



National Security Information (Criminal and Civil Proceedings) Regulation 2015

Select Legislative Instrument No. 26, 2015

I, the Honourable Alex Chernov AC QC, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 26 March 2015

Alex Chernov
Administrator

By His Excellency's Command

George Brandis QC
Attorney-General

OPC61142 - B

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Part 1—Preliminary

1 Name

This is the *National Security Information (Criminal and Civil Proceedings) Regulation 2015*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Purpose and application

- (1) This instrument prescribes:
 - (a) for subsections 23(1) and 38C(1) of the Act:
 - (i) requirements for accessing, storing, handling and destroying security classified documents and national security information; and
 - (ii) requirements for creating or preparing documents that relate to security classified documents or national security information; and
 - (b) for paragraphs 24(2)(a) and 38D(3)(a) of the Act—the form of a notice of expected disclosure; and
 - (c) related matters.

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Note: A person who contravenes a requirement prescribed for subsection 23(1) or 38C(1) of the Act by this instrument may commit an offence (see sections 45A and 46FA of the Act).

- (2) This instrument does not apply in relation to a security classified document, or national security information, that is the subject of an order that is in force under section 22 or 38B of the Act (whether the order was made before or after the commencement of this instrument).

Note: See subsections 23(2) and 38C(2) of the Act.

6 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) civil proceeding;
- (b) court official;
- (c) document;
- (d) federal criminal proceeding;
- (e) national security information.

In this instrument:

Act means the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

approved information and communications technology equipment, for a security classified document or national security information to which a particular security classification is, or is to be, assigned, means information and communications technology equipment that is supplied, or approved, by the Commonwealth for security classified documents or national security information to which that security classification is, or is to be, assigned.

authorised recipient, in relation to a security classified document or national security information, means a person to whom the document or information has been disclosed, or may be disclosed, in a federal criminal proceeding or a civil proceeding in accordance with:

- (a) a certificate, hearing, decision, notice, order or other process under the Act; or

- (b) an order or process of the court in the proceeding; or
 - (c) a written authorisation given by the Attorney-General or a representative of the Attorney-General in the proceeding;
- but does not include a judicial officer.

Class B security container means a security container that is fitted with an SCEC-endorsed combination lock.

classified document register means a register that includes details about security classified documents that are received, created, prepared or transferred in hard copy form.

Note: See section 15.

copy means to record or reproduce information in any medium.

discrete area means an area within an enclosed building or office where:

- (a) public access is restricted; and
- (b) access by employees is controlled; and
- (c) access by visitors is strictly controlled and is on a needs basis.

judicial officer means a magistrate or a judge.

SCEC (short for Security Construction and Equipment Committee) means the Commonwealth Government interdepartmental committee that approves protective security products and endorses protective security services.

security classification means a protective marking assigned by the Commonwealth to national security information to indicate:

- (a) the value of the information; and
- (b) the minimum level of protection that the information must be afforded to protect it from compromise when it is being used, stored, transmitted, transferred or disposed of.

Examples: The following are examples of security classifications that may be, or may have been, assigned by the Commonwealth to national security information:

- (a) Protected;
- (b) Confidential;

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- (c) Secret;
- (d) Top Secret;
- (e) Codeword material;
- (f) Restricted.

security classified document means:

- (a) a document that is disclosed, or to be disclosed, in a federal criminal proceeding or a civil proceeding:
 - (i) to which a security classification has been assigned; or
 - (ii) that the Attorney-General, or a representative of the Attorney-General in the proceeding, has stated, in writing, is a security classified document; or
- (b) a document that includes national security information that is disclosed, or to be disclosed, in a federal criminal proceeding or a civil proceeding; or
- (c) a document that includes national security information that is included in a document referred to in paragraph (a) or (b); or
- (d) a document that is or was created or prepared as referred to in paragraph 8(1)(a) or (b) for the purpose of a federal criminal proceeding or a civil proceeding.

security classified document storage area means an area in which entry and openings are secured at all times to limit access to the following:

- (a) an authorised recipient in relation to security classified documents or national security information stored in the area;
- (b) a person in the company of such an authorised recipient;
- (c) a person authorised to access the area by such an authorised recipient;
- (d) a judicial officer.

7 References to federal criminal proceeding or civil proceeding

In this instrument:

- (a) a reference to a federal criminal proceeding is a reference to a federal criminal proceeding to which the Act applies under section 6 of the Act; and

- (b) a reference to a civil proceeding is a reference to a civil proceeding to which the Act applies under section 6A of the Act.

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**Part 2—Protection of security classified documents
and national security information**

**8 Creation or preparation of documents relating to security
classified documents or national security information**

- (1) This section applies to:
 - (a) an authorised recipient in relation to a security classified document who creates or prepares a document (including a court record referred to in subsection 29(5) or 38I(5) of the Act) that includes information included in the security classified document; and
 - (b) an authorised recipient in relation to national security information that is disclosed, or to be disclosed, in a federal criminal proceeding or a civil proceeding, who creates or prepares a document (including a court record referred to in subsection 29(5) or 38I(5) of the Act) that includes the national security information.
- (2) The authorised recipient must create or prepare the document in a discrete area.
- (3) If the document is to be created or prepared in electronic form, the authorised recipient must do so by means of approved information and communications technology equipment for the document.
- (4) The authorised recipient must ensure that the document is assigned a security classification that is equivalent to the most highly classified information included in the document.
- (5) The security classification assigned to the document must be clearly recorded at the top and bottom of each page of the document.
- (6) If the authorised recipient has any doubt about the security classification to be assigned to the document under subsection (4), the recipient must consult with the Commonwealth as to the appropriate classification to be assigned to the document.

