



Independent National Security Legislation Monitor Act 2010

No. 32, 2010

Compilation No. 18

Compilation date:	8 December 2021
Includes amendments up to:	Act No. 130, 2021
Registered:	11 January 2022

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Independent National Security Legislation Monitor Act 2010* that shows the text of the law as amended and in force on 8 December 2021 (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 Legislation 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 series page on the Legislation 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 series page on the Legislation 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 to provide for the appointment of an Independent National Security Legislation Monitor, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Independent National Security Legislation Monitor Act 2010*.

2 Commencement

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

3 Object

The object of this Act is to appoint an Independent National Security Legislation Monitor who will assist Ministers in ensuring that Australia's counter-terrorism and national security legislation:

- (a) is effective in deterring and preventing terrorism and terrorism-related activity which threatens Australia's security; and
- (b) is effective in responding to terrorism and terrorism-related activity; and
- (c) is consistent with Australia's international obligations, including:
 - (i) human rights obligations; and
 - (ii) counter-terrorism obligations; and
 - (iii) international security obligations; and
- (d) contains appropriate safeguards for protecting the rights of individuals.

4 Definitions

In this Act:

Committee on Intelligence and Security means the Parliamentary Joint Committee on Intelligence and Security established under the *Intelligence Services Act 2001*.

counter-terrorism and national security legislation means the following provisions of Commonwealth law:

- (aa) 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;
- (a) Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979* and any other provision of that Act as far as it relates to that Division;
- (b) Part 4 of the *Charter of the United Nations Act 1945* and any other provision of that Act as far as it relates to that Part;
- (c) the following provisions of the *Crimes Act 1914*:
 - (i) Division 3A of Part IAA and any other provision of that Act as far as it relates to that Division;
 - (ii) sections 15AA and 19AG and any other provision of that Act as far as it relates to those sections;
 - (iii) Part IC, to the extent that the provisions of that Part relate to the investigation of terrorism offences (within the meaning of that Act), and any other provision of that Act as far as it relates to that Part;
- (d) Chapter 5 of the *Criminal Code* and any other provision of that Act as far as it relates to that Chapter;
- (e) Part IIIAAA of the *Defence Act 1903* and any other provision of that Act as far as it relates to that Part;
- (f) the *National Security Information (Criminal and Civil Proceedings) Act 2004*;
- (g) Part 2 of the *Counter-Terrorism (Temporary Exclusion Orders) Act 2019* and any other provision of that Act as far as it relates to that Part.

Defence Department means the Department of State that deals with defence and that is administered by the Minister administering section 1 of the *Defence Act 1903*.

head means:

- (a) in relation to the Australian Federal Police—the Commissioner of Police; or
- (b) in relation to the Australian Crime Commission—the Chief Executive Officer of the Australian Crime Commission; or
- (d) in relation to the Australian Security Intelligence Organisation—the Director-General of Security; or
- (e) in relation to the Australian Secret Intelligence Service—the Director-General of the Australian Secret Intelligence Service; or
- (ea) in relation to the Australian Signals Directorate—the Director-General of the Australian Signals Directorate; or
- (f) in relation to the part of the Defence Department known as the Australian Geospatial-Intelligence Organisation—the Director of that part of the Department; or
- (g) in relation to the part of the Defence Department known as the Defence Intelligence Organisation—the Director of that part of the Department; or
- (i) in relation to any other part of the Defence Department—the Chief of the Defence Force and the Secretary of the Department; or
- (j) in relation to the Office of National Intelligence—the Director-General of National Intelligence; or
- (k) in relation to any other Commonwealth government agency:
 - (i) in the case of a Department of the Commonwealth—the Secretary of the Department; or
 - (ii) in the case of a body established for a public purpose—the person holding, or performing the duties of, the principal office in respect of the body; or
- (l) in relation to a State or Territory government agency—the person holding, or performing the duties of, the principal office in respect of the agency.

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Immigration and Border Protection Department means the Department administered by the Minister administering the *Australian Border Force Act 2015*.

