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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 August 2023 (the ***compilation date***).

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 the Register (www.legislation.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 Register 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.

Editorial changes

For more information about any editorial changes made in this compilation, see 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 Register 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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

(1) 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 of ASIS; and
(b) in relation to AGO—the Director of AGO; and
(c) in relation to ASD—the Director-General 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 the Australian Signals Directorate.

ASD contract means a contract, to which ASD is a party, under which services are to be, or were to be, provided to ASD.

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ASIO means the Australian Security Intelligence Organisation.

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.

authority, of another country, has a meaning affected by subsection (2).

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.

contracted service provider, for an ASD contract, means:

(a) a person who is a party to the ASD contract and who is responsible for the provision of services to ASD under the ASD contract; or

(b) a subcontractor for the ASD contract.

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

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cybercrime means activities that involve committing a serious crime by, or facilitated by, the use of electromagnetic energy, whether guided or unguided or both.

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 of National Intelligence means the Director-General of National Intelligence holding office under the *Office of National Intelligence Act 2018*.

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*.

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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(1)(a), (b) or (c) or by ASD in the course of obtaining intelligence under paragraph 7(1)(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*.

intelligence information means the following:

(a) intelligence obtained by ASIS under subsection 6(1) (other than intelligence obtained solely under paragraph 6(1)(da));

(b) intelligence obtained by AGO under paragraph 6B(1)(a), (b) or (c);

(c) intelligence obtained by ASD under paragraph 7(1)(a);

(ca) intelligence obtained or produced by DIO in the performance of its intelligence functions;

(d) incidentally obtained intelligence.

involved with a listed terrorist organisation has a meaning affected by subsection 9(1AAB).

listed terrorist organisation has the same meaning as in subsection 100.1(1) of the *Criminal Code*.

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

ONI means the Office of National Intelligence.

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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.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

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.

prescribed activity has the meaning given by subsection 8(1B).

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*.

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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 ONI—the Minister responsible for ONI.

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

(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

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(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.

subcontractor, for an ASD contract, means a person:

(a) who is a party to a contract (the ***subcontract***):

(i) with a contracted service provider for the ASD contract (within the meaning of paragraph (a) of the definition of ***contracted service provider***); or

(ii) with a subcontractor for the ASD contract (under a previous application of this definition); and

(b) who is responsible under the subcontract for the provision of services to ASD, or to a contracted service provider for the ASD contract, for the purposes (whether direct or indirect) of the ASD contract.

(2) For the purposes of determining whether a body is an authority of another country, it does not matter whether:

(a) the body is established by a law of the country; or

(b) the body is connected with an internationally recognised government of the country.

3A References to Ministers

Despite section 19 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

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(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 subsection 19(4) 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.

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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 cooperate 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 the following other activities relating to the capabilities, intentions or activities of people or organisations outside Australia:

(i) such activities of a general or specific nature as the responsible Minister directs;

(ii) activities included in such a class or classes of activity or activities as the responsible Minister directs.

(1A) Without limiting subparagraph (1)(e)(i), a direction given under that subparagraph may specify the purpose or purposes for which an activity or activities are to be undertaken.

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(1B) Without limiting subparagraph (1)(e)(ii), a direction given under that subparagraph may specify the purpose or purposes for which a class or classes of activity or activities are to be undertaken.

(2) The responsible Minister may give a direction under subparagraph (1)(e)(i) or (ii) 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 subparagraph (1)(e)(i) or (ii) must be in writing.

Note: If the Minister gives a direction under subparagraph (1)(e)(i) or (ii), 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 subparagraph (1)(e)(i) or (ii) 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.

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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.

(5A) Subsection (4) does not prevent:

(a) the provision of weapons, or training in the use of force (including in the use of weapons) against a person, in accordance with Schedule 3, for the purposes of activities undertaken by ASIS outside Australia; or

(b) the use of force against a person (including the use of weapons), in accordance with Schedule 3, in the course of activities undertaken by ASIS outside Australia; or

(c) the threat of the use of force against a person (including the threat of the use of weapons), in accordance with Schedule 3, in the course of activities undertaken by ASIS outside Australia.

(5B) Nothing in subsection (5) or (5A) permits conduct by a person (the ***actor***) that:

(a) would constitute torture; or

(b) would subject a person to cruel, inhuman or degrading treatment; or

(c) would involve the commission of a sexual offence against any person; or

(d) is likely to cause the death of, or grievous bodily harm to, a person, unless the actor believes on reasonable grounds that the conduct is necessary to protect life or to prevent serious injury to another person (including the actor).

(5C) Nothing in subsection (5) or Schedule 2 limits the operation of subsection (5A) or Schedule 3.

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(5D) Nothing in subsection (5A) or Schedule 3 limits the operation of subsection (5) or Schedule 2.

(6) ASIS must not:

(a) provide weapons; or

(b) provide training in the use of weapons; or

(c) provide training in the use of force, or the threat of the use of force, against a person; or

(d) provide training in the use of self-defence techniques;

other than in accordance with Schedule 2 or Schedule 3.

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

6A Committee to be advised of other activities

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

Note: For ***Committee*** see section 3.

6B Functions of AGO

(1) The functions of AGO are:

(a) to obtain geospatial, hydrographic, meteorological, oceanographic 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, hydrographic, meteorological, oceanographic 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

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(c) to obtain geospatial, hydrographic, meteorological, oceanographic 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 the following to persons and bodies mentioned in subsection (2):

(i) imagery and other geospatial, hydrographic, meteorological and oceanographic products, not being intelligence obtained under paragraph (a), (b) or (c) of this subsection;

(ii) assistance in relation to the production and use of imagery and other geospatial, hydrographic, meteorological and oceanographic products;

(iii) assistance in relation to the production and use of imagery technologies and other geospatial, hydrographic, meteorological and oceanographic technologies; and

(ea) to provide to any persons or bodies (including Commonwealth authorities and State authorities) assistance in relation to the performance by the persons or bodies of emergency response functions, safety functions, scientific research functions, economic development functions, cultural functions and environmental protection functions, if:

(i) the provision of the assistance is incidental to the performance by AGO of its other functions; or

(ii) the assistance is capable of being conveniently provided by the use of resources that are not immediately required in performing AGO's other functions; or

(iii) the assistance is capable of being conveniently provided in the course of performing AGO's other functions; and

(f) to cooperate with and assist bodies referred to in section 13A in accordance with that section; and

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(g) to provide assistance to the Defence Force in support of military operations and to cooperate with the Defence Force on intelligence matters; and

(h) the functions mentioned in subsection 223(2) of the *Navigation Act 2012* (to the extent they are not covered by another paragraph of this subsection).

Note 1: For limits on the agency's functions and activities see sections 11 and 12.

Note 2: Subsection 223(2) of the *Navigation Act 2012* deals with the functions of the Australian Hydrographic Office, which is part of AGO (see subsection (3) of this section).

(2) Paragraph (1)(e) applies to providing imagery and other products, or assistance in relation to imagery and other products or technologies, to the following:

(a) a Commonwealth authority;

(b) a State authority of a Territory;

(c) a foreign person or entity;

(d) any other person or body (including a State authority of a State) if:

(i) the imagery and other products or technologies are for use in, or incidental to, trade and commerce with other countries, among the States, between Territories or between a Territory and a State, or are for use outside Australia; or

(ii) the imagery and other products or assistance are provided by way of postal, telegraphic, telephonic or other like services.

Note: For ***State authority***, see section 3.

(3) The Australian Hydrographic Office mentioned in section 223 of the *Navigation Act 2012* is part of the AGO.

