exception—information or matter lawfully available

- (2) Subsection (1) does not apply to information or matter that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Exception—communication to the Inspector-General of Intelligence and Security

- (3) Subsection (1) does not apply if the person communicates the information or matter to an IGIS official for the purpose of the Inspector-General of Intelligence and Security exercising a power, or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

39A Communication of certain information—AGO

- (1) A person commits an offence if:
- (a) the person communicates any information or matter that was acquired or prepared by or on behalf of AGO in connection with its functions or relates to the performance by AGO of its functions; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member of AGO; or
 - (ii) his or her having entered into any contract, agreement or arrangement with AGO; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with AGO; and
 - (c) the communication was not made:

- (i) to the Director of AGO or a staff member by the person in the course of the person's duties as a staff member; or
- (ii) to the Director of AGO or a staff member by the person in accordance with a contract, agreement or arrangement; or
- (iii) by the person in the course of the person's duties as a staff member, within the limits of authority conferred on the person by the Director of AGO; or
- (iv) with the approval of the Director of AGO or of a staff member having the authority of the Director of AGO to give such an approval.

Penalty: Imprisonment for 10 years.

Exception—information or matter lawfully available

- (2) Subsection (1) does not apply to information or matter that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Exception—communication to the Inspector-General of Intelligence and Security

- (3) Subsection (1) does not apply if the person communicates the information or matter to an IGIS official for the purpose of the Inspector-General of Intelligence and Security exercising a power, or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

40 Communication of certain information—ASD

- (1) A person is guilty of an offence if:
- (a) the person communicates any information or matter that was acquired or prepared by or on behalf of ASD in connection

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with its functions or relates to the performance by ASD of its functions; and

- (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member of ASD; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ASD; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ASD; and
- (c) the communication was not made:
 - (i) to the Director of ASD or a staff member by the person in the course of the person's duties as a staff member; or
 - (ii) to the Director of ASD or a staff member by the person in accordance with a contract, agreement or arrangement; or
 - (iii) by the person in the course of the person's duties as a staff member, within the limits of authority conferred on the person by the Director of ASD; or
 - (iv) with the approval of the Director of ASD or of a staff member having the authority of the Director of ASD to give such an approval.

Penalty: Imprisonment for 10 years.

Exception—information or matter lawfully available

- (2) Subsection (1) does not apply to information or matter that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

*Exception—communication to the Inspector-General of
Intelligence and Security*

- (3) Subsection (1) does not apply if the person communicates the information or matter to an IGIS official for the purpose of the Inspector-General of Intelligence and Security exercising a power, or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

40A Communication of certain information—ONA

- (1) A person commits an offence if:
- (a) the person communicates any information or matter that was acquired or prepared by or on behalf of ONA in connection with its functions or relates to the performance by ONA of its functions; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member of ONA; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ONA; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ONA; and
 - (c) the communication was not made:
 - (i) to the Director-General of ONA or a staff member by the person in the course of the person's duties as a staff member; or
 - (ii) to the Director-General of ONA or a staff member by the person in accordance with a contract, agreement or arrangement; or
 - (iii) by the person in the course of the person's duties as a staff member, within the limits of authority conferred on the person by the Director-General of ONA; or

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- (iv) with the approval of the Director-General of ONA or of a staff member having the authority of the Director-General of ONA to give such an approval.

Penalty: Imprisonment for 10 years.

Exception—information or matter lawfully available

- (2) Subsection (1) does not apply to information or matter that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Exception—communication to the Inspector-General of Intelligence and Security

- (3) Subsection (1) does not apply if the person communicates the information or matter to an IGIS official for the purpose of the Inspector-General of Intelligence and Security exercising a power, or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

40B Communication of certain information—DIO

- (1) A person commits an offence if:
 - (a) the person communicates any information or matter that was acquired or prepared by or on behalf of DIO in connection with its functions or relates to the performance by DIO of its functions; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member of DIO; or
 - (ii) his or her having entered into any contract, agreement or arrangement with DIO; or

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- (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with DIO; and
- (c) the communication was not made:
 - (i) to the Director of DIO or a staff member by the person in the course of the person's duties as a staff member; or
 - (ii) to the Director of DIO or a staff member by the person in accordance with a contract, agreement or arrangement; or
 - (iii) by the person in the course of the person's duties as a staff member, within the limits of authority conferred on the person by the Director of DIO; or
 - (iv) with the approval of the Director of DIO or of a staff member having the authority of the Director of DIO to give such an approval.

Penalty: Imprisonment for 10 years.

Exception—information or matter lawfully available

- (2) Subsection (1) does not apply to information or matter that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Exception—communication to the Inspector-General of Intelligence and Security

- (3) Subsection (1) does not apply if the person communicates the information or matter to an IGIS official for the purpose of the Inspector-General of Intelligence and Security exercising a power, or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

Section 40C

40C Unauthorised dealing with records—ASIS

- (1) A person commits an offence if:
- (a) the person engages in any of the following conduct (the *relevant conduct*):
 - (i) copying a record;
 - (ii) transcribing a record;
 - (iii) retaining a record;
 - (iv) removing a record;
 - (v) dealing with a record in any other manner; and
 - (b) the record was obtained by the person by reason of:
 - (i) his or her being, or having been, a staff member or agent of ASIS; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ASIS; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ASIS; and
 - (c) the record:
 - (i) was acquired or prepared by or on behalf of ASIS in connection with its functions; or
 - (ii) relates to the performance by ASIS of its functions; and
 - (d) the relevant conduct was not engaged in:
 - (i) in the course of the person's duties as a staff member or agent; or
 - (ii) in accordance with a contract, agreement or arrangement with ASIS; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director-General; or
 - (iv) with the approval of the Director-General or of a staff member having the authority of the Director-General to give such an approval.

Penalty: Imprisonment for 3 years.

Section 40D

Exception—record lawfully available

- (2) Subsection (1) does not apply to a record that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Exception—Inspector-General of Intelligence and Security

- (2A) Subsection (1) does not apply if the person deals with the record for the purpose of the Inspector-General of Intelligence and Security exercising a power, or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

Alternative verdict

- (3) Subsection (4) applies if, in a prosecution for an offence (the ***prosecuted offence***) against subsection (1), the trier of fact:
- (a) is not satisfied that the defendant is guilty of the prosecuted offence; but
 - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection 40D(1) (the ***alternative offence***).
- (4) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

40D Unauthorised recording of information or matter—ASIS

- (1) A person commits an offence if:
- (a) the person makes a record of any information or matter; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:

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- (i) his or her being, or having been, a staff member or agent of ASIS; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ASIS; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ASIS; and
- (c) the information or matter:
- (i) was acquired or prepared by or on behalf of ASIS in connection with its functions; or
 - (ii) relates to the performance by ASIS of its functions; and
- (d) the record was not made:
- (i) in the course of the person's duties as a staff member or agent; or
 - (ii) in accordance with a contract, agreement or arrangement with ASIS; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director-General; or
 - (iv) with the approval of the Director-General or of a staff member having the authority of the Director-General to give such an approval.

Penalty: Imprisonment for 3 years.

