



Office of National Intelligence Act 2018

No. 155, 2018

**An Act to provide for the Office of National
Intelligence, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
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Office of National Intelligence Act 2018

No. 155, 2018

An Act to provide for the Office of National Intelligence, and for related purposes

[Assented to 10 December 2018]

The Parliament of Australia enacts:

Part 1—Introduction

1 Short title

This Act is the *Office of National Intelligence Act 2018*.

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 December 2018
2. Sections 3 to 55	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	20 December 2018 (F2018N00191)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline of this Act

This Act continues the former Office of National Assessments as the Office of National Intelligence (ONI). ONI's functions include leading the national intelligence community, carrying out evaluations, preparing assessments and reports and otherwise providing advice to the Prime Minister on matters relating to the national intelligence community.

The Director-General manages ONI and ensures the proper, efficient and effective performance of ONI's functions. In carrying out the role, the Director-General may give directions and issue guidelines to be followed by the national intelligence community or particular agencies within the community.

The Director-General has a leadership role in the national intelligence community and also has responsibility for keeping the Prime Minister informed on matters relating to the national intelligence community and the Leader of the Opposition informed on matters relating to intelligence.

This Act also continues the National Assessments Board. The Board considers whether assessments prepared by ONI are national assessments, and considers national assessments.

Commonwealth authorities must provide relevant information to ONI, if requested to do so, for the purpose of ONI preparing assessments relating to international matters. Commonwealth authorities may provide information to ONI for the purpose of ONI preparing assessments relating to international or other matters.

This Act also deals with other matters such as secrecy obligations, providing for privacy rules to be made to protect the collection, communication and handling of identifiable information and other administrative matters.

4 Definitions

(1) In this Act:

agency with an intelligence role or function means:

- (a) AUSTRAC (within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*); or
- (b) the Australian Federal Police; or
- (c) the Department of Home Affairs; or
- (d) the Defence Department (other than AGO or DIO);

to the extent that the agency:

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- (e) collects, correlates, analyses, produces or disseminates intelligence that relates, or may relate, to national intelligence priorities, requirements or capabilities; or
- (f) either:
 - (i) maintains a capability that materially assists in doing any of the things mentioned in paragraph (e); or
 - (ii) is developing a capability that is designed to materially assist in doing any of the things mentioned in paragraph (e).

Note: The Defence Department does not include the Australian Defence Force.

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

ASD means the Australian Signals Directorate.

ASIO means the Australian Security Intelligence Organisation.

ASIS means the Australian Secret Intelligence Service.

AUSTRAC means the Australian Transaction Reports and Analysis Centre.

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.

Defence Department means the Department administered by the Defence Minister.

Defence Minister means the Minister responsible for administering the *Defence Act 1903*.

Department of Home Affairs means the Department administered by the Home Affairs Minister.

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

Director-General means the Director-General of National Intelligence.

general rules means the rules made under section 55.

head, in relation to an intelligence agency or an agency with an intelligence role or function, means the following persons:

- (a) in relation to the ASD—the Director-General of ASD;
- (b) in relation to the ASIO—the Director-General of Security;
- (c) in relation to the ASIS—the Director-General of the ASIS;
- (d) in relation to AUSTRAC—the Chief Executive Officer of AUSTRAC;
- (e) in relation to the agency known as the Australian Criminal Intelligence Commission—the Chief Executive Officer of that agency;
- (f) in relation to the Australian Federal Police—the Commissioner of Police;
- (g) in relation to the part of the Defence Department known as the Australian Geospatial-Intelligence Organisation—the Director of that part of the Department;
- (h) in relation to the part of the Defence Department known as the Defence Intelligence Organisation—the Director of that part of the Department;
- (i) in relation to ONI—the Director-General;
- (j) in relation to any other Department of the Commonwealth or part of such a Department—the Secretary of the Department.

Home Affairs Minister means the Minister administering the *Australian Border Force Act 2015*.

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identifiable information means information or an opinion about an identified Australian citizen or permanent resident, or an Australian citizen or permanent resident who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

IGIS official: see *Inspector-General of Intelligence and Security official*.

Inspector-General of Intelligence and Security official or **IGIS 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*.

intelligence agency means:

- (a) ASD, ASIO, ASIS, AGO or DIO; or
- (b) the agency known as the Australian Criminal Intelligence Commission.

national intelligence community means the following agencies:

- (a) ONI;
- (b) each intelligence agency;
- (c) each agency with an intelligence role or function.

national security has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

ONI means the body continued in existence by section 6 under the name Office of National Intelligence.