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Fees

(4) AGO may, on behalf of the Commonwealth, charge a fee in relation to anything done in performing AGO's functions under paragraph (1)(e), (ea) or (h).

(5) A fee must not be such as to amount to taxation.

7 Functions of ASD

(1) 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 prevent and disrupt, by electronic or similar means, cybercrime undertaken by people or organisations outside Australia; and

(ca) to provide material, advice and other assistance to any person or body mentioned in subsection (2) 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

(da) to protect specialised technologies acquired in connection with the performance of any of the preceding functions; and

(e) to provide assistance to Commonwealth authorities and State authorities in relation to:

(i) cryptography, and communication and computer technologies; and

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(ii) other specialised technologies acquired in connection with the performance of its other functions; and

(iii) the performance by those authorities of search and rescue functions; and

(f) to cooperate 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.

(2) For the purposes of paragraph (1)(ca), material, advice and other assistance may be provided to the following:

(a) a Commonwealth authority;

(b) a State authority;

(c) a foreign person or entity;

(d) any other person or body if:

(i) the material, advice and other assistance are provided for the purpose of protecting or facilitating trade and commerce with other countries, among the States, between Territories or between a Territory and a State, or outside Australia; or

(ii) the material, advice and other assistance are provided by way of a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution); or

(iii) the information was obtained or generated in the operation of a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

Note: For ***State authority***, see section 3.

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:

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(a) require the agency to obtain an authorisation under section 9, 9A, 9B or 9D (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

(iaa) undertaking 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

(ia) undertaking, in the course of providing assistance to the Defence Force in support of military operations under paragraph 6(1)(ba), 6B(1)(g) or 7(1)(d), 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 subparagraph 6(1)(e)(i) or (ii), an activity, or a series of activities, that will, or is likely to, have a direct effect on an Australian person; or

(iii) undertaking, in accordance with paragraph 7(1)(c), an activity, or a series of activities, for the specific purpose, or for purposes which include the specific purpose, of preventing or disrupting cybercrime undertaken by, or enabled by, 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).

(1A) For the purposes of subparagraphs (1)(a)(i), (iaa) and (ia), an agency undertakes an activity, or a series of activities, for the

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specific purpose, or for purposes which include the specific purpose, of producing intelligence on an Australian person, or one or more members of a class of Australian persons, only if:

(a) the agency undertakes a prescribed activity to obtain that intelligence; or

(b) the agency expressly or impliedly requests an authority referred to in paragraph 13(1)(c) to undertake a prescribed activity to obtain that intelligence.

(1B) ***Prescribed activity*** means a covert and intrusive activity, or a series of covert and intrusive activities and, to avoid doubt, includes an activity, or a series of activities, that ASIO could not undertake in at least one State or Territory without it being authorised by warrant under:

(a) Division 2 of Part III of the *Australian Security Intelligence Organisation Act 1979*; or

(b) Part 2-2 of the *Telecommunications (Interception and Access) Act 1979*.

(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 of ASIS 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).

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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

(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

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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 writing, but subject to subsection (1AA)) of the Attorney-General.

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

(1AAA) Before a Minister gives an authorisation for an activity, or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(iaa), the Minister must also:

(a) be satisfied that the class of Australian persons mentioned in that subparagraph is, or is likely to be, involved with a listed terrorist organisation; and

(b) obtain the agreement (orally or in writing, but subject to subsection (1AA)) of the Attorney-General.

(1AAB) Without limiting the circumstances in which a person is involved with a listed terrorist organisation, a person is taken to be involved with a listed terrorist organisation if the person:

(a) directs, or participates in, the activities of the organisation; or

(b) recruits a person to join, or participate in the activities of, the organisation; or

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(c) provides training to, receives training from, or participates in training with, the organisation; or

(d) is a member of the organisation (within the meaning of subsection 102.1(1) of the *Criminal Code*); or

(e) provides financial or other support to the organisation; or

(f) advocates for, or on behalf of, the organisation.

Agreement of the Attorney-General

(1AA) Without limiting paragraph (1A)(b) or (1AAA)(b), the Attorney-General may, in writing:

(a) specify classes of Australian persons who are, or are likely to be:

(i) involved in an activity or activities that are, or are likely to be, a threat to security; or

(ii) involved with a listed terrorist organisation; 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), (iaa), (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 Attorney-General 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 Attorney-General 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), (iaa), (ia), (ib), (ii) or (iii) 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) or (1AAA)(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) or (1AAA)(b) (if in writing), a request under subsection (5) (if in writing), and an authorisation under this section, are not legislative instruments.

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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)(iaa), (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 Attorney-General 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;
(v) the Minister responsible for administering the *Australian Security Intelligence Organisation Act 1979*.

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.

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(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:

(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 Attorney-General 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;

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(c) 48 hours from the time the authorisation was given under this section.

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—Attorney-General 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 Attorney-General is required to be obtained under paragraph 9(1A)(b);

(ii) the agreement has not been obtained;

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

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Giving authorisation

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

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 Attorney-General.

Notifying Attorney-General, ASIO Minister and Inspector-General of Intelligence and Security

(4) The relevant agency head must notify the following that an authorisation was given under section 9A or 9B (as the case requires) in accordance with this section:
   (a) the Attorney-General;
   (b) the Minister responsible for administering the *Australian Security Intelligence Organisation Act 1979* (the ***ASIO Minister***);
   (c) the Inspector-General of Intelligence and Security.

   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 Attorney-General or 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.

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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.

9D Authorisations in an emergency—imminent risk to safety of an Australian person

When this section applies

(1) This section applies if an agency head is satisfied that:
  (a) there is, or is likely to be, an imminent risk to the safety of an Australian person who is outside Australia; and
  (b) it is necessary or desirable to undertake an activity, or a series of activities, for the specific purpose, or for purposes which include the specific purpose, of producing intelligence on the person; and
  (c) it is not reasonably practicable to obtain the person's consent to the agency producing that intelligence; and
  (d) having regard to the nature and gravity of the risk, it is reasonable to believe that the person would consent to the agency producing that intelligence if the person were able to do so.

Authorisation

(2) The agency head may, orally or in writing, give an authorisation under this section for the activity, or series of activities, if the agency head is satisfied that, apart from paragraph 9(1A)(b):

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(a) the facts of the case would justify the responsible Minister giving an authorisation under section 9 because 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.

Conditions on authorisation

(3) The authorisation is subject to any conditions specified by the agency head.

Agency head to record and notify

(4) As soon as practicable after giving the authorisation (but no later than 8 hours after the authorisation is given) the agency head must, orally or in writing, notify the responsible Minister of the authorisation.

(5) As soon as practicable after giving the authorisation (but no later than 48 hours after the authorisation is given) the agency head must:

(a) if the authorisation is given orally—ensure that the authorisation is recorded in writing; and

(b) ensure that a summary of the facts of the case that the agency head was satisfied justified giving the authorisation is recorded in writing; and

(c) give to the responsible Minister:

(i) a copy of the authorisation; and

(ii) a summary of the facts of the case that the agency head was satisfied justified giving the authorisation; and

(iii) an explanation of the Minister's obligation under subsection (6); and

(d) give to the Inspector-General of Intelligence and Security the documents referred to in subparagraphs (c)(i) and (ii); and

(e) if the Australian person is, or is likely to be, involved in an activity or activities that are, or are likely to be, a threat to security—give to the Attorney-General and the Minister responsible for administering the *Australian Security*

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Intelligence Organisation Act 1979 (the ***ASIO Minister***) the documents referred to in subparagraphs (c)(i) and (ii).