Exception—information or matter lawfully available

- (2) Subsection (1) does not apply to information or matter that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Exception—communication to the Inspector-General of Intelligence and Security

- (2A) Subsection (1) does not apply if the person makes the record for the purpose of the Inspector-General of Intelligence and Security

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exercising a power, or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

Alternative verdict

- (3) Subsection (4) applies if, in a prosecution for an offence (the ***prosecuted offence***) against subsection (1), the trier of fact:
 - (a) is not satisfied that the defendant is guilty of the prosecuted offence; but
 - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection 40C(1) (the ***alternative offence***).
- (4) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

40E Unauthorised dealing with records—AGO

- (1) A person commits an offence if:
 - (a) the person engages in any of the following conduct (the ***relevant conduct***):
 - (i) copying a record;
 - (ii) transcribing a record;
 - (iii) retaining a record;
 - (iv) removing a record;
 - (v) dealing with a record in any other manner; and
 - (b) the record was obtained by the person by reason of:
 - (i) his or her being, or having been, a staff member of AGO; or
 - (ii) his or her having entered into any contract, agreement or arrangement with AGO; or

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- (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with AGO; and
- (c) the record:
 - (i) was acquired or prepared by or on behalf of AGO in connection with its functions; or
 - (ii) relates to the performance by AGO of its functions; and
- (d) the relevant conduct was not engaged in:
 - (i) in the course of the person's duties as a staff member; or
 - (ii) by the person in accordance with a contract, agreement or arrangement with AGO; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director of AGO; or
 - (iv) with the approval of the Director of AGO or of a staff member having the authority of the Director of AGO to give such an approval.

Penalty: Imprisonment for 3 years.

Exception—record lawfully available

- (2) Subsection (1) does not apply to a record that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Exception—Inspector-General of Intelligence and Security

- (2A) Subsection (1) does not apply if the person deals with the record for the purpose of the Inspector-General of Intelligence and Security exercising a power, or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

Alternative verdict

- (3) Subsection (4) applies if, in a prosecution for an offence (the ***prosecuted offence***) against subsection (1), the trier of fact:
- (a) is not satisfied that the defendant is guilty of the prosecuted offence; but
 - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection 40F(1) (the ***alternative offence***).
- (4) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

40F Unauthorised recording of information or matter—AGO

- (1) A person commits an offence if:
- (a) the person makes a record of any information or matter; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member of AGO; or
 - (ii) his or her having entered into any contract, agreement or arrangement with AGO; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with AGO; and
 - (c) the information or matter:
 - (i) was acquired or prepared by or on behalf of AGO in connection with its functions; or
 - (ii) relates to the performance by AGO of its functions; and
 - (d) the record was not made:
 - (i) in the course of the person's duties as a staff member; or
 - (ii) in accordance with a contract, agreement or arrangement with AGO; or

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- (iii) by the person acting within the limits of authority conferred on the person by the Director of AGO; or
- (iv) with the approval of the Director of AGO or of a staff member having the authority of the Director of AGO to give such an approval.

Penalty: Imprisonment for 3 years.

Exception—information or matter lawfully available

- (2) Subsection (1) does not apply to information or matter that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Exception—communication to the Inspector-General of Intelligence and Security

- (2A) Subsection (1) does not apply if the person makes the record for the purpose of the Inspector-General of Intelligence and Security exercising a power, or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

Alternative verdict

- (3) Subsection (4) applies if, in a prosecution for an offence (the ***prosecuted offence***) against subsection (1), the trier of fact:
- (a) is not satisfied that the defendant is guilty of the prosecuted offence; but
 - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection 40E(1) (the ***alternative offence***).
- (4) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the

defendant has been accorded procedural fairness in relation to that finding of guilt.

40G Unauthorised dealing with records—ASD

- (1) A person commits an offence if:
- (a) the person engages in any of the following conduct (the *relevant conduct*):
 - (i) copying a record;
 - (ii) transcribing a record;
 - (iii) retaining a record;
 - (iv) removing a record;
 - (v) dealing with a record in any other manner; and
 - (b) the record was obtained by the person by reason of:
 - (i) his or her being, or having been, a staff member of ASD; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ASD; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ASD; and
 - (c) the record:
 - (i) was acquired or prepared by or on behalf of ASD in connection with its functions; or
 - (ii) relates to the performance by ASD of its functions; and
 - (d) the relevant conduct was not engaged in:
 - (i) in the course of the person's duties as a staff member; or
 - (ii) in accordance with a contract, agreement or arrangement with ASD; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director of ASD; or
 - (iv) with the approval of the Director of ASD or of a staff member having the authority of the Director of ASD to give such an approval.

Penalty: Imprisonment for 3 years.

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Exception—record lawfully available

- (2) Subsection (1) does not apply to a record that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Exception—Inspector-General of Intelligence and Security

- (2A) Subsection (1) does not apply if the person deals with the record for the purpose of the Inspector-General of Intelligence and Security exercising a power, or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

Alternative verdict

- (3) Subsection (4) applies if, in a prosecution for an offence (the ***prosecuted offence***) against subsection (1), the trier of fact:
- (a) is not satisfied that the defendant is guilty of the prosecuted offence; but
 - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection 40H(1) (the ***alternative offence***).
- (4) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

40H Unauthorised recording of information or matter—ASD

- (1) A person commits an offence if:
- (a) the person makes a record of any information or matter; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:

- (i) his or her being, or having been, a staff member of ASD; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ASD; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ASD; and
- (c) the information or matter:
- (i) was acquired or prepared by or on behalf of ASD in connection with its functions; or
 - (ii) relates to the performance by ASD of its functions; and
- (d) the record was not made:
- (i) in the course of the person's duties as a staff member; or
 - (ii) in accordance with a contract, agreement or arrangement with ASD; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director of ASD; or
 - (iv) with the approval of the Director of ASD or of a staff member having the authority of the Director of ASD to give such an approval.

Penalty: Imprisonment for 3 years.

Exception—information or matter lawfully available

- (2) Subsection (1) does not apply to information or matter that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Exception—communication to the Inspector-General of Intelligence and Security

- (2A) Subsection (1) does not apply if the person makes the record for the purpose of the Inspector-General of Intelligence and Security

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exercising a power, or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

Alternative verdict

- (3) Subsection (4) applies if, in a prosecution for an offence (the ***prosecuted offence***) against subsection (1), the trier of fact:
 - (a) is not satisfied that the defendant is guilty of the prosecuted offence; but
 - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection 40G(1) (the ***alternative offence***).
- (4) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

40J Unauthorised dealing with records—ONA

- (1) A person commits an offence if:
 - (a) the person engages in any of the following conduct (the ***relevant conduct***):
 - (i) copying a record;
 - (ii) transcribing a record;
 - (iii) retaining a record;
 - (iv) removing a record;
 - (v) dealing with a record in any other manner; and
 - (b) the record was obtained by the person by reason of:
 - (i) his or her being, or having been, a staff member of ONA; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ONA; or

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- (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ONA; and
- (c) the record:
 - (i) was acquired or prepared by or on behalf of ONA in connection with its functions; or
 - (ii) relates to the performance by ONA of its functions; and
- (d) the relevant conduct was not engaged in:
 - (i) in the course of the person's duties as a staff member; or
 - (ii) in accordance with a contract, agreement or arrangement with ONA; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director-General of ONA; or
 - (iv) with the approval of the Director-General of ONA or of a staff member having the authority of the Director-General of ONA to give such an approval.