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

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).

prescribed Commonwealth officer means:

- (a) a Secretary of a Department; or
- (b) the Chief of the Defence Force; or
- (c) the Commissioner of the Australian Federal Police; or
- (d) the Australian Border Force Commissioner (within the meaning of the *Australian Border Force Act 2015*); or
- (e) the Director-General of ASD; or
- (f) the Director-General of ASIS; or
- (g) the Chief Executive Officer of the agency known as the Australian Criminal Intelligence Commission; or
- (h) the AUSTRAC CEO (within the meaning of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*); or
- (i) the Director-General of Security holding office under the *Australian Security Intelligence Organisation Act 1979*; or
- (j) any other person employed by the Commonwealth (whether under the *Public Service Act 1999* or otherwise) who is authorised in an instrument under subsection (2).

privacy rules means the rules made under section 53.

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*.

staff member means:

- (a) a member of the staff of ONI referred to in section 33; or

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- (b) a consultant engaged under section 34; or
- (c) a person whose services are made available to the Director-General under section 36.

State authority includes:

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

Prescribed Commonwealth officer instrument

- (2) The Prime Minister may, in writing, authorise a person employed by the Commonwealth (whether under the *Public Service Act 1999* or otherwise) for the purposes of paragraph (j) of the definition of **prescribed Commonwealth officer** in subsection (1).

5 Extension to external Territories

This Act extends to every external Territory.

Part 2—Office of National Intelligence

Division 1—Office of National Intelligence

6 Establishment

- (1) The Office of National Assessments established by section 4 of the *Office of National Assessments Act 1977* continues in existence, by force of this subsection, under and subject to the provisions of this Act, under the name Office of National Intelligence.
- (2) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
 - (a) ONI is a listed entity; and
 - (b) the Director-General is the accountable authority of ONI; and
 - (c) the following persons are officials of ONI:
 - (i) the Director-General;
 - (ii) the staff of ONI referred to in section 33;
 - (iii) consultants engaged under section 34;
 - (iv) persons whose services are made available to the Director-General under section 36; and
 - (d) the purposes of ONI include the functions of ONI referred to in section 7.

Division 2—Functions and powers

7 Functions of ONI

- (1) ONI has the following functions:
 - (a) to lead the national intelligence community, as described in section 8;
 - (b) to carry out the evaluation functions mentioned in section 9;
 - (c) to:
 - (i) assemble, correlate and analyse information relating to international matters that are of political, strategic or economic significance to Australia, including domestic aspects relating to such matters; and
 - (ii) prepare assessments and reports in relation to such matters in accordance with the Government's requirements;
 - (d) to:
 - (i) assemble, correlate and analyse information relating to other matters that are of political, strategic or economic significance to Australia; and
 - (ii) prepare assessments and reports in relation to such matters in accordance with the Government's requirements;if doing so would support the performance of any other function or the Director-General's functions, or complement the work of the national intelligence community;
 - (e) to provide advice to the Prime Minister, from a whole-of-national intelligence community perspective, on national intelligence priorities, requirements and capabilities;
 - (f) to provide advice, from time to time, to the Prime Minister on matters relating to the national intelligence community more generally;
 - (g) to collect, interpret and disseminate information relating to matters of political, strategic or economic significance to Australia that is accessible to any section of the public;

- (h) to cooperate with and assist bodies referred to in section 14 in accordance with that section;
- (i) to provide assessments or reports, prepared under paragraph (c) or (d), to a person or body, inside or outside Australia;
- (j) such other functions as are conferred on ONI by this Act or any other law of the Commonwealth;
- (k) to do anything incidental or conducive to the performance of any of its functions.

Note: For matters that do not form part of ONI's functions: see subsection 10(2).

- (2) ONI must perform its function under paragraph (1)(a) in ways that promote the appropriate integration of the intelligence capabilities of the national intelligence community.

Note 1: The Director-General must ensure that ONI performs its functions in ways that do not inappropriately impact on, or encroach on, the functions and responsibilities of other agencies within the national intelligence community: see subsection 10(1).

Note 2: The Prime Minister may give directions to the Director-General about the performance of ONI's functions, but not in relation to the content or conclusions to be contained in any advice, report or assessment by ONI: see section 12.

8 Leading the national intelligence community

- (1) ONI is to provide leadership in the national intelligence community by guiding the direction of the national intelligence community so as to ensure the following:
 - (a) the development, strategic planning, coordination and appropriate integration of matters relating to the national intelligence community;
 - (b) prioritisation of national intelligence priorities and requirements, and allocation of resources accordingly;
 - (c) structured and appropriate responses to technological advancements.
- (2) Examples of the ways in which ONI might provide that leadership in the national intelligence community include:

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- (a) identifying particular areas of intelligence focus that require greater integration and overseeing appropriate action; and
- (b) developing strategic policies relating to the national intelligence community, and coordinating and overseeing their implementation; and
- (c) coordinating matters relating to the national intelligence community.

Note: Leadership could, for example, be provided in areas such as intelligence liaison with international partners, engagement with the private sector, workforce planning, training for agencies within the national intelligence community, data management, or information technology and communication networks or systems.