Role of responsible Minister

(6) The responsible Minister must, as soon as practicable after being given documents under paragraph (5)(c), consider whether to cancel the authorisation under subsection (10).

(7) If the Attorney-General is required to be given documents under paragraph (5)(e), the responsible Minister must have regard to any advice given by the Attorney-General when making a decision under subsection (6).

Role of Inspector-General of Intelligence and Security

(8) Within 30 days after the Inspector-General of Intelligence and Security is given documents under paragraph (5)(d), the Inspector-General must:
  (a) consider whether the agency head has complied with the requirements of this section; and
  (b) provide the responsible Minister with a report on the Inspector-General's views of the extent of the compliance by the agency head with the requirements of this section; and
  (c) provide to the Committee a copy of the conclusions in the report.

Period of effect of authorisation

(9) The authorisation ceases to have effect at the earliest of the following times:
  (a) the end of 6 months, starting on the day the authorisation is given;
  (b) if the authorisation specifies a time when the authorisation ceases to have effect—that time;
  (c) if the responsible Minister cancels the authorisation under subsection (10)—the time of cancellation;

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(d) if the agency head cancels the authorisation under subsection (12)—the time of cancellation;

(e) if an authorisation for the activity, or series of activities, is given under section 9, 9A or 9B—the time the authorisation under section 9, 9A or 9B is given.

Cancellation by responsible Minister

(10) The responsible Minister may, in writing, cancel the authorisation.

(11) If the responsible Minister cancels the authorisation under subsection (10), the Minister must, as soon as practicable, give written notice of the cancellation to:

(a) the Inspector-General of Intelligence and Security; and

(b) if the Attorney-General and the ASIO Minister are required to be given documents under paragraph (5)(e)—those Ministers.

Cancellation by agency head

(12) The agency head must, in writing, cancel the authorisation if the agency head is satisfied that:

(a) there is not; and

(b) there is not likely to be;

a significant risk to the safety of the Australian person.

Note: The agency head may cancel the authorisation in other circumstances (see subsection 33(3) of the *Acts Interpretation Act 1901*).

(13) If the agency head cancels the authorisation under subsection (12), the agency head must, as soon as practicable, give written notice of the cancellation to:

(a) the responsible Minister; and

(b) the Inspector-General of Intelligence and Security; and

(c) if the Attorney-General and the ASIO Minister are required to be given documents under paragraph (5)(e)—those Ministers.

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Delegation

(14) An agency head may, in writing, delegate to a staff member (other than a consultant or contractor) all or any of the powers, functions or duties of the agency head under this section.

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

(15) In exercising a power, performing a function or discharging a duty under a delegation under subsection (14), the delegate must comply with any written directions of the agency head.

Relationship with the Acts Interpretation Act 1901

(16) 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 this section.

Status of instruments

(17) The following are not legislative instruments:
- (a) an authorisation given in writing under subsection (2);
- (b) a written notice given under subsection (4), (11) or (13);
- (c) a record made, or a summary or explanation given, under subsection (5);
- (d) a report under subsection (8);
- (e) a cancellation under subsection (10) or (12).

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

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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), (iaa), (ia), (ib), (ii) or (iii), 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:

(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

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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.

10AA Additional requirements for class authorisations

(1) This section applies if an authorisation is given to an agency under section 9 for an activity, or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(iaa), (ia) or (ib) in relation to one or more members of a class of Australian persons.

(2) The agency head must ensure that a list is kept that:
  (a) identifies each Australian person in relation to whom the agency intends to undertake activities, or a series of activities, under the authorisation; and
  (b) gives an explanation of the reasons why the agency believes the person is a member of the class; and
  (c) includes any other information that the agency head considers appropriate.

Note: For variation of the list, see subsection 33(3) of the *Acts Interpretation Act 1901*.

(3) If:
  (a) the Attorney-General's agreement under paragraph 9(1A)(b) or (1AAA)(b) was obtained in relation to the class of Australian persons mentioned in subsection (1); and
  (b) an Australian person who is a member of that class is included on the list;

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then the agency head must ensure that the Director-General of Security is given, as soon as practicable:

(c) a copy of the list; and

(d) written notice that the Australian person was included on the list.

(4) The agency head must ensure that the list is available for inspection on request by the Inspector-General of Intelligence and Security.

(5) The list and a notice under paragraph (3)(d) are not legislative instruments.

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, 9B or 9D.

(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 a series of activities, of a kind mentioned in subparagraph 8(1)(a)(iaa), (ia) or (ib), then:

(a) the report must be provided to the Minister as soon as practicable, but no later than 3 months, after each of the following days:

(i) the day on which the relevant authorisation ceased to have effect;

(ii) the day on which the relevant authorisation was renewed; and

(b) the report must be accompanied with a statement identifying every Australian person who was included on the list referred to in section 10AA during the period the authorisation was in effect.

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(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, 9B or 9D, 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(1)(a), (b), or (c) or 7(1)(a) and communicating any such intelligence that is relevant to serious crime to the appropriate law enforcement authorities; or

(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(1)(e), (ea), (f) and (h); or

(f) in the case of ASD—performing the functions set out in paragraphs 7(1)(c), (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;

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(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(1)(b) to (h) and 7(1)(c), (ca), (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 Director and Directors-General

The Director-General of ASIS, the Director of AGO and the Director-General of ASD 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).

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Division 2—Cooperation

13 Cooperation 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.

Cooperating with authorities of other countries—with approval

(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.

Cooperating with authorities of other countries—AGO

(3A) Despite paragraph (1)(c), subject to any arrangements made or directions given by the responsible Minister, AGO may, for the

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purposes of performing its functions under paragraph 6B(1)(e), (ea) or (h), cooperate with authorities of other countries if they are capable of assisting AGO in the performance of its functions.

(3B) The Director of AGO must, as soon as practicable after each year ending on 30 June, give to the responsible Minister and the Inspector-General of Intelligence and Security a report about any significant cooperation under subsection (3A) by AGO with authorities of other countries referred to in that subsection.

Cooperating with authorities of other countries—ASD

(4) Despite paragraph (1)(c), subject to any arrangements made or directions given by the responsible Minister, ASD may, for the purposes of performing its function under paragraph 7(1)(ca), cooperate with authorities of other countries if they are capable of assisting ASD in the performance of its functions.

(5) The Director-General of ASD must, as soon as practicable after each year ending on 30 June, give to the responsible Minister and the Inspector-General of Intelligence and Security a report about any significant cooperation under subsection (4) by ASD with authorities of other countries referred to in that subsection.

Reports by AGO and ASD

(6) A report under subsection (3B) or (5):
(a) must be in writing; and
(b) is not a legislative instrument.

13A Cooperation with intelligence agencies etc. in connection with performance of their functions

(1) An agency may cooperate with and assist the following bodies in the performance of their functions:
(a) another agency;
(b) ASIO;
(ba) ONI;

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(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 cooperating 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.

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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

(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 ASIO notice is not required—particular activity outside Australia

(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) the activity will be undertaken outside Australia; and

(b) a staff member of ASIS who:

(i) is authorised under subsection (7); and

(ii) 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 paragraph (1)(d) 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 of ASIS 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 of ASIS to be satisfied of certain matters

The Director-General of ASIS 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 of ASIS 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 of ASIS 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

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

(1A) Before making guidelines under subsection (1), the responsible Ministers must consult with the Attorney-General.

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

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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-General of ASIS, the Director of AGO and the Director-General of ASD.

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.

(1A) The agencies must not communicate intelligence information concerning Australian persons, except in accordance with the rules.