Penalty: Imprisonment for 3 years.

Exception—record lawfully available

- (2) Subsection (1) does not apply to a record that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Exception—Inspector-General of Intelligence and Security

- (2A) Subsection (1) does not apply if the person deals with the record for the purpose of the Inspector-General of Intelligence and Security exercising a power, or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

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Alternative verdict

- (3) Subsection (4) applies if, in a prosecution for an offence (the ***prosecuted offence***) against subsection (1), the trier of fact:
 - (a) is not satisfied that the defendant is guilty of the prosecuted offence; but
 - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection 40K(1) (the ***alternative offence***).
- (4) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

40K Unauthorised recording of information or matter—ONA

- (1) A person commits an offence if:
 - (a) the person makes a record of any information or matter; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:
 - (i) his or her being, or having been, a staff member of ONA; or
 - (ii) his or her having entered into any contract, agreement or arrangement with ONA; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ONA; and
 - (c) the information or matter:
 - (i) was acquired or prepared by or on behalf of ONA in connection with its functions; or
 - (ii) relates to the performance by ONA of its functions; and
 - (d) the record was not made:
 - (i) in the course of the person's duties as a staff member; or
 - (ii) in accordance with a contract, agreement or arrangement with ONA; or

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- (iii) by the person acting within the limits of authority conferred on the person by the Director-General of ONA; or
- (iv) with the approval of the Director-General of ONA or of a staff member having the authority of the Director-General of ONA to give such an approval.

Penalty: Imprisonment for 3 years.

Exception—information or matter lawfully available

- (2) Subsection (1) does not apply to information or matter that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Exception—communication to the Inspector-General of Intelligence and Security

- (2A) Subsection (1) does not apply if the person makes the record for the purpose of the Inspector-General of Intelligence and Security exercising a power, or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

Alternative verdict

- (3) Subsection (4) applies if, in a prosecution for an offence (the ***prosecuted offence***) against subsection (1), the trier of fact:
- (a) is not satisfied that the defendant is guilty of the prosecuted offence; but
 - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection 40J(1) (the ***alternative offence***).
- (4) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the

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defendant has been accorded procedural fairness in relation to that finding of guilt.

40L Unauthorised dealing with records—DIO

- (1) A person commits an offence if:
- (a) the person engages in any of the following conduct (the *relevant conduct*):
 - (i) copying a record;
 - (ii) transcribing a record;
 - (iii) retaining a record;
 - (iv) removing a record;
 - (v) dealing with a record in any other manner; and
 - (b) the record was obtained by the person by reason of:
 - (i) his or her being, or having been, a staff member of DIO; or
 - (ii) his or her having entered into any contract, agreement or arrangement with DIO; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with DIO; and
 - (c) the record:
 - (i) was acquired or prepared by or on behalf of DIO in connection with its functions; or
 - (ii) relates to the performance by DIO of its functions; and
 - (d) the relevant conduct was not engaged in:
 - (i) in the course of the person's duties as a staff member; or
 - (ii) in accordance with a contract, agreement or arrangement with DIO; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director of DIO; or
 - (iv) with the approval of the Director of DIO or of a staff member having the authority of the Director of DIO to give such an approval.

Penalty: Imprisonment for 3 years.

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Exception—record lawfully available

- (2) Subsection (1) does not apply to a record that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Exception—Inspector-General of Intelligence and Security

- (2A) Subsection (1) does not apply if the person deals with the record for the purpose of the Inspector-General of Intelligence and Security exercising a power, or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

Alternative verdict

- (3) Subsection (4) applies if, in a prosecution for an offence (the **prosecuted offence**) against subsection (1), the trier of fact:
- (a) is not satisfied that the defendant is guilty of the prosecuted offence; but
 - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection 40M(1) (the **alternative offence**).
- (4) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

40M Unauthorised recording of information or matter—DIO

- (1) A person commits an offence if:
- (a) the person makes a record of any information or matter; and
 - (b) the information or matter has come to the knowledge or into the possession of the person by reason of:

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- (i) his or her being, or having been, a staff member of DIO; or
 - (ii) his or her having entered into any contract, agreement or arrangement with DIO; or
 - (iii) his or her having been an employee or agent of a person who has entered into a contract, agreement or arrangement with DIO; and
- (c) the information or matter:
- (i) was acquired or prepared by or on behalf of DIO in connection with its functions; or
 - (ii) relates to the performance by DIO of its functions; and
- (d) the record was not made:
- (i) in the course of the person's duties as a staff member; or
 - (ii) in accordance with a contract, agreement or arrangement with DIO; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director of DIO; or
 - (iv) with the approval of the Director of DIO or of a staff member having the authority of the Director of DIO to give such an approval.

Penalty: Imprisonment for 3 years.

Exception—information or matter lawfully available

- (2) Subsection (1) does not apply to information or matter that has already been communicated or made available to the public with the authority of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Exception—communication to the Inspector-General of Intelligence and Security

- (2A) Subsection (1) does not apply if the person makes the record for the purpose of the Inspector-General of Intelligence and Security

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exercising a power, or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A): see subsection 13.3(3) of the *Criminal Code*.

Alternative verdict

- (3) Subsection (4) applies if, in a prosecution for an offence (the ***prosecuted offence***) against subsection (1), the trier of fact:
 - (a) is not satisfied that the defendant is guilty of the prosecuted offence; but
 - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence against subsection 40L(1) (the ***alternative offence***).
- (4) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

41 Publication of identity of staff

A person is guilty of an offence:

- (a) if:
 - (i) the person identifies a person as being, or having been, an agent or staff member of ASIS; and
 - (ii) the identification is not of the Director-General or such other persons as the Director-General determines; or
- (b) if:
 - (i) the person makes public any information from which the identity of such a person could reasonably be inferred, or any information that could reasonably lead to the identity of such a person being established; and
 - (ii) the Minister or Director-General has not consented in writing to the information being made public; and
 - (iii) the information has not been made public by means of broadcasting or reporting proceedings of the Parliament

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(other than proceedings of the Committee) as authorised by the Parliament.

Penalty: Imprisonment for 10 years.

Note: For *staff member* see section 3.

41A Offences against this Division—general rules

Extended geographical jurisdiction

- (1) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against this Division.
- (2) Subsection (1) does not, by implication, affect the interpretation of any other provision of this Act.

Institution of prosecution

- (3) A prosecution under this Division may be instituted only by, or with the consent of, the Attorney-General or a person acting under the Attorney-General's direction.
- (4) However:
 - (a) a person charged with an offence against this Division may be arrested, or a warrant for his or her arrest may be issued and executed; and
 - (b) such a person may be remanded in custody or on bail; even if the consent of the Attorney-General or a person acting under his or her direction has not been obtained, but no further proceedings are to be taken until that consent has been obtained.
- (5) Nothing in subsection (3) or (4) prevents the discharging of the accused if proceedings are not continued within a reasonable time.