- (3) ONI must perform its leadership function in ways that are consistent with other agencies in the national intelligence community developing relationships with other entities, including international partners and the private sector.
- (4) ONI's leadership in the national intelligence community is to be supported by:
 - (a) directions given by the Director-General under section 20; and
 - (b) guidelines issued by the Director-General under section 21.

9 Evaluating matters relating to the national intelligence community

- (1) The evaluation functions of ONI are the following:
 - (a) evaluating the activities of an affected agency or agencies, having regard to:
 - (i) Australia's national intelligence priorities and requirements; and
 - (ii) the intelligence needs of relevant Ministers;
 - (b) evaluating the adequacy of the resources available to carry out Australia's national intelligence activities and whether those resources are being appropriately allocated;
 - (c) to the extent required to perform any other function, evaluating other aspects of an affected agency or agencies;

- (d) at the direction of the Prime Minister, evaluating an affected agency or agencies to assess the national intelligence community's effectiveness in relation to specific matters;
 - (e) providing advice to the Prime Minister on:
 - (i) the results of any evaluations made; and
 - (ii) any improvements or changes that should be made to remedy any identified inadequacies.
- (2) In carrying out its evaluation functions, ONI may have regard to:
- (a) directions given by the Director-General under section 20; and
 - (b) guidelines issued by the Director-General under section 21; and
 - (c) to the extent that an evaluation relates to an affected agency or agencies, any failure by the affected agency or agencies to comply with:
 - (i) a direction given by the Director-General under section 20; or
 - (ii) a guideline issued by the Director-General under section 21.
- (3) Before providing advice to the Prime Minister under this section, ONI must consult with any affected agency or agencies to which the advice relates. Any advice provided to the Prime Minister must include any comments made by any affected agency or agencies that are relevant to the advice.
- (4) In this section:
- affected agency or agencies*** means:
- (a) a particular intelligence agency; or
 - (b) a particular agency with an intelligence role or function; or
 - (c) ONI; or
 - (d) a class of agencies within the national intelligence community; or
 - (e) the national intelligence community as a whole.

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10 Matters that are not part of ONI's functions

- (1) The Director-General must ensure that ONI performs its functions in ways that do not inappropriately impact on, or encroach on the functions, powers and responsibilities of:
- (a) an intelligence agency; or
 - (b) an agency with an intelligence role or function; or
 - (c) a Department in relation to an intelligence agency or agency with an intelligence role or function in the same portfolio as the Department; or
 - (d) a person who holds any office or appointment under a law of the Commonwealth, being an office or appointment that relates to an agency within the national intelligence community or the national intelligence community more generally.

Note: The Director-General must also take all reasonable steps to ensure that ONI is kept free from any influences or considerations not relevant to its functions and that nothing is done that might lend colour to any suggestion that ONI is concerned to further or protect the interests of any particular section of the community: see section 19.

- (2) In particular, ONI's functions do not include the following:
- (a) directing an intelligence agency or an agency with an intelligence role or function to:
 - (i) carry out operational activities; or
 - (ii) allocate resources, or use particular methods, when carrying out such operational activities;
 - (b) conducting inquiries into individual complaints about the activities of:
 - (i) an intelligence agency; or
 - (ii) an agency with an intelligence role or function;
 - (c) directing the content of, or conclusions reached in, any intelligence communicated, or any advice given or assessments or reports prepared, by:
 - (i) an intelligence agency; or
 - (ii) an agency with an intelligence role or function;
 - (d) inquiring into the legality, propriety or integrity of activities undertaken by:

- (i) an intelligence agency; or
 - (ii) an agency with an intelligence role or function.
- (3) To avoid doubt, the reference to directing in paragraphs (2)(a) and (c) is not limited to directions given by the Director-General under section 20.

11 Powers of ONI

ONI has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

12 Prime Minister may give directions

- (1) Subject to subsection (2), the Prime Minister may give directions to the Director-General concerning the performance of ONI's functions or the exercise of ONI's powers.
- (2) However, the Director-General is not subject to direction in respect of the content of, or any conclusions to be reached in, any advice given, or report or assessment prepared, by ONI under this Act.
- (3) The Director-General need not comply with a direction to the extent that:
 - (a) compliance with the direction would be inconsistent with the Director-General's performance of functions or exercise of powers under the *Public Governance, Performance and Accountability Act 2013* in relation to ONI; or
 - (b) the direction relates to the Director-General's performance of functions or exercise of powers under the *Public Service Act 1999* in relation to ONI.
- (4) The Director-General may request that a direction be given in writing, and if the Director-General makes such a request, the Prime Minister must provide the direction in writing.

Note: The Inspector-General of Intelligence and Security has oversight powers in relation to Ministerial directions 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).

Part 2 Office of National Intelligence

Division 2 Functions and powers

Section 12

(5) A direction given under this section is not a legislative instrument.