(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 of ASIS; and

(ab) in the case of AGO—the Director of AGO; and

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(b) in the case of ASD—the Director-General of ASD; and
(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 Minister must ensure that the rules are published on the relevant agency's website as soon as practicable after the rules are made, except to the extent that the rules contain:
(a) operationally sensitive information (within the meaning of Schedule 1); or
(b) information that would or might prejudice:
(i) Australia's national security or the conduct of Australia's foreign relations; or
(ii) the performance by the relevant agency of its functions.

(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.

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

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 of ASIS is the accountable authority of ASIS; and
  (c) the following persons are officials of ASIS:
    (i) the Director-General of ASIS;
    (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 of ASIS

(1) There is to be a Director-General of ASIS.

(2) The Director-General of ASIS 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 of ASIS, 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

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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 of ASIS.

(2) The Director-General of ASIS, 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 of ASIS 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.

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Division 2—Administrative provisions relating to the Director-General of ASIS

20 Period of appointment

(1) The Director-General of ASIS 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 of ASIS 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 of ASIS 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 of ASIS for misbehaviour or physical or mental incapacity.

(2) The Governor-General must terminate the appointment of the Director-General of ASIS if:

(a) the Director-General:

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(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 of ASIS 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 of ASIS

(1) The Minister may appoint a person to act as the Director-General of ASIS 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 of ASIS during any period, or during all periods, when the

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Director-General is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

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

25 Outside employment

The Director-General of ASIS 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 of ASIS 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.

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Part 3A—Establishment of ASD and role of Director-General of ASD

Division 1—Establishment and control of ASD

27A Establishment of ASD on a statutory basis

(1) The organisation known as the Australian Signals Directorate is continued in existence in accordance with this Act.

Note: The Australian Signals Directorate provides assistance to the Defence Force in support of military operations and cooperates with the Defence Force on intelligence matters: see paragraph 7(1)(d).

(2) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

(a) ASD is a listed entity; and

(b) the Director-General of ASD is the accountable authority of ASD; and

(c) the following persons are officials of ASD:

(i) the Director-General of ASD;

(ii) the staff referred to in section 38A;

(iii) consultants engaged under section 38B;

(iv) employees of contracted service providers engaged under section 38C who are providing services under the relevant ASD contract;

(v) persons whose services are made available to ASD under section 38E; and

(d) the purposes of ASD include the functions of ASD referred to in section 7.

27B Appointment of Director-General of ASD

(1) There is to be a Director-General of ASD.

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(2) The Director-General of ASD is to be appointed by the Governor-General by written instrument.

Note: The Director-General of ASD may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

(3) Before a recommendation is made to the Governor-General for the appointment of a person as Director-General of ASD, the Prime Minister must consult with the Leader of the Opposition in the House of Representatives.

27C Control of ASD

(1) ASD, and the staff referred to in subsection 38A(1), are under the control of the Director-General of ASD.

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

27D Briefing the Leader of the Opposition about ASD

The Director-General of ASD 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 ASD.

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Division 2—Administrative provisions relating to the Director-General of ASD

27E Basis and period of appointment

(1) The Director-General of ASD holds office on a full-time basis.

(2) The Director-General of ASD holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

27F Remuneration

(1) The Director-General of ASD is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Director-General is to be paid the remuneration that is prescribed by the regulations.

(2) The Director-General of ASD is to be paid the allowances that are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

27G Resignation

(1) The Director-General of ASD may resign his or her appointment by giving the Governor-General a written resignation.

(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

27H Termination of appointment

(1) The Governor-General may terminate the appointment of the Director-General of ASD:

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(a) for misbehaviour; or

(b) if the Director-General is unable to perform the duties of his or her office because of physical or mental incapacity.

(2) The Governor-General must terminate the appointment of the Director-General of ASD 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 in paid work that, in the Minister's opinion, conflicts or may conflict with the proper performance of the Director-General's duties (see section 27L); or

(d) the Director-General lacks, or has lost, an essential qualification for performing the duties of his or her office.

Note: The appointment of the Director-General of ASD may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

(3) The Governor-General may, with the Director-General of ASD'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*.

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27J Acting appointments

Appointment generally

(1) The Minister may, by written instrument, appoint a person to act as the Director-General of ASD:

(a) during a vacancy in the office of the Director-General (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Director-General:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

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

Appointment while under command

(2) If:

(a) a person is appointed to act as the Director-General of ASD under subsection (1); and

(b) the person is under the command of the Chief of the Defence Force under the *Defence Act 1903*;

then, the person must perform the duties of the office of the Director-General consistently with this Act during the period of the appointment, even though the person is under the command of the Chief of the Defence Force.

27K Leave of absence

(1) A Director-General of ASD has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the Director-General of ASD leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

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27L Outside employment

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

27M Other terms and conditions

The Director-General of ASD holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

27N Delegation by Director-General of ASD

(1) The Director-General of ASD may, in writing, delegate all or any of his or her functions or powers under Part 5A to a staff member who holds, or is acting in, a position that is an Executive Level 1 position, or an equivalent or higher position, in ASD.

(2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Director-General of ASD.

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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 13 members and must include at least:

(a) 2 Senators who are Government members; and

(b) 2 members of the House of Representatives who are Government members; and

(c) 2 Senators who are non-Government members; and

(d) 2 members of the House of Representatives who are non-Government members.

(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 ONI, including the annual financial statements of ASIO, ASIS, AGO, DIO, ASD and ONI; and

(b) to review any matter in relation to ASIO, ASIS, AGO, DIO, ASD or ONI referred to the Committee by:

(i) the responsible Minister; or

(ia) the Attorney-General; 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

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(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

(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 January 2021, the operation, effectiveness and implications of the following:

(i) Division 3A of Part IAA of the *Crimes Act 1914* (which provides for police powers in relation to terrorism) and any other provision of the *Crimes Act 1914* as it relates to that Division;

(ii) Divisions 104 and 105 of the *Criminal Code* (which provide for control orders and preventative detention orders in relation to terrorism) and any other provision of the *Criminal Code Act 1995* as it relates to those Divisions; and

(bbaaa) to commence a review, within the period of 12 months after the Independent National Security Legislation Monitor completes a review under subsection 6(1C) of the *Independent National Security Legislation Monitor Act 2010*, into the operation, effectiveness and implications of Division 105A of the *Criminal Code* (which provides for post-sentence orders in relation to terrorism) and any other provision of the *Criminal Code Act 1995* as it relates to that Division; and

(bbaa) if the Committee resolves to do so—to review, by 7 January 2024, the operation, effectiveness and proportionality of sections 119.2 and 119.3 of the *Criminal Code* (which provide for declared areas in relation to foreign incursion and recruitment); and

(bba) to monitor and review:

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(i) the performance by the AFP of its functions under Division 3A of Part IAA of the *Crimes Act 1914*; and

(ii) the basis of the Minister's declarations of prescribed security zones under section 3UJ of that Act; and

(bc) to conduct the review under section 187N of the *Telecommunications (Interception and Access) Act 1979*; and

(bcaa) if the Committee resolves to do so—to commence, as soon as practicable after the fourth anniversary of the day the *Surveillance Legislation Amendment (Identify and Disrupt) Act 2021* receives the Royal Assent, a review of the operation, effectiveness and implications of the amendments made by Schedules 1, 2 and 3 to that Act; and

(bca) to review, by 30 September 2020, the operation of the amendments made by the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* and to give a written report of the review to the Minister administering 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

(bf) to commence, by the earlier of the following:

(i) the fifth anniversary of the day on which Schedule 1 to the *Telecommunications (Interception and Access) Act 1979* commences;