41B Offences against this Division—IGIS officials

- (1) A person does not commit an offence against an information offence provision if:

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- (a) the person is an IGIS official; and
 - (b) the relevant conduct is engaged in by the person for the purpose of exercising powers, or performing functions or duties, as an IGIS official.
- (2) In a prosecution for an offence against an information offence provision, the defendant does not bear an evidential burden in relation to the matter in subsection (1), despite subsection 13.3(3) of the *Criminal Code*.
- (3) In this section:
information offence provision means subsection 39(1), 39A(1), 40(1), 40A(1), 40B(1), 40C(1), 40D(1), 40E(1), 40F(1), 40G(1), 40H(1), 40J(1), 40K(1), 40L(1) or 40M(1).

Division 2—Other matters

42 Annual report

- (1) As soon as practicable after each year ending on 30 June, the Director-General must give to the Minister a report on the activities of ASIS during the year.
- (2) The report must include information about any cooperation by ASIS with an authority of another country in planning or undertaking activities covered by paragraphs 6(4)(a) to (c). The report must set out the number of occasions on which such cooperation occurred and the broad nature of each cooperation.

43 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted to be prescribed by this Act; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1—Committee on Intelligence and Security

Note: See section 32.

Part 1A—Preliminary

1A Definitions

In this Schedule, unless the contrary intention appears:

agency means ASIO, ASIS, AGO, DIO, ASD, ONA, AFP or the Immigration and Border Protection Department.

agency head means:

- (a) the Director-General of Security; or
- (b) the Director-General of ASIS; or
- (ba) the Director of AGO; or
- (bb) the Director of DIO; or
- (c) the Director of ASD; or
- (d) the Director-General of ONA; or
- (e) the Commissioner of the AFP; or
- (f) the Secretary of the Immigration and Border Protection Department.

operationally sensitive information means information:

- (a) about sources of information, other operational assistance or operational methods available to ASIO, ASIS, AGO, DIO, ASD or ONA; or
- (b) about particular operations that have been, are being or are proposed to be undertaken by ASIO, ASIS, AGO, DIO or ASD; or
- (c) provided by, or by an agency of, a foreign government where that government does not consent to the public disclosure of the information.

Clause 1B

responsible Minister, in relation to the review of a matter, means the Minister responsible for the agency concerned in relation to that matter.

staff member, in relation to an agency, means a member of the staff of the agency (whether an employee of the agency, a member or special member of the agency (within the meaning of the *Australian Federal Police Act 1979*), a consultant or contractor to the agency, or a person who is made available by another Commonwealth or State authority or other person to perform services for the agency).

1B Application of provisions of Schedule to subcommittees

Parts 1 and 2 and clauses 20, 21 and 22 of this Schedule apply to a subcommittee appointed under clause 23 as if:

- (a) references to the Committee included references to the subcommittee; and
- (b) references to the Chair of the Committee included references to a member of the subcommittee authorised by the subcommittee for the purpose of the provision concerned.

Part 1—Procedure

1 Committee must not require certain information to be disclosed

The Committee must not require a person or body to disclose to the Committee operationally sensitive information or information that would or might prejudice Australia's national security or the conduct of Australia's foreign relations.

2 Power to obtain information and documents

- (1) The Chair or another member authorised by the Committee may give a person written notice requiring the person to appear before the Committee to give evidence or to produce documents to the Committee.
- (2) The notice must specify the day on which, and the time and place at which, the person is required to appear or to produce documents. The day must not be less than 5 days after the day on which the notice is given to the person.
- (3) The notice must also specify the nature of the evidence or documents to be provided to the Committee, and in the case of documents, the form in which they are to be provided.
- (4) A requirement under this clause must not be made of:
 - (a) an agency head; or
 - (b) a staff member or agent of an agency; or
 - (c) the Inspector-General of Intelligence and Security; or
 - (d) a member of the staff of the Inspector-General of Intelligence and Security.
- (5) A requirement under this clause may only be made of a person if the Committee has reasonable grounds for believing that the person is capable of giving evidence or producing documents relevant to a matter that the Committee is reviewing or that has been referred to the Committee.

Clause 3

- (7) The Commonwealth must pay a person who has been given a notice requiring the person to appear before the Committee such allowances for the person's travelling and other expenses as are prescribed.

3 Provision of information to Committee by agencies

- (1) The Chair or another member authorised by the Committee may give a written notice to an agency head requiring him or her to appear before the Committee to give evidence or to produce documents to the Committee.
- (2) The notice must specify the day on which, and the time and place at which, the agency head is required to appear or to produce documents. The day must not be less than 5 days after the day on which the notice is given to the agency head.
- (3) The notice must also specify the nature of the evidence or documents to be provided to the Committee, and in the case of documents, the form in which they are to be provided.
- (4) A requirement under this clause may only be made of the agency head if the Committee has reasonable grounds for believing that the agency head is capable of giving evidence or producing documents relevant to a matter that has been referred to the Committee.
- (5) The evidence is to be given by:
 - (a) if the agency head nominates a staff member to give the evidence—the staff member or both the staff member and the agency head; or
 - (b) in any other case—the agency head.

4 Certificates by Minister

- (1) If:
 - (a) a person is about to give or is giving evidence to the Committee or is about to produce a document to the

Committee (whether or not required to do so under clause 2 or 3); and

- (b) a Minister responsible for an agency is of the opinion that, to prevent the disclosure of operationally sensitive information:
 - (i) the person (not being an agency head) should not give evidence before the Committee; or
 - (ii) the person should not give evidence before the Committee relating to a particular matter; or
 - (iii) in a case where a person has commenced to give evidence before the Committee:
 - (A) the person should not continue to give evidence before the Committee; or
 - (B) the person should not give, or continue to give, evidence relating to a particular matter before the Committee; or
 - (iv) the person should not produce documents to the Committee; or
 - (v) the person should not produce documents of a particular kind to the Committee;

the Minister may give to the presiding member of the Committee a certificate in relation to the matter stating the Minister's opinion.

- (2) The Minister's certificate must also specify:
 - (a) in a case to which subparagraph (1)(b)(ii) or (v) applies—the matter in relation to which the Minister is satisfied that the person should not give, or continue to give, evidence, or specifying the kind of documents that the Minister is satisfied the person should not produce, as the case requires; and
 - (b) in a case to which sub-subparagraph (1)(b)(iii)(B) applies—the matter in relation to which the Minister is satisfied that the person should not give, or continue to give, evidence.
- (3) The Minister must give a copy of a certificate under subclause (1) to the President of the Senate, to the Speaker of the House of Representatives and to the person required to give evidence or produce documents.

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- (4) A decision of the Minister under subclause (1) must not be questioned in any court or tribunal.
- (5) Where the Minister gives a certificate under subclause (1) in relation to a person:
 - (a) if the certificate states that the person should not give, or continue to give, evidence before the Committee—the Committee must not receive, or continue to receive, as the case may be, evidence from the person; or
 - (b) if the certificate states that the person should not give, or continue to give, evidence before the Committee relating to a particular matter—the Committee must not receive, or continue to receive, as the case may be, evidence from the person relating to that matter; or
 - (c) if the certificate states that the person should not produce documents, or documents of a particular kind, to the Committee—the Committee must not receive documents, or documents of that kind, as the case may be, from the person.