Division 3—Cooperation

13 Cooperation with entities in connection with performance of ONI's functions

- (1) In performing functions and exercising powers, ONI may cooperate with:
 - (a) subject to subsections (5) and (6), an authority of another country approved in an instrument under subsection (2); and
 - (b) any other person or entity, within or outside Australia.
- (2) For the purposes of paragraph (1)(a), the Director-General may, in writing, approve an authority of another country as being capable of assisting ONI in the performance of its functions and the exercise of its powers.
- (3) Each month the Director-General must, in writing, notify the Prime Minister of:
 - (a) each approval given under subsection (2) during the month; and
 - (b) each variation or revocation of an approval given under subsection (2) during the month.

Note: The Director-General does not need to notify the Prime Minister if no approvals are given, and no variations or revocations of approvals are made, in a particular month.
- (5) The Prime Minister may, at any time, cancel an approval given under subsection (2).
- (6) The cancellation of an approval:
 - (a) must be in writing; and
 - (b) unless specified otherwise, has immediate effect.
- (7) An approval under subsection (2), and a cancellation of an approval under subsection (5), are not legislative instruments.

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

- (1) ONI may cooperate with and assist:
 - (a) an intelligence agency in the performance of its functions; and
 - (b) an agency with an intelligence role or function in the performance of that intelligence role or function; and
 - (c) any of the following kinds of bodies prescribed by the general rules for the purposes of this paragraph:
 - (i) a Commonwealth authority;
 - (ii) a State authority.
 - (2) However, ONI may only do so:
 - (a) subject to any arrangements made or directions given by the Prime Minister; and
 - (b) on request by the head (however described) of the agency or 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 an agency or body in accordance with this section, ONI may make the services of staff members and other resources available to the agency or body.
 - (4) An arrangement or direction under paragraph (2)(a):
 - (a) must be in writing; and
 - (b) is not a legislative instrument.

Part 3—Director-General of National Intelligence and staff of ONI

Division 1—Functions and powers of the Director-General

15 Director-General of National Intelligence

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

Note: In this Act, *Director-General* means the Director-General of National Intelligence: see section 4.

- (2) The Director-General has a leadership role in the national intelligence community and may, as part of that role, provide advice relating to the appointment or engagement of persons in senior leadership roles within the national intelligence community.
- (3) To avoid doubt, subsection (2) does not require that the Director-General's advice be sought in relation to any appointment or engagement of a person in a senior leadership role within the national intelligence community.

16 Functions of the Director-General

- (1) The functions of the Director-General are:
- (a) subject to any direction by the Prime Minister under section 12, to ensure the proper, efficient and effective performance of ONI's functions; and
 - (b) to manage ONI; and
 - (c) to endeavour to respond to requests under section 22 for reports or assessments; and
 - (d) if the Director-General considers that an assessment made by ONI should be a national assessment but the National Assessments Board does not, or vice versa, to decide whether the assessment is a national assessment; and
 - (e) any other functions conferred on the Director-General by this Act or any other law of the Commonwealth.

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- (2) The Director-General must inform the Prime Minister:
 - (a) if the Director-General decides that an assessment is not to be a national assessment under paragraph (1)(d); and
 - (b) of the matter or matters on which there is a difference of opinion in relation to the assessment.
- (3) The Director-General has power to do all things necessary or convenient to be done for or in connection with the performance of the Director-General's functions.
- (4) The Director-General must perform the Director-General's functions and powers in ways that do not inappropriately impact on, or encroach on the functions, powers and responsibilities of:
 - (a) an intelligence agency; or
 - (b) an agency with an intelligence role or function; or
 - (c) a Department in relation to an intelligence agency or agency with an intelligence role or function in the same portfolio as the Department; or
 - (d) a person who holds any office or appointment under a law of the Commonwealth, being an office or appointment that relates to an agency within the national intelligence community or the national intelligence community more generally.
- (5) In particular, the Director-General's functions and powers do not include the following:
 - (a) directing an intelligence agency or an agency with an intelligence role or function to:
 - (i) carry out operational activities; or
 - (ii) allocate resources, or use particular methods, when carrying out such operational activities;
 - (b) conducting inquiries into individual complaints about the activities of:
 - (i) an intelligence agency; or
 - (ii) an agency with an intelligence role or function;
 - (c) directing the content of, or conclusions reached in, any intelligence communicated, or any advice given or assessments or reports prepared, by:

- (i) an intelligence agency; or
- (ii) an agency with an intelligence role or function;
- (d) inquiring into the legality, propriety or integrity of activities undertaken by:
 - (i) an intelligence agency; or
 - (ii) an agency with an intelligence role or function.
- (6) To avoid doubt, the reference to directing in paragraphs (5)(a) and (c) is not limited to directions given by the Director-General under section 20.

17 Prime Minister to be kept informed on matters relating to the national intelligence community

The Director-General must keep the Prime Minister informed on matters relating to the national intelligence community.