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(ii) the third anniversary of the day on which the first designated international agreement (within the meaning of that Schedule) enters into force for Australia;

a review of the operation, effectiveness and implications of that Schedule; and

(ca) to commence, by the third anniversary of the day the *Australian Citizenship Amendment (Citizenship Cessation) Act 2020* commenced, a review of the operation, effectiveness and implications of Subdivision C of Division 3 of Part 2 of the *Australian Citizenship Act 2007* (citizenship cessation determinations) and any other provision of that Act as far as it relates to that Subdivision; and

(cc) to review, by the end of the period of 3 years beginning on the day the *Counter-Terrorism (Temporary Exclusion Orders) Act 2019* commenced, the operation, effectiveness and implications of that Act; and

(cd) to monitor and review the exercise of powers under the *Counter-Terrorism (Temporary Exclusion Orders) Act 2019* by the Minister administering that Act; and

(ce) if the Committee resolves to do so—to commence, by 7 September 2023, a review of the operation, effectiveness and implications of Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*; and

(cf) to commence, by the second anniversary of the commencement of the *Migration Amendment (Clarifying International Obligations for Removal) Act 2021*, a review of the operation, effectiveness and implications of the amendments made by Schedule 1 to that Act; and

(cg) to review the privacy rules made under section 15 of this Act; and

(ch) to review the privacy rules made under section 41C of this Act; and

(ci) to review the privacy rules made under section 53 of the *Office of National Intelligence Act 2018*; and

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(c) to report the Committee's comments and recommendations to each House of the Parliament, to the responsible Minister and to the Attorney-General.

(2) The Committee may, by resolution, request the responsible Minister or the Attorney-General to refer a matter in relation to the activities of ASIO, ASIS, AGO, DIO, ASD or ONI (as the case may be) to the Committee, and the Minister or the Attorney-General may, under paragraph (1)(b), refer that matter to the Committee for review.

(3) The functions of the Committee do not include:

(aa) reviewing anything done by ONI in its leadership of the national intelligence community, to the extent that it involves prioritising national intelligence priorities and requirements, and allocating resources accordingly, in relation to:

(i) an intelligence agency (as defined by subsection 4(1) of the *Office of National Intelligence Act 2018*); or

(ii) an agency with an intelligence role or function (as defined by subsection 4(1) of that Act); or

(ab) reviewing anything done by ONI in its leadership of the national intelligence community, to the extent that it relates to:

(i) an intelligence agency (as defined by subsection 4(1) of the *Office of National Intelligence Act 2018*) and a matter that would otherwise be covered by any of the following paragraphs of this subsection; or

(ii) an agency with an intelligence role or function (as defined by subsection 4(1) of that Act) and a matter that would otherwise be covered by any of the following paragraphs of this subsection if those paragraphs applied to the agency; or

(a) reviewing the intelligence gathering and assessment priorities of ASIO, ASIS, AGO, DIO, ASD or ONI; or

(b) reviewing the sources of information, other operational assistance or operational methods available to ASIO, ASIS, AGO, DIO, ASD or ONI; or

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(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 ONI that does not affect an Australian person; or

(f) reviewing compliance by ASIS, AGO and ASD with the privacy rules made under section 15 of this Act; or

(faa) reviewing compliance by DIO with the privacy rules made under section 41C of this Act; or

(fa) reviewing compliance by ONI with the privacy rules made under section 53 of the *Office of National Intelligence Act 2018*; or

(g) conducting inquiries into individual complaints about the activities of ASIO, ASIS, AGO, DIO, ASD, ONI, 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 ONI, or reviewing sources of information on which such assessments or reports are based; or

(i) reviewing anything done by ONI in carrying out the evaluation functions mentioned in section 9 of the *Office of National Intelligence Act 2018*; or

(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):

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(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-General of ASD;

(bb) the Director-General of National Intelligence;

(c) the Inspector-General of Intelligence and Security;

(d) the Commissioner of the AFP;

(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.

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32 Schedule 1

Schedule 1 contains further provisions about the Committee.

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Part 5—Staff of ASIS

33 Employment of staff

(1) The Director-General of ASIS 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 of ASIS, 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 of ASIS 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 of ASIS 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 of ASIS 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 of ASIS 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.

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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 of ASIS and the Public Service Commissioner.

37 Staff grievances

(1) The Director-General of ASIS 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 of ASIS 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 of ASIS 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 of ASIS 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 of ASIS or an employee of ASIS that relates to an ASIS employee's employment.

38 Application of Crimes Act

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

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Part 5A—Staff of ASD

38A Employment of staff

Employees

(1) The Director-General of ASD may, on behalf of the Commonwealth, employ by written agreement such employees of ASD as the Director-General thinks necessary for the purposes of this Act.

(2) The Director-General of ASD, 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 ASD.

(3) The Director-General of ASD 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.

Termination of employment

(4) The Director-General of ASD may, at any time, by written notice, terminate the employment of a person employed under subsection (1).

Note: The *Fair Work Act 2009* has rules and entitlements that apply to termination of employment.

38B Consultants

(1) The Director-General of ASD may, on behalf of the Commonwealth, engage as consultants persons having suitable qualifications and experience to assist in the performance of ASD's functions.

(2) The engagement of a consultant must be by written agreement.

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(3) The terms and conditions of engagement are those that the Director-General of ASD determines in writing.

38C Contracted service providers

(1) The Director-General of ASD may, on behalf of the Commonwealth, engage a contracted service provider to assist in the performance of the ASD's functions.

(2) The engagement of a contracted service provider must be by written agreement.

(3) The terms and conditions of engagement are those that the Director-General of ASD determines in writing.

38D Secondment of employees of ASD

Secondment

(1) The Director-General of ASD may, in writing, arrange for an employee of ASD to be seconded for a specified period to a body or organisation whether within or outside Australia.

Termination of secondment

(2) The Director-General may at any time, by notice given to the body or organisation to which an employee of ASD is seconded under subsection (1), terminate the secondment.

38E Secondment of persons to ASD

(1) The Director-General of ASD may, by written agreement with a body or organisation (whether within or outside Australia), arrange for a person who is an officer, employee or other member of staff of the body or organisation to be made available to ASD to perform services in connection with the performance of its functions or the exercise of its powers.

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(2) The terms and conditions (including remuneration and allowances) applicable to a person performing services under an agreement are those specified in the agreement.

38F Applicability of principles of the *Public Service Act 1999*

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

38G Voluntary moves to APS

(1) Section 26 of the *Public Service Act 1999* applies in relation to an employee of ASD as if the employee were an APS employee and ASD were an APS Agency.

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

38H Staff grievances

(1) The Director-General of ASD must:
   (a) establish procedures relating to the consideration of grievances of employees and former employees of ASD; and
   (b) determine the classes of ASD actions that are to be subject to the grievance procedures.

(2) In establishing the procedures and determining the classes of action, the Director-General of ASD must:
   (a) adopt the principles of the *Public Service Act 1999* to the extent to which the Director-General considers they are

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consistent with the effective performance of the functions of ASD; and

(b) consult with the employees of ASD.

(3) In this section:

action includes a refusal or failure to act.

ASD action means action taken after the commencement of this section by the Director-General of ASD or an employee of ASD that relates to the employment of an employee of ASD.

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Part 6—Miscellaneous

Division 1—Secrecy

39 Communication of certain information—ASIS

(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 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 of ASIS 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 ASIS 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 of ASIS; or

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

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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*).

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:

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(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 commits 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-General 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-General 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-General of ASD; or

(iv) with the approval of the Director-General of ASD or of a staff member having the authority of the Director-General 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*.

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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

(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

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(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*.