5 Evidence

- (1) The Committee may take evidence on oath or affirmation.
- (2) The member presiding may administer an oath or affirmation to a witness appearing before the Committee.
- (3) The oath or affirmation is an oath or affirmation that the evidence the person will give will be true.
- (4) To avoid doubt, the Committee is not to be taken to be an Australian court for the purposes of the *Evidence Act 1995*.

6 Publication of evidence or contents of documents

- (1) Subject to this clause, the Committee may disclose or publish, or authorise the disclosure or publication of:
 - (a) any evidence taken by the Committee; or
 - (b) the contents of any document produced to the Committee.

- (2) If the evidence is taken, or the document is produced, in a review conducted in private, the Committee must not disclose or publish, or authorise the disclosure or publication of the evidence or the contents of the document without the written authority of:
 - (a) if the person who gave the evidence or produced the document is a staff member of an agency—the agency head; or
 - (b) in any other case—the person who gave the evidence or produced the document.
- (3) Subclause (2) does not apply:
 - (a) if the evidence, or the contents of the document, have already been lawfully disclosed or published; or
 - (b) in relation to a matter of which the Committee has become aware otherwise than because of the giving of any evidence before, or the production of any document to, the Committee.
- (4) The Committee must not disclose or publish, or authorise the disclosure or publication of, the evidence, or the contents of the document, if the disclosure or publication would disclose a matter that the Committee is not, under clause 7, permitted to disclose in a report to a House of the Parliament.
- (5) The Committee may obtain the advice of the responsible Minister or responsible Ministers concerned as to whether the disclosure or publication might disclose a matter of that kind.
- (6) This clause has effect despite section 2 of the *Parliamentary Papers Act 1908*.
- (7) If the evidence, or the contents of the document, are disclosed or published under this clause, section 4 of the *Parliamentary Papers Act 1908* applies to the disclosure or publication as if it were a publication under an authority given under section 2 of that Act.

7 Restrictions on disclosure to Parliament

- (1) The Committee must not disclose in a report to a House of the Parliament:
-

Clause 8

- (a) the identity of a person who is or has been a staff member of ASIO or ASIS or an agent of ASIO, ASIS, AGO or ASD; or
 - (b) any information from which the identity of such a person could reasonably be inferred; or
 - (c) operationally sensitive information or information that would or might prejudice:
 - (i) Australia's national security or the conduct of Australia's foreign relations; or
 - (ii) the performance by an agency of its functions.
- (2) An agency head may determine that paragraphs (1)(a) and (b) do not apply to the identification of specified staff members or agents of his or her agency, and the determination has effect accordingly.
- (3) The Committee must obtain the advice of the responsible Minister or responsible Ministers concerned as to whether the disclosure of any part of the report would or might disclose a matter referred to in subclause (1).
- (4) The Committee must not present a report of the Committee to a House of the Parliament if a responsible Minister concerned has advised that the report or a part of the report would or might disclose such a matter.

8 Continuance of evidence

- (1) If:
- (a) any evidence or document about a matter has been taken by or produced to the Committee as constituted at a time; and
 - (b) either of the following happens before the Committee reports on the matter:
 - (i) the Committee as so constituted ceases to exist;
 - (ii) the constitution of the Committee changes;
- the Committee as constituted at a later time, whether during the same or another Parliament, may consider the evidence or document as if the evidence or document had been taken by or produced to it.

- (2) Clause 9 applies to each member of the later Committee as if the evidence or document had been taken or produced to that Committee.

Part 2—Offences

9 Offences relating to publishing or disclosing evidence or documents

- (1) A person (including a member) is guilty of an offence if:
 - (a) the person discloses or publishes any evidence taken by, or the contents of any document produced to, the Committee in a review conducted in private; and
 - (b) the disclosure or publication is not authorised in writing by:
 - (i) if the person who gave the evidence or produced the document is a staff member of an agency—the agency head; or
 - (ii) in any other case—the person who gave the evidence or produced the document; and
 - (c) the disclosure or publication is of evidence, or is of the contents of a document, that has not already been lawfully disclosed or published.
- (2) Subclause (1) does not apply to the disclosure or publication by a person of a matter of which the person has become aware otherwise than because of the giving of any evidence before, or the production of any document to, the Committee.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (3) Subclause (1) has effect despite section 2 of the *Parliamentary Papers Act 1908*.
- (4) In this clause:

Committee includes the Parliamentary Joint Committee on the Australian Security Intelligence Organisation.

Note: The Parliamentary Joint Committee on the Australian Security Intelligence Organisation (established under the *Australian Security Intelligence Organisation Act 1979*) ceased to exist when the Parliamentary Joint Committee on ASIO, ASIS and DSD was

established. However, the records of the earlier Committee were transferred to the Parliamentary Joint Committee on ASIO, ASIS and DSD.

10 Offences relating to giving evidence or producing documents

- (1) A person who has been given a notice requiring the person to appear before the Committee is guilty of an offence if the person:
- (a) fails to attend as required by the notice; or
 - (b) having not been excused or released by the Committee, fails to attend and report from day to day; or
 - (c) refuses or fails to be sworn or to make an affirmation; or
 - (d) refuses or fails to answer a question, not being a question about a matter in respect of which a certificate has been issued under clause 4, that the Committee requires the person to answer.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

- (2) Subclause (1) applies to a staff member who is nominated by an agency head under subclause 3(5) to appear before the Committee to give evidence.
- (3) Paragraph (1)(d) does not apply if the answer to the question would tend to incriminate the person.
- (4) A person who has been given a notice requiring the person to produce a document, not being a document in respect of which a certificate has been issued under clause 4, to the Committee is guilty of an offence if the person refuses or fails to produce the document.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

- (5) Subclause (4) does not apply if the producing of the document would tend to incriminate the person.
- (6) A person is guilty of an offence if the person:
- (a) gives evidence to the Committee; and

Clause 11

- (b) does so knowing that the evidence is false or misleading in a material particular.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

11 Protection of witnesses

- (1) A person who causes or threatens to cause any detriment to another person with the intention that the other person or a third person will:
 - (a) not attend as a witness before the Committee; or
 - (b) give false evidence or a falsified document to the Committee; or
 - (c) withhold true evidence or a document from the Committee;is guilty of an offence.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (2) A person who otherwise improperly influences another person with the intention that the other person or a third person will:
 - (a) not attend as a witness before the Committee; or
 - (b) give false evidence or a falsified document to the Committee; or
 - (c) withhold true evidence or a document from the Committee;is guilty of an offence.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

- (3) A person who causes or threatens to cause any detriment to another person because that other person or a third person appeared before the Committee or produced a document to the Committee is guilty of an offence.