18 Leader of Opposition to be kept informed on significant intelligence matters

The Director-General must consult regularly with the Leader of the Opposition in the House of Representatives for the purpose of keeping the Leader of the Opposition informed on matters relating to intelligence that the Director-General considers significant.

19 Special responsibilities of the Director-General

The Director-General must take all reasonable steps to ensure that:

- (a) ONI is kept free from any influences or considerations not relevant to its functions; and
- (b) nothing is done that might lend colour to any suggestion that ONI is concerned to further or protect the interests of any particular section of the community, or with any matters other than the performance of its functions.

20 Director-General may give directions

- (1) If the Director-General considers it necessary to enable ONI to perform its function under paragraph 7(1)(a) (to lead the national
-

Section 20

intelligence community), the Director-General may give written directions to:

- (a) for the national intelligence community as a whole—the head of each agency within the community; or
- (b) for a class of agencies within the national intelligence community—the head of each agency within the class; or
- (c) the head of a particular intelligence agency or agency with an intelligence role or function.

Note: The Director-General and ONI must perform functions in ways that do not inappropriately impact on, or encroach on, the functions and responsibilities of intelligence agencies, see sections 10 and 16. In particular, for matters on which directions may not be given: see subsections 10(2) and 16(5).

- (2) Before giving a direction, the Director-General must consult with:
 - (a) the head of any agency mentioned in subsection (1) that would be affected by the proposed direction; and
 - (b) if AGO would be affected by the proposed direction—the head of AGO and the Secretary of the Defence Department; and
 - (c) if DIO would be affected by the proposed direction—the head of DIO and the Secretary of the Defence Department.
- (3) A direction given under this section in relation to an agency mentioned in subsection (1) has no effect to the extent that:
 - (a) the direction is inconsistent with a direction given to the agency or head of the agency by the Minister responsible for the agency; or
 - (b) the direction is inconsistent with a statutory rule made by the Minister responsible for the agency and applicable to the agency; or
 - (c) compliance with the direction would be inconsistent with a guideline given to the agency or head of the agency by the Minister responsible for the agency; or
 - (d) compliance with the direction would be directly inconsistent with obligations imposed on the agency or head of the agency by any other law of the Commonwealth.

- (4) Failure to comply with a direction given under this section cannot result in any sanction or penalty being imposed on:
- (a) an intelligence agency; or
 - (b) an agency with an intelligence role or function; or
 - (c) the head of an intelligence agency or an agency with an intelligence role or function.

Note: See also subsection 9(2).

- (5) A direction given under this section is not a legislative instrument.

21 Director-General may issue guidelines

- (1) To assist ONI's performance of its functions or the Director-General's performance of the Director-General's functions, the Director-General may, by written notice to the heads of the agencies within the national intelligence community, issue guidelines to be followed in relation to matters relevant to, or affecting:
- (a) the national intelligence community as a whole; or
 - (b) a class of agencies within the national intelligence community.

Note: The Director-General and ONI must perform functions in ways that do not inappropriately impact on, or encroach on, the functions and responsibilities of intelligence agencies: see sections 10 and 16. In particular, for matters on which guidelines may not be issued: see subsections 10(2) and 16(5).

- (2) Before issuing guidelines, the Director-General must consult with:
- (a) the heads of agencies within the national intelligence community that would be affected by the proposed guidelines; and
 - (b) if AGO would be affected by the proposed guidelines—the head of AGO and the Secretary of the Defence Department; and
 - (c) if DIO would be affected by the proposed guidelines—the head of DIO and the Secretary of the Defence Department.
- (3) Failure to comply with guidelines issued under this section cannot result in any sanction or penalty being imposed on:

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- (a) an intelligence agency; or
- (b) an agency with an intelligence role or function; or
- (c) the head of an intelligence agency or an agency with an intelligence role or function.

Note: See also subsection 9(2).

- (4) Guidelines issued under this section are not a legislative instrument.

22 Requests for reports or assessments

For the purpose of obtaining assistance in forming policies or plans by the Commonwealth Government, a Minister or prescribed Commonwealth officer may request that ONI prepare a report or make an assessment in accordance with paragraph 7(1)(c) or (d).

23 Consultation with National Assessments Board

- (1) The Director-General must consult the National Assessments Board in relation to each national assessment made by ONI, and if practicable, before providing the assessment.
- (2) If there is a significant difference of opinion between the Director-General and the National Assessments Board in relation to a national assessment, the Director-General and the Board must endeavour to reach agreement.
- (3) If the Director-General and the National Assessments Board are unable to reach agreement, the Director-General must give a statement to each person to whom the national assessment is provided that sets out the matter on which there is a difference of opinion.

Division 2—Appointment of the Director-General

24 Appointment

- (1) The Director-General is to be appointed by the Governor-General by written instrument, on a full-time basis.

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

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

25 Term of appointment

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

26 Acting appointments

- (1) The Prime Minister may, by written instrument, appoint a person to act as the Director-General:
 - (a) during a vacancy in the office of 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*.