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

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(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 of ASIS; or

(iv) with the approval of the Director-General of ASIS or of a staff member having the authority of the Director-General of ASIS 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*.

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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:
    (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:

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(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 of ASIS; or

(iv) with the approval of the Director-General of ASIS or of a staff member having the authority of the Director-General of ASIS 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

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(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

(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

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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—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.

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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

(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*.

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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:

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(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-General of ASD; or

(iv) with the approval of the Director-General of ASD or of a staff member having the authority of the Director-General of ASD 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

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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

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(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-General of ASD; or

(iv) with the approval of the Director-General of ASD or of a staff member having the authority of the Director-General 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 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

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(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.

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

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(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—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.

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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:

(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*.

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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 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 commits 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 of ASIS or such other persons as the Director-General of ASIS determines; or

(b) if:

(i) the person makes public any information from which the identity of such a person could reasonably be

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inferred, or any information that could reasonably lead to the identity of such a person being established; and

(ii) the Minister or Director-General of ASIS 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 (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.

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(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:

(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), 40B(1), 40C(1), 40D(1), 40E(1), 40F(1), 40G(1), 40H(1), 40L(1) or 40M(1).

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Division 2—Other matters

41C Rules to protect privacy of Australians—DIO

(1) The responsible Minister in relation to DIO must make written rules regulating the communication and retention by DIO of intelligence information concerning Australian persons.

(2) DIO must not communicate intelligence information concerning Australian persons, except in accordance with the rules.

(3) 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 DIO of its functions.

(4) Before making the rules, the Minister must consult with:
  (a) the Attorney-General; and
  (b) the Inspector-General of Intelligence and Security; and
  (c) the Director of DIO.

(5) For the purpose of consultations under paragraphs (4)(a) and (b), the Minister must provide a copy of the rules the Minister is proposing to make to the Attorney-General and to the Inspector-General of Intelligence and Security.

(6) The Minister must ensure that the rules are published on DIO's website as soon as practicable after the rules are made, except to the extent that the rules contain:
  (a) operationally sensitive information (within the meaning of Schedule 1); or
  (b) information that would or might prejudice:
    (i) Australia's national security or the conduct of Australia's foreign relations; or
    (ii) the performance by DIO of its functions.

(7) Rules made under subsection (1) are not legislative instruments.

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(8) 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.

42 Annual report—ASIS

(1) As soon as practicable after each year ending on 30 June, the Director-General of ASIS 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.

(3) The report must include information about:
  (a) the number of occasions on which force, or the threat of force, against a person by a staff member or agent of ASIS occurred in the course of activities undertaken by ASIS outside Australia during the year; and
  (b) the broad nature of those occurrences.

42A Annual report—ASD

As soon as practicable after each year ending on 30 June, the Director-General of ASD must give to the Minister a report of the activities of ASD during the year.

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.

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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, ONI, 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-General of ASD; or
(d) the Director-General of National Intelligence; 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 ONI; 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.

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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.

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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.

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(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

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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.

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(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:

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(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.

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Clause 8

(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.

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Part 2—Offences

9 Offences relating to publishing or disclosing evidence or documents

(1) A person (including a member) commits 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

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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 commits 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 commits 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 commits an offence if the person:

(a) gives evidence to the Committee; and

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(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;

commits 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;

commits 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 commits an offence.

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

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12 Secrecy

(1) A person who is or has been a member, or a member of the staff, of the Committee commits 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.

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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.

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(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.

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(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

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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 7 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.

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(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 ONI.

(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.

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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.

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Schedule 2—Activities excepted under subsection 6(5) of the Act

Note: See section 6.

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 cooperating with ASIS in accordance with section 13; or

(iiia) to protect another person, or class of persons, specified in the Minister's approval under subclause (3); 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 cooperating 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:

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(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 cooperating with ASIS in accordance with section 13; or

(iv) to protect another person, or class of persons, specified in the Minister's approval under subclause (3A).

(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 (iiia)—the weapon or techniques are used outside Australia; and

(c) guidelines have been issued by the Director-General of ASIS 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 of ASIS 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.

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(3) The Minister may, by written notice given to the Director-General of ASIS, 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.

(3A) The Minister may, by written notice given to the Director-General of ASIS, 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.

(4A) An approval under subclause (3) for the provision of a weapon or training may specify a person, or class of persons, that may be protected under subparagraph (1)(b)(iiia).

(4B) An approval under subclause (3A) for the provision of a weapon or training may specify a person, or class of persons, that may be protected under subparagraph (1A)(c)(iv).

(5) As soon as practicable after giving the Director-General of ASIS 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 of ASIS 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 or changing the guidelines, the Director-General of ASIS must give the Inspector-General of Intelligence and Security a copy of the guidelines.

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(7A) The Inspector-General of Intelligence and Security must brief the Committee on the content and effect of the guidelines if:

(a) the Committee requests the Inspector-General of Intelligence and Security to do so; or

(b) the guidelines change.

(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

(1) The Director-General of ASIS must give a report to the Inspector-General of Intelligence and Security if a weapon or self-defence technique is used by a staff member or agent of ASIS against a person for a purpose mentioned in any of subparagraphs 1(1)(b)(i) to (iiia).

(2) The report must:

(a) be given in writing as soon as practicable after the weapon or self-defence technique is used; and

(b) explain the circumstances in which the use of the weapon or self-defence technique occurred.

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Schedule 3—Activities excepted under subsection 6(5A) of the Act

Note: See section 6.

1 Provision of weapons, training etc.

(1) The provision of a weapon, or training in the use of force (including in the use of a weapon), for the purposes of activities undertaken by ASIS outside Australia 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 preventing, mitigating or removing:

(i) a significant risk to a person's safety; or

(ii) a significant threat to security (within the meaning of paragraphs (a) and (aa) of the definition of ***security*** in section 4 of the *Australian Security Intelligence Organisation Act 1979*); or

(iii) a significant risk to the operational security of ASIS from interference by a foreign person or entity; and

(c) in accordance with a Ministerial approval given under paragraph (3)(a).

(2) The use of force (including the use of a weapon) against a person, or the threat of the use of force (including the use of a weapon) against a person, in the course of activities undertaken by ASIS outside Australia is not prevented by subsection 6(4) if:

(a) the conduct is by a staff member or agent of ASIS; and

(b) the conduct is for the purpose of preventing, mitigating or removing:

(i) a significant risk to a person's safety; or

(ii) a significant threat to security (within the meaning of paragraphs (a) and (aa) of the definition of ***security*** in section 4 of the *Australian Security Intelligence Organisation Act 1979*); or

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(iii) a significant risk to the operational security of ASIS from interference by a foreign person or entity; and

(c) the conduct is in accordance with a Ministerial approval given under paragraph (3)(b); and

(d) guidelines have been issued by the Director-General of ASIS under clause 2; and

(e) the conduct is in compliance with those guidelines.

Minister's approval

(3) The Minister may approve:

(a) the provision of a weapon, or training in the use of force (including in the use of a weapon) to:

(i) a specified staff member or agent of ASIS; or

(ii) the holder of a specified position in ASIS;

for the purposes of specified activities undertaken by ASIS outside Australia; or

(b) the use of force, or the threat of the use of force, against a specified person, or a specified class of persons, by:

(i) a specified staff member or agent of ASIS; or

(ii) the holder of a specified position in ASIS;

in the course of specified activities undertaken by ASIS outside Australia.