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

12 Secrecy

- (1) A person who is or has been a member, or a member of the staff, of the Committee is guilty of an offence if the person, directly or indirectly:
- (a) makes a record of, or discloses or communicates to a person, any information acquired because of holding the office or employment; or
 - (b) produces to a person a document provided to the Committee for the purposes of enabling the Committee to perform its functions;
- and the action of the person is not carried out for the purposes of enabling the Committee to perform its functions.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) A person who is or has been a member, or a member of the staff, of the Committee must not be required to:
- (a) produce in a court a document of which he or she has custody, or to which he or she has access, because of his or her position as a member, or a member of the staff, of the Committee; or
 - (b) disclose or to communicate to a court any information obtained by him or her because of such a position.

- (3) In this clause:

produce includes permit access to.

13 Prosecution of offences

A prosecution for an offence against this Part can be instituted only by the Attorney-General or with the Attorney-General's consent.

Part 3—Administration

14 Appointment of members

- (1) The members who are members of the House of Representatives must be appointed by resolution of the House on the nomination of the Prime Minister.
- (2) Before nominating the members, the Prime Minister must consult with the Leader of each recognised political party that is represented in the House and does not form part of the Government.
- (3) The members who are Senators must be appointed by resolution of the Senate on the nomination of the Leader of the Government in the Senate.
- (4) Before nominating the members, the Leader of the Government in the Senate must consult with the Leader of each recognised political party that is represented in the Senate and does not form part of the Government.
- (5) In nominating the members, the Prime Minister and the Leader of the Government in the Senate must have regard to the desirability of ensuring that the composition of the Committee reflects the representation of recognised political parties in the Parliament.
- (6) A person is not eligible for appointment as a member if the person is:
 - (a) a Minister; or
 - (b) the President of the Senate; or
 - (c) the Speaker of the House of Representatives.

15 Term of office

- (1) A member holds office during the pleasure of the House of the Parliament by which the member was appointed.

- (2) A member ceases to hold office as a member:
 - (a) when the House of Representatives expires by the passing of time or is dissolved; or
 - (b) if the person becomes the holder of an office specified in any of the paragraphs of subclause 14(6); or
 - (c) if the person ceases to be a member of the House of the Parliament by which the person was appointed; or
 - (d) if the person resigns the office.
- (3) A member who is a Senator may resign his or her office by giving a signed notice of resignation to the President of the Senate.
- (4) A member who is a member of the House of Representatives may resign his or her office by giving a signed notice of resignation to the Speaker of the House of Representatives.
- (5) Either House of the Parliament may appoint one of its members to fill a vacancy among the members of the Committee appointed by that House.

16 Chair

- (1) There must be a Chair of the Committee who must be a Government member elected by the members from time to time.
- (2) The Chair holds office during the pleasure of the Committee.
- (3) A person holding office as Chair ceases to hold the office if:
 - (a) the person ceases to be a member; or
 - (b) the person resigns the office.
- (4) A person holding office as Chair may resign the office by giving a signed notice of resignation to a meeting of the Committee.

16A Deputy Chair

- (1) There must be a Deputy Chair of the Committee who must be a member elected by the members from time to time.

Clause 17

- (2) The Deputy Chair holds office during the pleasure of the Committee.
- (3) A person holding office as Deputy Chair ceases to hold the office if:
 - (a) the person ceases to be a member; or
 - (b) the person resigns the office.
- (4) A person holding office as Deputy Chair may resign the office by giving a signed notice of resignation to a meeting of the Committee.

17 Meetings

- (1) The Committee may meet at such times and, subject to subclause (3), at such places in Australia as the Committee decides by resolution or, subject to a resolution of the Committee, as the Chair decides.
- (2) The Committee may meet and transact business even though the Parliament has been prorogued.
- (3) Before the Committee or the Chair decides a place of meeting, the Chair must obtain advice from each of the agency heads as to the suitability of the place.
- (4) The Chair must preside at all meetings of the Committee at which he or she is present.
- (5) If:
 - (a) the Chair is not present at a meeting of the Committee; and
 - (b) either:
 - (i) the meeting is one at which a question is to be decided by voting, or could reasonably be expected to be so decided; or
 - (ii) throughout a continuous period of more than one month immediately preceding the day of the meeting, the Chair was absent from duty or from Australia, or was for any

reason unable to perform the duties of his or her office
as Chair;

the members present are to appoint a Government member to
preside.

(5A) If:

- (a) the Chair is not present at a meeting of the Committee; and
- (b) the members are not required by subclause (5) to appoint a
Government member to preside;

then:

- (c) if the Deputy Chair is present at the meeting—the Deputy
Chair is to preside; or
- (d) if the Deputy Chair is not present at the meeting—the
members present are to appoint a member to preside.

(5B) A member who presides at a meeting of the Committee under
subclause (5) or (5A) may exercise, in relation to the meeting and
any matter arising out of the meeting, any of the powers of the
Chair.

(6) The Committee must keep minutes of its proceedings.

18 Quorum

- (1) At a meeting of the Committee, a quorum is constituted if:
 - (a) at least 6 members are present; and
 - (b) subject to subclause (2), a majority of the members present
are Government members.
- (2) There may be an equal number of Government members and
non-Government members if the presiding member is a
Government member.

19 Voting at meetings

- (1) A question arising at a meeting is to be decided by a majority of
the votes of the members present and voting.

Clause 20

- (2) The member presiding at the meeting has a deliberative vote.
- (3) The member presiding at the meeting has a casting vote if votes are equal.

20 Proceedings

- (1) The proceedings of the Committee are to be conducted in the manner determined by the Committee.
- (2) The Committee must not conduct a review in public without the approval of:
 - (a) the Minister responsible for ASIO; and
 - (b) the Minister responsible for ASIS; and
 - (c) the Minister responsible for AGO, DIO and ASD; and
 - (d) the Minister responsible for ONA.
- (3) At a review conducted in private, the Committee may give directions as to the persons who may be present. In giving such directions, the Committee must have regard to the requirements of security and any other matters the Committee thinks fit.

21 Staff of the Committee must be cleared for security purposes

Each member of the staff of the Committee must be cleared for security purposes to the same level and at the same frequency as staff members of ASIS.

22 Protection of information and documents

- (1) The Committee must make arrangements acceptable to all of the agency heads for the security of any information held and any records made by the Committee.
- (2) The Committee must ensure that any documents having a national security classification provided to the Committee are returned as soon as possible after the members have examined them.

Part 4—Subcommittees

23 Subcommittees

- (1) The Committee may appoint one or more subcommittees of at least 3 of its members to inquire into and report to the Committee upon such matters with which the Committee is concerned as the Committee directs.
- (2) A subcommittee must report in writing to the Committee as soon as practicable on each matter referred to that subcommittee by the Committee.
- (3) A subcommittee may sit at any time, including at a time when the Committee is sitting.

24 Term of office

- (1) A member of a subcommittee holds office during the pleasure of the Committee.
- (2) A member of a subcommittee ceases to hold office if:
 - (a) the person ceases to be a member of the Committee; or
 - (b) the person resigns the office.
- (3) A member of a subcommittee may resign his or her office by giving a signed notice of resignation to the Chair of the Committee.