Independent National Security Legislation Monitor means the person appointed in accordance with section 11.

law enforcement or security agency means any of the following agencies:

- (a) the Australian Federal Police;
- (b) the Australian Crime Commission;
- (c) the Immigration and Border Protection Department;
- (d) the Australian Security Intelligence Organisation;
- (e) the Australian Secret Intelligence Service;
- (ea) the Australian Signals Directorate;
- (f) the Australian Defence Force;
- (g) the part of the Defence Department known as the Australian Geospatial-Intelligence Organisation;
- (h) the part of the Defence Department known as the Defence Intelligence Organisation;
- (j) the Office of National Intelligence;
- (k) the police force of a State or Territory;
- (l) any other agency prescribed by the regulations for the purposes of this definition.

operationally sensitive information means:

- (a) information about information sources or operational activities or methods available to a law enforcement or security agency; or
- (b) information about particular operations that have been, are being or are proposed to be undertaken by a law enforcement or security agency, or about proceedings relating to those operations; or
- (c) information provided by a foreign government, or by an agency of a foreign government, where that government does not consent to the public disclosure of the information.

responsible Minister, in relation to a review of a matter, means the Minister (including a State or Territory Minister) responsible for the agency concerned in relation to the matter.

secrecy provision means:

- (a) a provision of a law of the Commonwealth, of a State or of a Territory, being a provision that purports to prohibit; or
- (b) anything done, under a provision of a law of the Commonwealth, of a State or of a Territory, to prohibit; the communication, divulging or publication of information, the production of, or the publication of the contents of, a document, or the production of a thing.

Part 2—Independent National Security Legislation Monitor

Division 1—Establishment, functions and powers of Independent National Security Legislation Monitor

5 Independent National Security Legislation Monitor

There is to be an Independent National Security Legislation Monitor.

6 Functions of the Independent National Security Legislation Monitor

- (1) The Independent National Security Legislation Monitor has the following functions:
 - (a) to review, on his or her own initiative, the operation, effectiveness and implications of:
 - (i) Australia's counter-terrorism and national security legislation; and
 - (ii) any other law of the Commonwealth to the extent that it relates to Australia's counter-terrorism and national security legislation;
 - (b) to consider, on his or her own initiative, whether any legislation mentioned in paragraph (a):
 - (i) contains appropriate safeguards for protecting the rights of individuals; and
 - (ii) remains proportionate to any threat of terrorism or threat to national security, or both; and
 - (iii) remains necessary;
 - (ba) to report on matters relating to the performance of the Monitor's functions as set out in paragraphs (a) and (b);

- (bb) to report on reviews completed under subsections (1B) and (1C);
 - (c) if a matter relating to counter-terrorism or national security is referred to the Monitor by a Minister under section 7—to report on the reference;
 - (ca) if a matter is referred to the Monitor by the Committee on Intelligence and Security under section 7A, and the Monitor decides to perform the function under paragraph (1)(a) or (b) in relation to the reference—to report on that reference;
 - (d) to assess whether Australia’s counter-terrorism or national security legislation is being used for matters unrelated to terrorism and national security;
 - (f) the function conferred by subsection (1E).
- (1A) If a matter is referred to the Independent National Security Legislation Monitor by the Committee on Intelligence and Security under section 7A, the Monitor may perform the function set out in paragraph (1)(a), (b) or (ca) in relation to the matter.
- (1B) The Independent National Security Legislation Monitor must, as soon as practicable after the third anniversary of the day the *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018* receives the Royal Assent, begin a review under paragraph (1)(a) of the following provisions of Chapter 5 of the *Criminal Code*:
- (a) Division 82 (sabotage);
 - (b) Part 5.2 (espionage and related offences);
 - (c) Part 5.6 (secrecy of information).
- (1C) The Independent National Security Legislation Monitor must:
- (a) review the operation, effectiveness and implications of Division 105A of the *Criminal Code* and any other provision of that Code as far as it relates to that Division; and
 - (b) complete the review as soon as practicable after 7 December 2021.
- (1E) The Independent National Security Legislation Monitor must:
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Part 2 Independent National Security Legislation Monitor

Division 1 Establishment, functions and powers of Independent National Security Legislation Monitor

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- (a) review the operation, effectiveness and implications of the amendments made by Schedules 1, 2 and 3 to the *Surveillance Legislation Amendment (Identify and Disrupt) Act 2021*; and
 - (b) commence to do so before the end of the 3-year period beginning on the day that Act receives the Royal Assent.
- (2) To avoid doubt, the following are not functions of the Independent National Security Legislation Monitor:
 - (a) to review the priorities of, and use of resources by, agencies that have functions relating to, or are involved in the implementation of, Australia's counter-terrorism and national security legislation;
 - (b) to consider any individual complaints about the activities of Commonwealth agencies that have functions relating to, or are involved in the implementation of, Australia's counter-terrorism and national security legislation.
- (3) The Independent National Security Legislation Monitor has the power to do all things necessary or convenient to be done for or in connection with the performance of the Monitor's functions.