(4) The Minister (the ***approving Minister***) must not give approval under paragraph (3)(b) unless:

(a) the approving Minister has consulted with:

(i) the Prime Minister; and

(ii) the Attorney-General; and

(iii) the Defence Minister; and

(iv) any other Minister who has responsibility for a matter that is likely to be significantly affected by an act that is to be approved; and

(b) the approving Minister is satisfied that:

(i) there are satisfactory arrangements in place to ensure that, in acting under the approval, nothing will be done

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beyond what is necessary having regard to the purposes for which the approval is given; and

(ii) there are satisfactory arrangements in place to ensure that the nature and consequences of acts done under the approval will be reasonable having regard to the purposes for which the approval is given.

(5) An approval under paragraph (3)(a) or (b) must be given by notice in writing to the Director-General of ASIS.

(6) The approval must specify:

(a) any conditions that must be complied with in relation to the conduct approved; and

(b) 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.

(7) The approval is not a legislative instrument.

(8) As soon as practicable after giving the Director-General of ASIS an approval under paragraph (3)(a) or (b), the Minister must give a copy of the approval to:

(a) the Inspector-General of Intelligence and Security; and

(b) if the approval is given under paragraph (3)(b)—the Prime Minister and each other Minister who was consulted about the approval under paragraph (4)(a).

Annual review of approvals

(9) As soon as practicable after each year ending on 30 June, the Minister must:

(a) consider whether the approvals in force under paragraphs (3)(a) and (b) at the end of the year are appropriate; and

(b) in relation to any approval that is no longer appropriate:

(i) amend the approval so that it is appropriate; or

(ii) revoke the approval.

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(10) In considering whether an approval in force under paragraph (3)(b) at the end of a year is appropriate, the Minister must take into account whether the Minister is still satisfied of the matters mentioned in paragraph (4)(b).

(11) As soon as practicable after subclause (9) has been complied with:
  (a) the Director-General of ASIS must give the Inspector-General of Intelligence and Security a report in writing outlining the action taken under subclause (9); and
  (b) if any part of the report relates to an approval under paragraph (3)(b)—the Minister must give a copy of that part of the report to the Prime Minister and each other Minister who was consulted about the approval under paragraph (4)(a).

2 Guidelines for the purposes of this Schedule

(1) The Director-General of ASIS must issue guidelines for the purposes of this Schedule on matters related to:
  (a) the use of force (including the use of weapons) against a person in the course of activities undertaken by ASIS outside Australia; and
  (b) threats of the use of force (including the use of weapons) against a person in the course of activities undertaken by ASIS outside Australia.

(2) As soon as practicable after making or changing the guidelines, the Director-General of ASIS must give the Inspector-General of Intelligence and Security a copy of the guidelines.

(3) The Inspector-General of Intelligence and Security must brief the Committee on the content and effect of the guidelines if:
  (a) the Committee requests the Inspector-General of Intelligence and Security to do so; or
  (b) the guidelines change.

(4) Guidelines issued under subclause (1) are not legislative instruments.

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3 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.

4 Reports to Inspector-General of Intelligence and Security

(1) The Director-General of ASIS must give a report to the Inspector-General of Intelligence and Security if force, or the threat of force, is used by a staff member or agent of ASIS against a person for a purpose mentioned in paragraph 1(2)(b) in the course of activities undertaken by ASIS outside Australia.

(2) The report must:

(a) be given in writing as soon as practicable after the force or threat of force is used; and

(b) explain the circumstances in which the force or threat of force occurred.

(3) In this clause:

(a) the use of force includes but is not limited to the use of a weapon; and

(b) the threat of the use of force includes but is not limited to a threat that involves a weapon.

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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

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.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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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)	—
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)	Sch 1 (item 68)

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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	Sch 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

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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): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
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)	—

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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): 5 Mar 2016 (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)
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 197–199): 10 Mar 2016 (s 2(1) item 6)	—
Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016	95, 2016	7 Dec 2016	Sch 2 (item 1F): 7 June 2017 (s 2(1) item 3)	—
Defence Legislation Amendment (2017 Measures No. 1) Act 2017	117, 2017	30 Oct 2017	Sch 3 (items 1–11): 31 Oct 2017 (s 2(1) item 8)	—
Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018	25, 2018	11 Apr 2018	Sch 1 (items 1–34, 100–108): 1 July 2018 (s 2(1) item 2)	Sch 1 (items 100–108)
Home Affairs and Integrity Agencies Legislation Amendment Act 2018	31, 2018	9 May 2018	Sch 1 (items 62–79): 11 May 2018 (s 2(1) item 2)	Sch 1 (item 63)

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Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Counter-Terrorism Legislation Amendment Act (No. 1) 2018	74, 2018	24 Aug 2018	Sch 1 (item 19): 25 Aug 2018 (s 2(1) item 1)	—
Office of National Intelligence (Consequential and Transitional Provisions) Act 2018	156, 2018	10 Dec 2018	Sch 2 (items 66–84) and Sch 4: 20 Dec 2018 (s 2(1) items 2, 4)	Sch 4
Intelligence Services Amendment Act 2018	161, 2018	10 Dec 2018	Sch 1: 11 Dec 2018 (s 2(1) item 2)	Sch 1 (item 4)
Counter-Terrorism (Temporary Exclusion Orders) (Consequential Amendments) Act 2019	54, 2019	30 July 2019	Sch 1 (item 2): 30 July 2019 (s 2(1) item 2)	—
Telecommunications (Interception and Access) Amendment (Assistance and Access Amendments Review) Act 2019	124, 2019	12 Dec 2019	Sch 1 (item 1): 13 Dec 2019 (s 2(1) item 1)	—
Australian Citizenship Amendment (Citizenship Cessation) Act 2020	88, 2020	17 Sept 2020	Sch 1 (items 15–22): 18 Sept 2020 (s 2(1) item 1)	Sch 1 (items 16–22)
Australian Security Intelligence Organisation Amendment Act 2020	134, 2020	17 Dec 2020	Sch 1 (item 26A): 7 Sept 2020 (s 2(1) item 2)	—
Migration Amendment (Clarifying International Obligations for Removal) Act 2021	35, 2021	24 May 2021	Sch 2: 25 May 2021 (s 2(1) item 1)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Telecommunications Legislation Amendment (International Production Orders) Act 2021	78, 2021	23 July 2021	Sch 1 (item 5B): 24 July 2021 (s 2(1) item 2)	—
Counter-Terrorism Legislation Amendment (Sunsetting Review and Other Measures) Act 2021	88, 2021	2 Sept 2021	Sch 1 (items 2–4): 3 Sept 2021 (s 2(1) item 1)	—
Surveillance Legislation Amendment (Identify and Disrupt) Act 2021	98, 2021	3 Sept 2021	Sch 3A (item 3): 4 Sept 2021 (s 2(1) item 4)	—
Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Act 2021	131, 2021	8 Dec 2021	Sch 1 (items 188A, 188B): 9 Dec 2021 (s 2(1) item 2)	—
National Security Legislation Amendment (Comprehensive Review and Other Measures No. 1) Act 2022	31, 2022	1 Apr 2022	Sch 1–6, Sch 10 (items 1–5), Sch 12 and Sch 14: 2 Apr 2022 (s 2(1) items 2, 4, 8) Sch 10 (items 9–13, 15, 16, 25): 1 Oct 2022 (s 2(1) items 5, 6) Sch 10 (item 26): awaiting commencement (s 2(1) item 7)	Sch 1 (item 4) and Sch 10 (items 5, 13, 25)
National Security Legislation Amendment (Comprehensive Review and Other Measures No. 2) Act 2023	53, 2023	11 Aug 2023	Sch 1 (items 11–13, 36–42): 12 Aug 2023 (s 2(1) item 1)	Sch 1 (item 13)