25 Operation of subcommittees

- (1) A subcommittee may determine matters relating to the operation of the subcommittee, except as mentioned in subsection (2).
- (2) If the Chair of the Committee gives a direction to a subcommittee in relation to the operation of the subcommittee, the subcommittee must operate in accordance with the direction.

Schedule 2—Limits on provision of weapons, training etc.

1 Provision of weapons, training etc.

- (1) The provision of a weapon, or training in the use of a weapon or in self-defence techniques, is not prevented by subsection 6(4) if it is provided:
 - (a) to a person who is a staff member or agent of ASIS; and
 - (b) for the purpose of enabling the person:
 - (i) to protect himself or herself; or
 - (ii) to protect a staff member or agent of ASIS; or
 - (iii) to protect a person who is co-operating with ASIS in accordance with section 13; or
 - (iv) to provide training to staff members or agents of ASIS; and
 - (c) in accordance with a Ministerial approval given under subclause (3).
- (1A) The provision to a person of a weapon, or training in the use of a weapon or in self-defence techniques, is not prevented by subsection 6(4) if:
 - (a) the person:
 - (i) is an officer of an authority with which ASIS is co-operating in accordance with paragraph 13(1)(c); or
 - (ii) is an officer (however described) of a Commonwealth authority, or a State authority, and is authorised in that capacity to carry and use weapons; and
 - (b) it is provided in accordance with a Ministerial approval under subclause (3A) in relation to the person; and
 - (c) it is provided for the purpose of enabling the person:
 - (i) to protect himself or herself; or
 - (ii) to protect a staff member or agent of ASIS; or

- (iii) to protect a person who is co-operating with ASIS in accordance with section 13.
 - (2) The use of a weapon or self-defence techniques is not prevented by subsection 6(4) if:
 - (a) the weapon or techniques are used:
 - (i) for a purpose covered by paragraph (1)(b); or
 - (ii) in training in accordance with subclause (1) or (1A); and
 - (b) in a case covered by any of subparagraphs (1)(b)(i) to (iii)—the weapon or techniques are used outside Australia; and
 - (c) guidelines have been issued by the Director-General under subclause (6); and
 - (d) the weapon or techniques are used in compliance with those guidelines.
 - (2A) The use of a weapon or self-defence techniques is not prevented by subsection 6(4) if:
 - (a) the weapon or techniques are used in the proper performance of a function of ASIS; and
 - (b) the weapon or techniques are used in a controlled environment; and
 - (c) guidelines have been issued by the Director-General under subclause (6); and
 - (d) the weapon or techniques are used in compliance with those guidelines.
- Example: The following may constitute the use of a weapon or technique in a controlled environment:
- (a) the use of a firearm at a rifle range;
 - (b) the use of a martial art at a martial arts club.
- (3) The Minister may, by written notice given to the Director-General, approve the provision of a weapon, or training in the use of a weapon or in self-defence techniques, to:
 - (a) a specified staff member or agent of ASIS; or
 - (b) the holder of a specified position in ASIS.

Clause 2

- (3A) The Minister may, by written notice given to the Director-General, approve the provision of a weapon, or training in the use of a weapon or in self-defence techniques, to a specified person for the purposes of paragraph (1A)(b).
- (4) An approval under subclause (3) or (3A) for the provision of a weapon or training must specify:
 - (a) the purpose for which the weapon or training is provided; and
 - (b) any conditions that must be complied with in relation to the provision of the weapon or training; and
 - (c) if the approval is for the provision of a weapon or training in the use of a weapon—the kind or class of weapon involved.
- (5) As soon as practicable after giving the Director-General an approval under subclause (3) or (3A), the Minister must give the Inspector-General of Intelligence and Security a copy of the approval.
- (6) The Director-General must issue guidelines for the purposes of this Schedule on matters related to the use of weapons and self-defence techniques.
- (7) As soon as practicable after making the guidelines, the Director-General must give the Inspector-General of Intelligence and Security a copy of the guidelines.
- (8) Guidelines issued under subclause (6) are not legislative instruments.

2 Application of certain State and Territory laws

A person is not required under, or by reason of, a law of a State or Territory:

- (a) to obtain or have a licence or permission for doing any act or thing in accordance with clause 1; or
- (b) to register any weapon provided in accordance with clause 1.

3 Reports to Inspector-General of Intelligence and Security

If:

- (a) a staff member or agent of ASIS uses a weapon for a purpose mentioned in any of subparagraphs 1(1)(b)(i) to (iii); and
- (b) during that use the weapon is discharged;

the Director-General must, as soon as practicable, give to the Inspector-General of Intelligence and Security a written report of the discharge which explains the circumstances in which the discharge occurred.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

A = Act	o = order(s)
ad = added or inserted	Ord = Ordinance
am = amended	orig = original
amdt = amendment	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
c = clause(s)	pres = present
C[x] = Compilation No. x	prev = previous
Ch = Chapter(s)	(prev...) = previously
def = definition(s)	Pt = Part(s)
Dict = Dictionary	r = regulation(s)/rule(s)
disallowed = disallowed by Parliament	Reg = Regulation/Regulations
Div = Division(s)	reloc = relocated
exp = expires/expired or ceases/ceased to have effect	renum = renumbered
F = Federal Register of Legislative Instruments	rep = repealed
gaz = gazette	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)/subsection(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
(md) = misdescribed amendment can be given effect	Sdiv = Subdivision(s)
(md not incorp) = misdescribed amendment cannot be given effect	SLI = Select Legislative Instrument
mod = modified/modification	SR = Statutory Rules
No. = Number(s)	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Intelligence Services Act 2001	152, 2001	1 Oct 2001	29 Oct 2001 (s 2)	
Security Legislation Amendment (Terrorism) Act 2002	65, 2002	5 July 2002	Sch 1 (item 19): 6 July 2002 (s 2(1) item 8A)	—
Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003	77, 2003	22 July 2003	Sch 1 (item 27D): 23 July 2003 (s 2(1) item 4)	—
ASIO Legislation Amendment Act 2003	143, 2003	17 Dec 2003	Sch 2: 18 Dec 2003 (s 2)	—
Intelligence Services Amendment Act 2004	57, 2004	27 Apr 2004	27 Apr 2004 (s 2)	—
Intelligence Services Legislation Amendment Act 2005	128, 2005	4 Nov 2005	Sch 1: 2 Dec 2005 (s 2(1) item 2)	Sch 1 (items 68–70)
Telecommunications (Interception) Amendment Act 2006	40, 2006	3 May 2006	Sch 1 (item 20A): 13 June 2006 (s 2(1) item 2 and F2006L01623)	—
ASIO Legislation Amendment Act 2006	54, 2006	19 June 2006	Sch 2 (item 33): 20 June 2006 (s 2(1) item 3)	—
Telecommunications (Interception and Access) Amendment Act 2007	177, 2007	28 Sept 2007	Sch 1 (items 15, 68): 1 Nov 2007 (s 2(1) item 2 and F2007L03941)	Sch 1 (item 68)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008	26, 2008	23 June 2008	Schedule 1 (item 81): 23 June 2008 (s 2(1) item 4)	—
Telecommunications Interception and Intelligence Services Legislation Amendment Act 2011	4, 2011	22 Mar 2011	Sch 6 (items 18–27) and Sch 8: 23 Mar 2011 (s 2)	Sch 8 (item 4)
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 5 (items 116–119) and Sch 6 (items 63–66): 19 Apr 2011 (s 2(1) items 13, 17)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 733, 734) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 5, 12)	Sch 3 (items 10, 11)
Intelligence Services Legislation Amendment Act 2011	80, 2011	25 July 2011	Sch 1 (items 20–28, 32): 26 July 2011 (s 2)	Sch 1 (item 32)
Foreign Affairs Portfolio Miscellaneous Measures Act 2013	54, 2013	28 May 2013	Sch 1 (items 1, 2): 28 May 2013 (s 2)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 6 (items 52, 53), Sch 9 (items 193, 194) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14