7 References to the Independent National Security Legislation Monitor by the Prime Minister or the Attorney-General

- (1) The Prime Minister or the Attorney-General may refer a matter relating to counter-terrorism or national security to the Independent National Security Legislation Monitor, either at the Monitor's suggestion or on his or her own initiative.
- (2) A Minister who refers a matter under subsection (1) may alter the terms of the reference.
- (3) The Prime Minister may give the Independent National Security Legislation Monitor directions about the order in which he or she is to deal with references.

**7A References to the Independent National Security Legislation
Monitor by the Committee on Intelligence and Security**

- (1) The Committee on Intelligence and Security may refer to the Independent National Security Legislation Monitor a matter that the Committee:
 - (a) becomes aware of in the course of performing its functions under subsection 29(1) of the *Intelligence Services Act 2001*; and
 - (b) considers should be referred to the Monitor.
- (2) It is a function of the Committee on Intelligence and Security to refer the matter to the Independent National Security Legislation Monitor.

8 Regard to be had to international obligations and constitutional arrangements

When performing the Independent National Security Legislation Monitor's functions, the Monitor must have regard to:

- (a) Australia's obligations under international agreements (as in force from time to time), including:
 - (i) human rights obligations; and
 - (ii) counter-terrorism obligations; and
 - (iii) international security obligations; and
- (b) arrangements agreed from time to time between the Commonwealth, the States and the Territories to ensure a national approach to countering terrorism.

9 Emphasis to be given to counter-terrorism and national security legislation that has been applied or considered recently

- (1) When performing functions relating to Australia's counter-terrorism and national security legislation in a particular financial year, the Independent National Security Legislation Monitor must give particular emphasis to provisions of that legislation that have been applied, considered or purportedly

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applied by employees of agencies that have functions relating to, or are involved in the implementation of, that legislation during that financial year or the immediately preceding financial year.

- (2) Subsection (1) does not apply to the Independent National Security Legislation Monitor's performance of his or her functions under sections 29A (special report) or 29B (statutory review report).

10 Consultation with agencies etc.

- (1) When performing functions relating to Australia's counter-terrorism and national security legislation, the Independent National Security Legislation Monitor must have regard to:
- (a) the functions of agencies that have functions relating to, or are involved in the implementation of, that legislation; and
 - (b) functions relating to that legislation that are conferred on a person who holds any office or appointment under a law of the Commonwealth or of a State or Territory.
- (2) When performing functions relating to Australia's counter-terrorism and national security legislation, the Independent National Security Legislation Monitor may consult with:
- (b) the Ombudsman; or
 - (c) the Inspector-General of Intelligence and Security; or
 - (ca) the Human Rights Commissioner; or
 - (cb) the Privacy Commissioner; or
 - (cc) the head of an agency established by a law of the Commonwealth or of a State or Territory; or
 - (d) a person mentioned in paragraph (1)(b);
- as the Monitor considers necessary.

Division 2—Appointment of Independent National Security Legislation Monitor

11 Appointment

- (1) The Independent National Security Legislation Monitor is to be appointed by the Governor-General by written instrument, on a part-time or full-time basis.
- (2) Before a recommendation is made to the Governor-General for the appointment of a person as the Independent National Security Legislation Monitor, the Prime Minister must consult with the Leader of the Opposition in the House of Representatives.
- (3) A person must not be appointed as the Independent National Security Legislation Monitor unless the person is, in the Governor-General's opinion, suitable for appointment because of the person's qualifications, training or experience.
- (4) A person's appointment as the Independent National Security Legislation Monitor is not invalid because of a defect or irregularity in connection with the person's appointment.

11A Obligation to fill vacancy as soon as practicable

As soon as practicable after the office of Independent National Security Legislation Monitor becomes vacant, a Monitor or acting Monitor must be appointed under section 11 or 20.

12 Term of appointment

- (1) The Independent National Security Legislation Monitor holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.
- (2) The Independent National Security Legislation Monitor is eligible for reappointment once only.

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13 Remuneration and allowances

- (1) The Independent National Security Legislation Monitor is to be paid such remuneration as is determined by the Remuneration Tribunal. If no determination of that remuneration is in operation, the Monitor is to be paid such remuneration as is prescribed by the regulations.
- (2) The Independent National Security Legislation Monitor is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

14 Leave of absence

- (1) A full-time Independent National Security Legislation Monitor has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Attorney-General may grant leave of absence, other than recreation leave, to a full-time Independent National Security Legislation Monitor on the terms and conditions as to remuneration or otherwise that the Governor-General determines in writing.
- (3) The Attorney-General may grant leave of absence to a part-time Independent National Security Legislation Monitor on the terms and conditions that the Governor-General determines in writing.