- (2) Before the appointment of a person under subsection (1) to act as the Director-General, the Prime Minister must consult with the Leader of the Opposition in the House of Representatives, unless it is impracticable to do so.

Division 3—Terms and conditions of appointment

27 Remuneration and allowances

- (1) The Director-General 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 general rules.
- (2) The Director-General is to be paid the allowances that are prescribed by the general rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

28 Leave of absence

- (1) The Director-General has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Prime Minister may grant the Director-General leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Prime Minister determines.

29 Outside employment

The Director-General must not engage in paid work outside the duties of the Director-General's office without the Prime Minister's approval.

30 Resignation

- (1) The Director-General may resign the Director-General's 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.

31 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Director-General:
 - (a) for misbehaviour; or
 - (b) if the Director-General is unable to perform the duties of the Director-General's office because of physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of the Director-General if:
 - (a) the Director-General:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the Director-General's creditors; or
 - (iv) makes an assignment of the Director-General's remuneration for the benefit of the Director-General's 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 Prime Minister's approval, in paid work outside the duties of the Director-General's office (see section 29); 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.

32 Other terms and conditions

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

Division 4—Staff of ONI

33 Staff

- (1) The staff of ONI are to be:
 - (a) persons engaged under the *Public Service Act 1999*; and
 - (b) such other persons, if any, as the Director-General considers necessary for the performance of ONI's functions.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Director-General and the APS employees assisting the Director-General together constitute a Statutory Agency; and
 - (b) the Director-General is the Head of that Statutory Agency.

Staff of ONI who are not APS employees

- (3) A person mentioned in paragraph (1)(b) is to be employed on the terms and conditions that the Director-General determines in writing. Although such a person is not employed under the *Public Service Act 1999*, the Director-General must adopt the principles of that Act in relation to the person to the extent to which the Director-General considers they are consistent with the effective performance of ONI's functions.

34 Consultants

The Director-General may, on behalf of the Commonwealth, engage consultants to assist in the performance of ONI's functions.

35 Secondment of ONI employees

Secondment

- (1) The Director-General may, in writing, arrange for a member of ONI's staff 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 the member of ONI's staff is seconded under subsection (1), terminate the secondment.

36 Secondment of persons to ONI

- (1) The Director-General may, by written agreement with a body or organisation (whether inside 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 ONI to perform services in connection with the performance of its functions or the exercise of its powers.
- (2) The terms and conditions (including remuneration and allowances) applicable to a person performing services under an agreement are those specified in the agreement.

Part 4—Provisions relating to information

Division 1—Information gathering

37 Requirement to provide information, documents or things to ONI relating to international matters

- (1) For the purpose of ONI performing its function under paragraph 7(1)(c), the Director-General may make a written request that a Commonwealth authority provide information, documents or things in its possession that relate to:
 - (a) international matters of political, strategic or economic significance to Australia; or
 - (b) domestic aspects relating to such international matters.
- (2) Before making a written request of a Commonwealth authority under subsection (1), the Director-General must:
 - (a) consult with the Commonwealth authority; and
 - (b) consider any concerns raised by the Commonwealth authority, including concerns about:
 - (i) a contract, arrangement or understanding that would prohibit or limit the Commonwealth authority's ability to provide information, documents or things that would need to be provided in response to a request; or
 - (ii) the need to provide personal information (within the meaning of the *Privacy Act 1988*) in response to a request.
- (3) A Commonwealth authority must provide any information, documents or things to ONI in response to a written request by the Director-General under subsection (1), unless and to the extent that a law of the Commonwealth, or of a State or Territory prohibits the provision (however described) of the information, documents or things.

Note: For limits on the use that ONI may make of such information, documents or things: see section 40.

38 Ability to provide information, documents or things to ONI relating to international or other matters

- (1) For the purpose of ONI performing its function under paragraph 7(1)(c) or (d), a Commonwealth authority may provide to ONI information, documents or things that the head (however described) of the Commonwealth authority considers relates to matters of political, strategic or economic significance to Australia.

Note: Even though a Commonwealth authority may voluntarily provide information, documents or things under this section, the Commonwealth authority may be required to provide the same information, documents or things in response to a request made under section 37.

- (2) To avoid doubt, a Commonwealth authority may provide information, documents or things to ONI under this section even if doing so would not otherwise fall within the Commonwealth authority's statutory functions.

39 Ability of agencies to provide information, documents or things to ONI relating to its functions

- (1) For the purpose of ONI performing its functions, an intelligence agency or agency with an intelligence role or function may provide to ONI information, documents or things that relate, or may relate, to any of ONI's functions.

Note: Even though an intelligence agency or agency with an intelligence role or function may voluntarily provide information, documents or things under this section, if the agency is a Commonwealth authority, the agency may be required to provide the same information, documents or things in response to a request made under section 37.