Intelligence Services Act 2001

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Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): <u>awaiting commencement (s 2(1) item 2)</u>	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): <u>awaiting commencement (s 2(1) item 2)</u>	—
National Security Legislation Amendment Act (No. 1) 2014	108, 2014	2 Oct 2014	Sch 5 and Sch 6 (items 6–23): 30 Oct 2014 (s 2(1) item 2) Sch 7 (items 1–57, 144, 145): 3 Oct 2014 (s 2(1) items 3, 5)	Sch 5 (item 10), Sch 6 (item 23) and Sch 7 (items 144, 145)
Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014	116, 2014	3 Nov 2014	Sch 1 (items 131B–133G): 1 Dec 2014 (s 2(1) item 2)	Sch 1 (item 133G)
Counter-Terrorism Legislation Amendment Act (No. 1) 2014	134, 2014	12 Dec 2014	Sch 2: 13 Dec 2014 (s 2(1) item 3)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015	39, 2015	13 Apr 2015	Sch 1 (items 1E–1G, 7): 13 Oct 2015 (s 2(1) item 2) Sch 1 (items 8–12): 13 Apr 2015 (s 2(1) items 1, 3)	Sch 1 (items 7– 12)
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 311, 312): <u>awaiting commencement</u> (s 2(1) item 2)	—
Australian Citizenship Amendment (Allegiance to Australia) Act 2015	166, 2015	11 Dec 2015	Sch 2 (items 3–9): 12 Dec 2015 (s 2(1) item 1)	Sch 2 (item 9)

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 128, 2005; No 4, 2011; No 5, 2011; No 54, 2013; No 108, 2014; No 116, 2014; No 39, 2015; No 166, 2015
s 3A.....	ad No 134, 2014
	am <u>No 126, 2015</u>
Part 2	
Division 1	
Division 1 heading.....	ad No 108, 2014
s 6	am No 57, 2004; No 128, 2005; No 4, 2011; No 80, 2011; No 108, 2014; No 134, 2014
s 6B.....	ad No 128, 2005
	am No 4, 2011; No 80, 2011; No 108, 2014
s 7	am No 128, 2005; No 4, 2011; No 108, 2014
s 8	am No 128, 2005, No 80, 2011; No 108, 2014; No 134, 2014
s 9	am No 128, 2005; No 80, 2011; No 108, 2014; No 134, 2014
s 9A.....	ad No 128, 2005
	am No 5, 2011
	rs No 134, 2014
s 9B.....	ad No 134, 2014
s 9C.....	ad No 134, 2014
s 10	am No 128, 2005; No 134, 2014
s 10A.....	ad No 128, 2005
	am No 134, 2014
s 11	am No 128, 2005; No 4, 2011; No 80, 2011; No 108, 2014
s 12A.....	am No 128, 2005; No 108, 2014
Division 2	
Division 2 heading.....	ad No 108, 2014
s 13	am No 57, 2004; No 4, 2011; No 108, 2014
s 13A.....	ad No 4, 2011

Endnote 4—Amendment history

Provision affected	How affected
Division 3	
Division 3	ad No 108, 2014
s 13B.....	ad No 108, 2014
s 13C.....	ad No 108, 2014
s 13D.....	ad No 108, 2014
s 13E.....	ad No 108, 2014
s 13F	ad No 108, 2014
s 13G.....	ad No 108, 2014
Division 4	
Division 4 heading.....	ad No 108, 2014
s 14	am No 128, 2005; No 40, 2006; No 177, 2007; No 80, 2011; No 108, 2014
s 15	am No 128, 2005; No 80, 2011; No 108, 2014
Part 3	
Division 1	
s 16	am No 62, 2014
Division 2	
s 23	am No 26, 2008; No 62, 2014
s 24	am No 46, 2011
s 26	rep No 62, 2014
s 27	am No 128, 2005
Part 4	
Part 4 heading	rs No 128, 2005
s 28	am No 128, 2005; No 4, 2011
s 29	am No 65, 2002; No 77, 2003; No 143, 2003; No 128, 2005; No 54, 2006; No 108, 2014; No 116, 2014; No 134, 2014; No 39, 2015; No 166, 2015
s 30	am No 128, 2005; No 108, 2014; No 116, 2014; No 166, 2015
Part 5	
s 36A.....	ad No 54, 2013
Part 6	
Division 1	
Division 1 heading.....	ad No 108, 2014

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 39	am No 108, 2014
s 39A.....	ad No 128, 2005
	am No 108, 2014
s 40	am No 128, 2005; No 108, 2014
s 40A.....	ad No 108, 2014
s 40B.....	ad No 108, 2014
s 40C.....	ad No 108, 2014
s 40D.....	ad No 108, 2014
s 40E.....	ad No 108, 2014
s 40F.....	ad No 108, 2014
s 40G.....	ad No 108, 2014
s 40H.....	ad No 108, 2014
s 40J.....	ad No 108, 2014
s 40K.....	ad No 108, 2014
s 40L.....	ad No 108, 2014
s 40M.....	ad No 108, 2014
s 41	am No 108, 2014
s 41A.....	ad No 108, 2014
s 41B.....	ad No 108, 2014
Division 2	
Division 2 heading.....	ad No 108, 2014
s 42	am No 57, 2004
Schedule 1	
Schedule 1 heading.....	rs No 128, 2005
Part 1A	
Part 1A heading.....	rs No 128, 2005
c 1A.....	am No 128, 2005; No 108, 2014; No 116, 2014; No 166, 2015
c 1B.....	ad No 128, 2005
Part 1	
c 3	am No 128, 2005
c 7	am No 128, 2005; No 108, 2014

Endnote 4—Amendment history

Provision affected	How affected
c 8	am No 4, 2011
Part 3	
c 16A	ad No 128, 2005
c 17	am No 128, 2005
c 18	am No 128, 2005; No 4, 2011
c 20	am No 128, 2005; No 108, 2014
Part 4	
Part 4	ad No 128, 2005
c 23	ad No 128, 2005
c 24	ad No 128, 2005
c 25	ad No 128, 2005
Schedule 2	
Schedule 2	ad No 57, 2004
c 1	ad No 57, 2004
	am No 80, 2011; No 108, 2014
c 2	ad No 57, 2004
	am No 108, 2014
c 3	ad No 57, 2004