15 Outside employment

- (1) A full-time Independent National Security Legislation Monitor must not engage in paid employment outside the duties of his or her office without the Attorney-General's written consent.
- (2) A part-time Independent National Security Legislation Monitor must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties without the Attorney-General's written consent.

16 Disclosure of interests to the Attorney-General

The Independent National Security Legislation Monitor must give written notice to the Attorney-General of all interests, pecuniary or otherwise, that the Monitor has or acquires and that conflict or could conflict with the proper performance of his or her functions.

17 Other terms and conditions

The Independent National Security Legislation Monitor holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Governor-General.

18 Resignation

- (1) The Independent National Security Legislation Monitor may resign by giving to the Governor-General a signed notice of resignation.
- (2) The resignation takes effect on the day on which it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

19 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Independent National Security Legislation Monitor for misbehaviour or physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of the Independent National Security Legislation Monitor:
 - (a) if the Monitor:
 - (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

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- (b) if the Monitor fails, without reasonable excuse, to comply with section 16; or
- (ba) if the Monitor is appointed on a full-time basis—the Monitor engages, except with the Attorney-General’s written consent, in paid employment outside the duties of his or her office;
- (c) if the Monitor is appointed on a part-time basis—the Monitor engages, except with the Attorney-General’s written consent, in paid employment that conflicts or may conflict with the proper performance of the Monitor’s duties; or
- (ca) if the Monitor is appointed on a full-time basis—the Monitor is absent, except on leave of absence granted under subsection 14(2), for 14 consecutive days or for 28 days in any 12 months; or
- (d) if the Monitor is appointed on a part-time basis—the Monitor is absent, except on leave of absence granted under subsection 14(3), for 7 consecutive days or for 14 days in any 12 months.

20 Acting Independent National Security Legislation Monitor

The Attorney-General may appoint a person to act as the Independent National Security Legislation Monitor:

- (a) during a vacancy in the office of the Monitor (whether or not an appointment has previously been made to the office); or
- (b) during a period, or during all periods, when the Monitor:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office;so long as the period, or the total of all periods, is not more than 12 months.

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

Part 3—Information gathering powers

21 Independent National Security Legislation Monitor may hold hearings

- (1) The Independent National Security Legislation Monitor may hold a hearing for the purposes of performing his or her functions under this Act.
- (2) A hearing, or a part of a hearing:
 - (a) may be held in private if the Independent National Security Legislation Monitor so directs; and
 - (b) must be held in private for any time during which a person is giving evidence that discloses operationally sensitive information.Otherwise, a hearing must be held in public.
- (3) A hearing may otherwise be conducted in such a manner as the Independent National Security Legislation Monitor thinks fit.
- (4) The Independent National Security Legislation Monitor must ensure that a record of a hearing is made.
- (5) A direction given under paragraph (2)(a) is not a legislative instrument.

22 Independent National Security Legislation Monitor may summon person

- (1) The Independent National Security Legislation Monitor may, by notice in writing, summon a person to attend a hearing at a time and place specified in the notice:
 - (a) to give evidence; or
 - (b) to produce documents or things specified in the notice.

Note: Failure to comply with a notice is an offence: see section 25.

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- (2) The notice must:
 - (a) be in writing and be signed by the Independent National Security Legislation Monitor; and
 - (b) be served on the person required to attend a hearing.
- (3) A time specified in a notice must be at least 14 days after the day on which the notice is given.
- (4) A person summoned to appear as a witness at a hearing is entitled to be paid by the Commonwealth any allowances for travelling and other expenses that are prescribed by the regulations.

23 Evidence on oath or by affirmation

- (1) At a hearing, the Independent National Security Legislation Monitor may:
 - (a) require a witness to either take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to the witness.

Note 1: Failure to take an oath or make an affirmation is an offence: see section 25.

Note 2: This means that a hearing is a judicial proceeding for the purposes of Part III of the *Crimes Act 1914*, which creates various offences in relation to judicial proceedings.

- (2) The oath or affirmation is an oath or affirmation that the evidence the person will give will be true.
- (3) The Independent National Security Legislation Monitor may allow a person attending a hearing who has been sworn, or who has made an affirmation, to give evidence by tendering a written statement and verifying it by oath or affirmation.

24 Independent National Security Legislation Monitor may request production of a document or thing

- (1) For the purposes of performing his or her functions under this Act, the Independent National Security Legislation Monitor may request, by written notice, a person:

- (a) to give the Monitor the information referred to in the notice;
or
- (b) to produce to the Monitor the documents or things referred to in the notice.