- (2) To avoid doubt, an intelligence agency or agency with an intelligence role or function may provide information, documents or things to ONI under this section even if doing so would not otherwise fall within the agency's statutory functions.

40 Use of information, documents or things

- (1) If information, documents or things are provided to ONI under section 37, the Director-General must ensure that the information,

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documents and things are only used for the purpose of ONI performing its function under paragraph 7(1)(c), unless the head (however described) of the relevant Commonwealth authority gives written authorisation for the subsequent use of information, documents or things in relation to:

- (a) the performance of another of ONI's functions; or
 - (b) the exercise of ONI's powers; or
 - (c) the performance of the Director-General's functions; or
 - (d) the exercise of the Director-General's powers.
- (2) To avoid doubt, ONI does not contravene subsection (1) in relation to information, documents and things if:
- (a) the information, a document or thing is mentioned or referred to in any way in an assessment or report prepared under paragraph 7(1)(c); and
 - (b) anything is done in relation to an assessment or report prepared under paragraph 7(1)(c) that is otherwise allowed by this Act or the general rules.

41 Protection of information, documents or things

- (1) If information, documents or things are provided to ONI under this Division by an intelligence agency or agency with an intelligence role or function, the Director-General must make arrangements with the head of the relevant agency for the protection of the information, documents or things while they remain in ONI's possession.
- (2) If such arrangements are not made, ONI must take all reasonable steps to ensure:
 - (a) the appropriate storage, access, use or further disclosure of the information or documents, according to their sensitivity or classification; and
 - (b) in relation to a thing:
 - (i) the appropriate storage, access or use of the thing; and
 - (ii) the appropriate further disclosure of information or documents generated from the thing;according to the thing's sensitivity or classification.

(3) Subsection (2) is subject to section 40.

Division 2—Secrecy

42 Offence—communicating certain information

Communication of information or matter

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

Penalty: Imprisonment for 10 years.

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 IGIS officials

- (3) Subsection (1) does not apply if the person communicates the information or matter to an IGIS official for the purpose of the IGIS official exercising a power, or performing a function or duty, as an IGIS official.

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

Extended geographical jurisdiction

- (4) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

44 Offences—dealing with and making records

Unauthorised dealing with records

- (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) the person being, or having been, a staff member of ONI; or

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- (ii) the person having entered into any contract, agreement or arrangement with ONI; or
- (iii) the person having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ONI; and
- (c) the record:
 - (i) was acquired or prepared by or on behalf of ONI in connection with its functions; or
 - (ii) relates to the performance by ONI 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 ONI; or
 - (iii) by the person acting within the limits of authority conferred on the person by the Director-General; or
 - (iv) with the approval of the Director-General or a staff member having the authority of the Director-General to give such an approval.

Penalty: Imprisonment for 3 years.

Unauthorised recording of information or matter

- (2) 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) the person being, or having been, a staff member of ONI; or
 - (ii) the person having entered into any contract, agreement or arrangement with ONI; or
 - (iii) the person having been an employee or agent of a person who has entered into a contract, agreement or arrangement with ONI; and
 - (c) the information or matter:
 - (i) was acquired or prepared by or on behalf of ONI in connection with its functions; or

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

Penalty: Imprisonment for 3 years.

Exception—record, information or matter lawfully available

- (3) Subsection (1) does not apply to a record, and subsection (2) 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 (3): see subsection 13.3(3) of the *Criminal Code*.

Exception—dealing with or making record for IGIS officials

- (4) Subsection (1) does not apply if the person deals with, and subsection (2) does not apply if the person makes, the record for the purpose of an IGIS official exercising a power, or performing a function or duty, as an IGIS official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

Extended geographical jurisdiction

- (5) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against this section.

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Alternative verdicts

- (6) In a prosecution for an offence against subsection (1), the trier of fact may find the defendant not guilty of that offence but guilty of an offence against subsection (2) if:
- (a) the trier of fact:
 - (i) is not satisfied that the defendant is guilty of the offence against subsection (1); but
 - (ii) is satisfied beyond reasonable doubt that the defendant is guilty of the offence against subsection (2); and
 - (b) the defendant has been accorded procedural fairness in relation to that finding of guilt.
- (7) In a prosecution for an offence against subsection (2), the trier of fact may find the defendant not guilty of that offence but guilty of an offence against subsection (1) if:
- (a) the trier of fact:
 - (i) is not satisfied that the defendant is guilty of the offence against subsection (2); but
 - (ii) is satisfied beyond reasonable doubt that the defendant is guilty of the offence against subsection (1); and
 - (b) the defendant has been accorded procedural fairness in relation to that finding of guilt.

45 Instituting prosecutions for offences against this Division

- (1) A prosecution under this Division may be instituted only by or with the consent of:
- (a) the Attorney-General; or
 - (b) a person acting under the Attorney-General's direction.
- (2) However:
- (a) a person charged with an offence against this Division may be arrested, or a warrant for the person's 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 the Attorney-General's direction has not been obtained, but

no further proceedings are to be taken until that consent has been obtained.