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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; No 117, 2017; No 25, 2018; No 156, 2018; No 31, 2022 (Sch 10 item 26)
s 3A	ad No 134, 2014
	am No 126, 2015
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
	ed C31
	am No 161, 2018; No 53, 2023
s 6A	am No 53, 2023
s 6B	ad No 128, 2005
	am No 4, 2011; No 80, 2011; No 108, 2014; No 117, 2017
	ed C31
s 7	am No 128, 2005; No 4, 2011; No 108, 2014; No 25, 2018
	ed C31
s 8	am No 128, 2005, No 80, 2011; No 108, 2014; No 134, 2014; No 25, 2018; No 31, 2022; No 53, 2023
s 9	am No 128, 2005; No 80, 2011; No 108, 2014; No 134, 2014; No 31, 2018; No 31, 2022
s 9A	ad No 128, 2005
	am No 5, 2011
	rs No 134, 2014
	am No 31, 2018; No 31, 2022
s 9B	ad No 134, 2014
	am No 31, 2018

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Endnote 4—Amendment history

Provision affected	How affected
s 9C	ad No 134, 2014
	am No 31, 2018
s 9D	ad No 31, 2022
s 10	am No 128, 2005; No 134, 2014; No 31, 2022
s 10AA	ad No 31, 2022
s 10A	ad No 128, 2005
	am No 134, 2014; No 31, 2022
s 11	am No 128, 2005; No 4, 2011; No 80, 2011; No 108, 2014; No 117, 2017; No 25, 2018
s 12A	am No 128, 2005; No 108, 2014; No 25, 2018
Division 2	
Division 2 heading	ad No 108, 2014
	ed C31
s 13	am No 57, 2004; No 4, 2011; No 108, 2014; No 25, 2018; No 31, 2022
s 13A	ad No 4, 2011
	am No 25, 2018
	ed C31
	am No 156, 2018
Division 3	
Division 3	ad No 108, 2014
s 13B	ad No 108, 2014
	am No 25, 2018; No 31, 2022
s 13C	ad No 108, 2014
s 13D	ad No 108, 2014
s 13E	ad No 108, 2014
	am No 25, 2018
s 13F	ad No 108, 2014
	am No 25, 2018
s 13G	ad No 108, 2014
	am No 31, 2018
Division 4	

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Provision affected	How affected
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; No 25, 2018
s 15	am No 128, 2005; No 80, 2011; No 108, 2014; No 25, 2018; No 31, 2022
Part 3	
Part 3 heading	am No 25, 2018
Division 1	
s 16	am No 62, 2014; No 25, 2018
s 17	am No 25, 2018
s 19	am No 25, 2018
Division 2	
Division 2 heading	am No 25, 2018
s 20	am No 25, 2018
s 21	am No 25, 2018
s 22	am No 25, 2018
s 23	am No 26, 2008; No 62, 2014; No 25, 2018
s 24	am No 46, 2011; No 25, 2018
s 25	am No 25, 2018
s 26	rep No 62, 2014
s 27	am No 128, 2005; No 25, 2018
Part 3A	
Part 3A	ad No 25, 2018
Division 1	
s 27A	ad No 25, 2018
s 27B	ad No 25, 2018
s 27C	ad No 25, 2018
s 27D	ad No 25, 2018
Division 2	
s 27E	ad No 25, 2018
s 27F	ad No 25, 2018
s 27G	ad No 25, 2018

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Endnote 4—Amendment history

Provision affected	How affected
s 27H	ad No 25, 2018
s 27J	ad No 25, 2018
s 27K	ad No 25, 2018
s 27L	ad No 25, 2018
s 27M	ad No 25, 2018
s 27N	ad No 25, 2018
Part 4	
Part 4 heading	rs No 128, 2005
s 28	am No 128, 2005; No 4, 2011; No 53, 2023
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; No 95, 2016; No 31, 2018; No 74, 2018; No 156, 2018; No 54, 2019; No 124, 2019; No 88, 2020; No 134, 2020; No 35, 2021; No 78, 2021; No 88, 2021; No 98, 2021; No 131, 2021; No 31, 2022
s 30	am No 128, 2005; No 108, 2014; No 116, 2014; No 166, 2015; No 25, 2018; No 156, 2018
Part 5	
s 33	am No 25, 2018
s 34	am No 25, 2018
s 35	am No 25, 2018
s 36A	ad No 54, 2013
	am No 25, 2018
s 37	am No 25, 2018
s 38	am No 25, 2018
Part 5A	
Part 5A	ad No 25, 2018
s 38A	ad No 25, 2018
s 38B	ad No 25, 2018
s 38C	ad No 25, 2018
s 38D	ad No 25, 2018
s 38E	ad No 25, 2018
s 38F	ad No 25, 2018

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Provision affected	How affected
s 38G	ad No 25, 2018
s 38H	ad No 25, 2018
Part 6	
Division 1	
Division 1 heading	ad No 108, 2014
s 39	am No 108, 2014; No 4, 2016; No 25, 2018
s 39A	ad No 128, 2005
	am No 108, 2014
s 40	am No 128, 2005; No 108, 2014; No 4, 2016; No 25, 2018
s 40A	ad No 108, 2014
	rep No 156, 2018
s 40B	ad No 108, 2014
s 40C	ad No 108, 2014
	am No 25, 2018
s 40D	ad No 108, 2014
	am No 25, 2018
s 40E	ad No 108, 2014
s 40F	ad No 108, 2014
s 40G	ad No 108, 2014
	am No 25, 2018
s 40H	ad No 108, 2014
	am No 25, 2018
s 40J	ad No 108, 2014
	rep No 156, 2018
s 40K	ad No 108, 2014
	rep No 156, 2018
s 40L	ad No 108, 2014
s 40M	ad No 108, 2014
s 41	am No 108, 2014; No 4, 2016; No 25, 2018
s 41A	ad No 108, 2014
s 41B	ad No 108, 2014

Endnote 4—Amendment history

Provision affected	How affected
	am No 156, 2018
Division 2	
Division 2 heading	ad No 108, 2014
s 41C	ad No 31, 2022
s 42	am No 57, 2004; No 25, 2018; No 161, 2018
s 42A	ad No 25, 2018
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; No 25, 2018; No 156, 2018
c 1B	ad No 128, 2005
Part 1	
c 3	am No 128, 2005
c 7	am No 128, 2005; No 108, 2014
c 8	am No 4, 2011
Part 2	
c 9	am No 4, 2016
c 10	am No 4, 2016
c 11	am No 4, 2016
c 12	am No 4, 2016
Part 3	
c 16A	ad No 128, 2005
c 17	am No 128, 2005
c 18	am No 128, 2005; No 4, 2011; No 53, 2023
c 20	am No 128, 2005; No 108, 2014; No 156, 2018
Part 4	
Part 4	ad No 128, 2005
c 23	ad No 128, 2005
c 24	ad No 128, 2005

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Endnote 4—Amendment history

Provision affected	How affected
c 25	ad No 128, 2005
Schedule 2	
Schedule 2 heading	rs No 161, 2018
Schedule 2	ad No 57, 2004
c 1	ad No 57, 2004
	am No 80, 2011; No 108, 2014; No 25, 2018
	ed C31
	am No 161, 2018
c 2	ad No 57, 2004
	am No 108, 2014
c 3	ad No 57, 2004
	am No 25, 2018
	rs No 161, 2018
Schedule 3	
Schedule 3	ad No 161, 2018
c 1	ad No 161, 2018
c 2	ad No 161, 2018
c 3	ad No 161, 2018
c 4	ad No 161, 2018

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