Note: Failure to give the information, or produce the documents or things, is an offence: see section 25.

- (2) The notice must:
 - (a) be in writing; and
 - (b) specify the period within which the person must comply with the notice.
- (3) The period specified in a notice must end at least 14 days after the day on which the notice is given.

25 Offences

Failure to attend hearing

- (1) A person commits an offence if:
 - (a) the person is served with a notice to attend a hearing; and
 - (b) the person fails to attend as required by the notice.

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

Failure to swear an oath, make an affirmation or answer a question

- (2) A person commits an offence if:
 - (a) the person is served with a notice to attend a hearing; and
 - (b) either:
 - (i) the person fails to be sworn or to make an affirmation at the hearing; or
 - (ii) the person fails to answer a question at the hearing that the Independent National Security Legislation Monitor requires the person to answer.

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

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Failure to produce a document or thing

- (3) A person commits an offence if:
- (a) the person receives a notice to produce a document or thing specified in the notice; and
 - (b) the person fails to produce the document or thing that the person was required to produce.

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

Failure to provide information

- (4) A person commits an offence if:
- (a) the person receives a notice to provide information specified in the notice; and
 - (b) the person fails to provide the information that the person was required to provide.

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

Exception—reasonable excuse

- (5) This section does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) It is a reasonable excuse for a person to fail to:
- (a) answer a question; or
 - (b) produce a document or thing; or
 - (c) provide information;

on the ground that to do so might tend to incriminate the person or expose the person to a penalty.

26 No criminal or civil liability under secrecy provisions

A person who is served with a notice under section 22 or 24 does not commit an offence, and is not liable to any penalty, under a secrecy provision because the person:

- (a) answers a question at a hearing that the Independent National Security Legislation Monitor requires the person to answer; or
- (b) provides information that the person is required to provide in accordance with the notice; or
- (c) produces a document or thing that the person is required to produce in accordance with the notice.

27 Independent National Security Legislation Monitor may retain documents or things

- (1) Subject to section 28, if a document or thing is produced to the Independent National Security Legislation Monitor in accordance with section 22 or 24, the Monitor:
 - (a) may take possession of, and make copies of, the document or thing, or take extracts from the document; and
 - (b) may retain possession of the document or thing for such period as is necessary for the performance of the Monitor's functions under this Act.
- (2) While the Independent National Security Legislation Monitor retains the document or thing, the Monitor must allow a person who would otherwise be entitled to possession of the document or thing, or a person authorised by that person:
 - (a) reasonable access to the document for the purposes of inspecting and making copies of, or taking extracts from, it; and
 - (b) reasonable access to the thing.

28 Protection of information and documents

- (1) This section applies if documents having a national security classification or containing operationally sensitive information are provided by an agency to the Independent National Security Legislation Monitor.
- (2) The Independent National Security Legislation Monitor must:

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- (a) make arrangements with the head of the agency for the protection of those documents while they remain in the Monitor's possession; and
- (b) ensure that the documents are returned to the agency as soon as possible after the Monitor has examined them.

Part 4—Reporting requirements

29 Annual report

- (1) The Independent National Security Legislation Monitor must prepare and give to the Attorney-General a report (an **annual report**):
 - (a) relating to the performance of the Monitor's functions as set out in paragraphs 6(1)(a) and (b), including information relating to the performance of the Monitor's functions as set out in subsection 6(1A); and
 - (b) containing such details relating to the performance of the Monitor's function as set out in paragraph 6(1)(c) as the Monitor considers appropriate.
- (1A) Despite paragraph (1)(a), the annual report need not include information described in that paragraph if such information is already included in a report prepared under section 29A.
- (2) The annual report must be given to the Attorney-General as soon as practicable after 30 June in each financial year and, in any event, by the following 31 December.
- (2A) If the Independent National Security Legislation Monitor considers that the annual report contains information of the kind referred to in subsection (3), the Monitor must also prepare and give to the Attorney-General, at the same time as the annual report, a version of the report which does not contain that information (a **declassified annual report**).
- (3) The information specified by this subsection is information of the following kind:
 - (a) any operationally sensitive information; or
 - (b) any information that would or might prejudice:
 - (i) Australia's national security or the conduct of Australia's foreign relations; or