- (3) Nothing in subsection (1) or (2) prevents the discharging of the accused if proceedings are not continued within a reasonable time.

46 Offences against this Division—IGIS officials

- (1) A person does not commit an offence against this Division 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 this Division, the defendant does not bear an evidential burden in relation to the matter in subsection (1) of this section, despite subsection 13.3(3) of the *Criminal Code*.

Part 5—Administration

Division 1—National Assessments Board

47 National Assessments Board

- (1) The National Assessments Board continues in existence.
- (2) The National Assessments Board's functions are:
 - (a) to consider which assessments made by ONI are national assessments; and
 - (b) to consider national assessments.

Note: After the Board considers which assessments made by ONI are to be national assessments, the Director-General decides whether they are: see paragraph 16(1)(d).

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- (1) The National Assessments Board consists of:
 - (a) the Director-General; and
 - (b) an official of the Department of the Prime Minister and Cabinet; and
 - (c) an official of the Department of Foreign Affairs and Trade; and
 - (d) an official of the Defence Department; and
 - (e) an official of the Department of Home Affairs; and
 - (f) an official of the Department of the Treasury; and
 - (g) a member of the Defence Force; and
 - (h) such other persons as the Prime Minister directs.
- (2) For the purposes of a particular national assessment, the Director-General may add one or more persons to the membership of the National Assessments Board.

49 Holding of meetings

- (1) The Director-General must hold such meetings as are necessary for the efficient performance of the National Assessment Board's functions.
- (2) The Director-General may convene a meeting at any time.

50 Presiding at meetings

- (1) The Director-General presides at all meetings of the National Assessments Board.
- (2) The Director-General may direct the procedure to be followed at a meeting.

51 Officials to attend meetings

When a national assessment is under consideration by the National Assessments Board at a meeting, the Director-General must take reasonable steps to ensure that representatives of Departments and agencies appropriate to the subject matter of the national assessment are present.

Division 2—Committees

52 Committees

- (1) The Director-General may establish committees to advise or assist in the performance of ONI's functions.
- (2) The Director-General may determine, in relation to a committee established under this section:
 - (a) the committee's terms of reference; and
 - (b) the terms and conditions of appointment of the members of the committee; and
 - (c) the procedures to be followed by the committee.
- (3) The members of the committee (other than a member who is a person mentioned in paragraph 6(2)(c)) are not officials for the purposes of the *Public Governance, Performance and Accountability Act 2013*.
- (4) A determination made under subsection (2) is not a legislative instrument.

Division 3—Privacy rules

53 Privacy rules to protect Australians

- (1) The Prime Minister must make rules (the *privacy rules*) regulating:
 - (a) the collection of information mentioned in paragraph 7(1)(g), to the extent that information is identifiable information; and
 - (b) the communication, handling and retention by ONI of identifiable information.
 - (2) The Prime Minister may make privacy rules dealing with other matters if the Prime Minister considers it appropriate to do so.
 - (3) In making the privacy rules, the Prime Minister must have regard to the need to ensure that the privacy of Australian citizens and permanent residents is preserved as far as is consistent with the proper performance by ONI of its functions.
 - (4) Before making the privacy rules, the Prime Minister must consult with the Director-General, the Inspector-General of Intelligence and Security, the Privacy Commissioner and the Attorney-General, including by providing those persons with a copy of the privacy rules the Prime Minister is proposing to make.
 - (4A) The privacy rules must be published on ONI's website as soon as practicable after the rules are made, except to the extent that the rules contain information that has a protective security classification.
 - (5) ONI must not collect or communicate identifiable information, except in accordance with the privacy rules.
 - (6) The Inspector-General of Intelligence and Security must brief the Parliamentary Joint Committee on Intelligence and Security on the content and effect of the privacy rules if:
 - (a) the Committee requests the Inspector-General to do so; or
 - (b) the privacy rules change.
 - (7) To avoid doubt, the privacy rules may not do the following:
 - (a) create an offence or civil penalty;
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- (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (8) Privacy rules made under this section are not legislative instruments.

Part 6—Miscellaneous

54 Delegation

- (1) The Director-General may, by written instrument, delegate any of the Director-General's functions or powers under this Act or the general rules (other than those mentioned in subsection (2)) to a person who holds, or performs the duties of, an SES position, or an equivalent position, in ONI.
- (2) Subsection (1) does not apply to the following functions and powers:
 - (aa) the power to approve an authority of another country under subsection 13(2);
 - (a) the power to give written directions under section 20;
 - (b) the power to issue guidelines under section 21;
 - (c) the power to make a written request under section 37.

55 General rules

- (1) The Prime Minister may, by legislative instrument, make rules (the **general rules**) prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the general rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.

*[Minister's second reading speech made in—
House of Representatives on 28 June 2018
Senate on 29 November 2018]*

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