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- (ii) the performance by a law enforcement or security agency of its functions; or
 - (c) any information that, if included in the report, would or might endanger a person's safety; or
 - (d) any information obtained from a document prepared for the purposes of a meeting of:
 - (i) the Cabinet, or of a Committee of the Cabinet, of the Commonwealth or of a State; or
 - (ii) the Australian Capital Territory Executive or of a committee of that Executive; or
 - (iii) the Executive Council of the Northern Territory or of a committee of that Executive Council; or
 - (e) any information that would disclose the deliberations or decisions of:
 - (i) the Cabinet, or of a Committee of the Cabinet, of the Commonwealth or of a State; or
 - (ii) the Australian Capital Territory Executive or of a committee of that Executive; or
 - (iii) the Executive Council of the Northern Territory or of a committee of that Executive Council.
- (4) In determining whether an annual report contains information of the kind referred to in subsection (3), the Independent National Security Legislation Monitor may consult the responsible Minister or responsible Ministers concerned.
- (5) The Attorney-General must cause a copy of:
- (a) each annual report; or
 - (b) if an annual report contains information of the kind referred to in subsection (3)—the corresponding declassified annual report;
- to be presented to each House of the Parliament within the earlier of:
- (c) 15 sitting days of that House after the day on which he or she receives the report; or
 - (d) 30 days after the day on which he or she receives the report.

- (8) Section 34C of the *Acts Interpretation Act 1901* does not apply in relation to a report given to the Attorney-General under this section.

29A Special report

- (1) The Independent National Security Legislation Monitor may, from time to time, prepare and give to the Attorney-General a report (a ***special report***) relating to the performance of the Monitor's functions as set out in paragraphs 6(1)(a), (b) and (ca).
- (2) Before preparing the special report, the Independent National Security Legislation Monitor must give to the Attorney-General and Prime Minister a notice in writing:
- (a) of his or her intention to prepare the special report; and
 - (b) providing reasons why, in the opinion of the Monitor, the special report is required.
- (3) If the Independent National Security Legislation Monitor considers that a special report contains information of the kind referred to in subsection 29(3), the Monitor must also prepare and give to the Attorney-General, at the same time as the special report, a version of the report which does not contain that information (a ***declassified special report***).
- (4) In determining whether the report contains information of the kind referred to in subsection 29(3), the Independent National Security Legislation Monitor may consult the responsible Minister or responsible Ministers concerned.
- (5) The Attorney-General must cause a copy of:
- (a) the special report; or
 - (b) if the special report contains information of the kind referred to in subsection 29(3)—the corresponding declassified special report;
- to be presented to each House of the Parliament within the earlier of:

Section 29B

- (c) 15 sitting days of that House after the day on which he or she receives the report; or
- (d) 30 days after the day on which he or she receives the report.

29B Statutory review report

- (1) This section applies if the Independent National Security Legislation Monitor completes a review under subsection 6(1B) or (1C).
- (2) The Independent National Security Legislation Monitor must prepare and give to the Attorney-General a report relating to the performance of the review (a *statutory review report*).
- (3) If the Independent National Security Legislation Monitor considers that a statutory review report contains information of the kind referred to in subsection 29(3), the Monitor must also prepare and give to the Attorney-General, at the same time as the statutory review report, a version of the report which does not contain that information (a *declassified statutory review report*).
- (4) In determining whether the statutory review report contains information of the kind referred to in subsection 29(3), the Independent National Security Legislation Monitor may consult the responsible Minister or responsible Ministers concerned.
- (5) The Attorney-General must cause a copy of:
 - (a) the statutory review report; or
 - (b) if the statutory review report contains information of the kind referred to in subsection 29(3)—the corresponding declassified statutory review report;to be presented to each House of the Parliament within the earlier of:
 - (c) 15 sitting days of that House after the day on which he or she receives the report; or
 - (d) 30 days after the day on which he or she receives the report.

30 Report on a reference by the Prime Minister or the Attorney-General

Giving reports to referring Minister

- (1) The Independent National Security Legislation Monitor must report on a reference made under section 7 to the Minister who made the reference (the *referring Minister*).
- (2) The Independent National Security Legislation Monitor may, before giving his or her report on a reference, give an interim report to the referring Minister on the Monitor's work on the reference.
- (3) The referring Minister may, before the Independent National Security Legislation Monitor gives his or her report on a reference, direct the Monitor to give an interim report to the referring Minister on the Monitor's work on the reference.

Giving copies of reports to non-referring Minister

- (3A) The Independent National Security Legislation Monitor may, if he or she considers it appropriate to do so, give a copy of a report under subsection (1), (2) or (3) to the Minister mentioned in section 7 who did not make the reference.

Declassified reports

- (4) If the Independent National Security Legislation Monitor considers that a report to the referring Minister under subsection (1) or (3) contains information of the kind referred to in subsection 29(3), the Monitor must also prepare and give to the referring Minister, at the same time as the report, a version of the report which does not contain that information (a *declassified report*).
- (5) In determining whether a report contains information of the kind referred to in subsection 29(3), the Independent National Security Legislation Monitor may consult the responsible Minister or responsible Ministers concerned.

Section 30

Presenting copies of reports to the Parliament

- (6) The referring Minister must cause a copy of:
- (a) a report given to the referring Minister under subsection (1) or (3); or
 - (b) if a report contains information of the kind referred to in subsection 29(3)—the corresponding declassified report;
to be presented to each House of the Parliament within the earlier of:
 - (c) 15 sitting days of that House after the day on which he or she receives the report; or
 - (d) 30 days after the day on which he or she receives the report.

Part 5—Miscellaneous

31 Immunity from legal action

- (1) No action, suit or proceeding may be brought against a person who is, or has been, the Independent National Security Legislation Monitor in relation to anything done, or omitted to be done, in good faith by the Monitor:
 - (a) in the performance, or purported performance, of his or her functions; or
 - (b) in the exercise, or purported exercise, of his or her powers.
- (2) No action, suit or proceeding may be brought against a person who is assisting, or has assisted, the Independent National Security Legislation Monitor under sections 33 or 34 in relation to anything done, or omitted to be done, in good faith by that person:
 - (a) assisting the Monitor in the performance, or purported performance, of his or her functions or duties; or
 - (b) assisting the Monitor in the exercise, or purported exercise, of his or her powers.

32 Regulations

The Governor-General may make regulations prescribing matters:

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

33 Staff of the Independent National Security Legislation Monitor

- (1) The Independent National Security Legislation Monitor may be assisted by the following persons, whose services are made available to the Monitor in connection with the performance of any of the Monitor's functions, or the exercise of the Monitor's powers:

Section 34

- (a) APS employees in the Department whose services are made available to the Monitor by the Secretary of the Department;
 - (b) employees of Agencies (within the meaning of the *Public Service Act 1999*);
 - (c) persons employed under the *Australian Security Intelligence Organisation Act 1979*;
 - (d) persons employed under the *Intelligence Services Act 2001*;
 - (e) Parliamentary Service employees (within the meaning of the *Parliamentary Service Act 1999*);
 - (f) members of the Australian Defence Force.
- (2) When performing services for the Independent National Security Legislation Monitor, the persons are subject to the directions of the Monitor.
- (3) A person referred to in subsection (1) may only assist the Independent National Security Legislation Monitor with the written consent of the Monitor, and the Monitor may, in writing, withdraw such consent at any time.

34 Contractors engaged by the Independent National Security Legislation Monitor

- (1) The Independent National Security Legislation Monitor may, on behalf of the Commonwealth, engage persons to assist in the performance of any of the Monitor's functions, or the exercise of the Monitor's powers.
- (2) The persons are to be engaged on the terms and conditions that the Independent National Security Legislation Monitor determines in writing.
- (3) When performing services for the Independent National Security Legislation Monitor, a person engaged under subsection (1) is subject to the directions of the Monitor.
- (4) The Independent National Security Legislation Monitor may, in writing, delegate the Monitor's power under subsection (1) to a member of the staff of the Monitor who is:

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- (a) classified as an Executive Level 2 or equivalent or higher; or
 - (b) acting in a position usually occupied by a person with a classification level of the kind mentioned in paragraph (a).
- (5) In exercising the power delegated under subsection (4), the delegate is subject to the directions of the Independent National Security Legislation Monitor.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

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 the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

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

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

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

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Independent National Security Legislation Monitor Act 2010	32, 2010	13 Apr 2010	14 Apr 2010 (s 2)	
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 6 (items 51–53): 19 Apr 2011 (s 2(1) item 15)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 699–701) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 5, 12)	Sch 3 (items 10, 11)
National Security Legislation Amendment Act (No. 1) 2014	108, 2014	2 Oct 2014	Sch 7 (items 111–114, 144, 145): 3 Oct 2014 (s 2(1) items 4, 5)	Sch 7 (items 144, 145)
Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014	116, 2014	3 Nov 2014	Sch 1 (item 131A): 1 Dec 2014 (s 2(1) item 2)	—
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 5 (items 89–91) and Sch 9: 1 July 2015 (s 2(1) items 2, 7)	Sch 9
as amended by				
Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—
Australian Citizenship Amendment (Allegiance to Australia) Act 2015	166, 2015	11 Dec 2015	Sch 2 (items 2, 9): 12 Dec 2015 (s 2(1) item 1)	Sch 2 (item 9)

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016	95, 2016	7 Dec 2016	Sch 2 (items 1D, 1E): 7 June 2017 (s 2(1) item 3)	—
Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018	25, 2018	11 Apr 2018	Sch 1 (items 66–69, 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 4–27): 11 May 2018 (s 2(1) item 2)	Sch 1 (items 8, 10, 13, 16, 27)
National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018	67, 2018	29 June 2018	Sch 1 (item 51): 30 June 2018 (s 2(1) item 2)	—
Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018	148, 2018	8 Dec 2018	Sch 1 (items 4A, 4B): 9 Dec 2018 (s 2(1) item 2)	—
Office of National Intelligence (Consequential and Transitional Provisions) Act 2018	156, 2018	10 Dec 2018	Sch 2 (items 49, 50) and Sch 4: 20 Dec 2018 (s 2(1) items 2, 4)	Sch 4
Counter-Terrorism (Temporary Exclusion Orders) (Consequential Amendments) Act 2019	54, 2019	30 July 2019	Sch 1 (item 1): 30 July 2019 (s 2(1) item 2)	—
Australian Citizenship Amendment (Citizenship Cessation) Act 2020	88, 2020	17 Sept 2020	Sch 1 (items 14, 16–22): 18 Sept 2020 (s 2(1) item 1)	Sch 1 (items 16–22)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Counter-Terrorism Legislation Amendment (Sunsetting Review and Other Measures) Act 2021	88, 2021	2 Sept 2021	Sch 1 (items 8, 9): 3 Sept 2021 (s 2(1) item 1)	—
Surveillance Legislation Amendment (Identify and Disrupt) Act 2021	98, 2021	3 Sept 2021	Sch 3A (items 1, 2): 4 Sept 2021 (s 2(1) item 4)	—
Independent National Security Legislation Monitor Amendment Act 2021	130, 2021	8 Dec 2021	8 Dec 2021 (s 2(1) item 1)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 4	am No 5, 2011; No 108, 2014; No 41, 2015; No 166, 2015; No 25, 2018; No 156, 2018; No 54, 2019; No 88, 2020
Part 2	
Division 1	
s 6	am No 116, 2014; No 95, 2016; No 31, 2018; No 67, 2018; No 148, 2018; No 88, 2021; No 98, 2021
	ed C17
	am No 130, 2021
s 7	rs No 31, 2018
s 9	am No 130, 2021
Division 2	
s 11	am No 31, 2018; No 130, 2021
s 11A	ad No 130, 2021
s 14	am No 31, 2018
	rs No 130, 2021
s 15	am No 31, 2018
	rs No 130, 2021
s 16	am No 31, 2018
s 19	am No 31, 2018; No 130, 2021
s 20	am No 46, 2011; No 31, 2018
Part 4	
s 29	am No 31, 2018; No 130, 2021
	ed C18
s 29A	ad No 130, 2021
s 29B	ad No 130, 2021
s 30	am No 31, 2018; No 130, 2021
	ed C18

Endnote 4—Amendment history

Provision affected	How affected
Part 5	
s 31	am No 130, 2021
s 33	ad No 130, 2021
s 34	ad No 130, 2021

Endnotes

Endnote 5—Editorial changes

Endnote 5—Editorial changes

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

Subsection 29(5)

Kind of editorial change

Give effect to the misdescribed amendment as intended

Details of editorial change

Schedule 1 item 7AA of the *Independent National Security Legislation Monitor Amendment Act 2021* provides as follows:

7AA Subsection 29(5)

Omit all the words after “paragraph (b)”, substitute:

to be presented to each House of the Parliament within the earlier of:

- (c) 15 sitting days of that House after the day on which he or she receives the report; or
- (d) 30 days after the day on which he or she receives the report.

“paragraph (b)” does not appear in subsection 29(5). However, there are words after paragraph (b).

This compilation was editorially changed to apply the amendment to the words after paragraph 29(5)(b) and give effect to the misdescribed amendment as intended.

Subsection 30(6)**Kind of editorial change**

Give effect to the misdescribed amendment as intended

Details of editorial change

Schedule 1 item 9A of the *Independent National Security Legislation Monitor Amendment Act 2021* provides as follows:

9A Subsection 30(6)

Omit all the words after “paragraph (b)”, substitute:

to be presented to each House of the Parliament within the earlier of:

- (c) 15 sitting days of that House after the day on which he or she receives the report; or
- (d) 30 days after the day on which he or she receives the report.

“paragraph (b)” does not appear in subsection 30(6). However, there are words after paragraph (b).

This compilation was editorially changed to apply the amendment to the words after paragraph 30(6)(b) and give effect to the misdescribed amendment as intended.