Note: If the document is created or prepared in hard copy form, the authorised recipient must ensure that the document is recorded on the classified document register maintained by the recipient or to which the recipient has access (see section 15).

9 Copying security classified documents

- (1) An authorised recipient in relation to a security classified document must not copy the document or any part of the document, or any information in the document, except in accordance with section 8.
- (2) An authorised recipient in relation to a security classified document may request, in writing, the Attorney-General, or a representative of the Attorney-General in the proceeding to which the document relates, to give the recipient one or more copies of the document.
- (3) A request under subsection (2) must state:
 - (a) the number of copies of the document required; and
 - (b) the full name of the authorised recipient making the request; and
 - (c) the full name of each other authorised recipient in relation to the document who is to be given a copy of the document.

10 Storage of security classified documents in hard copy form

- (1) An authorised recipient in relation to a security classified document that is in hard copy form must store the document in a locked Class B security container.
- (2) The security container must have a combination that is not known by any person other than:
 - (a) an authorised recipient in relation to all the security classified documents stored in the container; or
 - (b) an APS employee whose duties include responsibilities relating to the container.
- (3) The security container must, subject to subsection (4), be located in a security classified document storage area.

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- (4) If any of the security classified documents stored in the security container are assigned the security classification Top Secret or Codeword material, the security container must be located in an area approved by the Commonwealth for the purpose of storing documents with that security classification.
- (5) A person must not remove a security classified document from the security container unless:
 - (a) either:
 - (i) the person is an authorised recipient in relation to the document, and the person needs to remove the document for the purpose of the proceeding to which the document relates; or
 - (ii) the person is a judicial officer; and
 - (b) if the security container is located in an area approved by the Commonwealth for the purpose of storing documents that are assigned the security classification Top Secret or Codeword material—the person is permitted by the Commonwealth to access the area.

Note: Arrangements may need to be made with the Commonwealth to permit an authorised recipient in relation to the document, or a judicial officer, to access the area where the security container is located.

- (6) If an authorised recipient in relation to a security classified document that is assigned the security classification Top Secret or Codeword material removes the document from the security container (other than for the purpose of transferring the document to another authorised recipient in relation to the document), the recipient must:
 - (a) make a written record of the following:
 - (i) the authorised recipient's full name;
 - (ii) the date and time when the document was removed;
 - (iii) the place where the document is to be taken; and
 - (b) put the record in the security container.

Note: If the authorised recipient transfers the document to another authorised recipient in relation to the document, the authorised recipient who transfers the document must ensure that certain information is recorded on the classified document register maintained by the recipient or to which the recipient has access (see section 15).

11 Storage and transmission of security classified documents or national security information in electronic form

- (1) An authorised recipient in relation to a security classified document or national security information:
 - (a) must not store the document or information in electronic form except on approved information and communications technology equipment for the document or information; and
 - (b) must not transmit the document or information in electronic form unless the equipment used to transmit and to receive the document or information is approved information and communications technology equipment for the document or information.
- (2) When the approved information and communications technology equipment is not being used, the equipment must, subject to subsection (3):
 - (a) be stored in a locked Class B security container located in a security classified document storage area; or
 - (b) if it is too large to be stored in a Class B security container—be located in a security classified document storage area.
- (3) If any of the security classified documents or national security information stored on, or transmitted by or to, the approved information and communications technology equipment are assigned the security classification Top Secret or Codeword material, the equipment must be located in an area approved by the Commonwealth for the purpose of storing documents or information with that security classification.
- (4) A Class B security container in which the approved information and communications technology equipment is stored must have a combination that is not known to any person other than:
 - (a) an authorised recipient in relation to all the security classified documents and national security information stored in the container; or
 - (b) an APS employee whose duties include responsibilities relating to the container.

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- (5) A person must not access approved information and communications technology equipment, or remove it from a security container, unless:
- (a) either:
 - (i) the person is an authorised recipient in relation to all the security classified documents and national security information stored on, or transmitted by or to, the equipment, and the person needs to access any of those documents or information for the purpose of the proceeding to which the documents or information relate; or
 - (ii) the person is a judicial officer; and
 - (b) if the equipment is located in an area approved by the Commonwealth for the purpose of storing documents or information that are assigned the security classification Top Secret or Codeword material—the person is permitted by the Commonwealth to access the area.

Note: Arrangements may need to be made with the Commonwealth to permit an authorised recipient in relation to the document or information, or a judicial officer, to access the area where the equipment is located.

- (6) When the approved information and communications technology equipment is not being used and, if it is capable of being secured by a password, the equipment must be secured by a password that is not known by any person other than:
- (a) an authorised recipient in relation to all the security classified documents and national security information stored on, or transmitted by or to, the equipment who is handling the equipment for the purposes of the proceeding to which the documents or information relates; or
 - (b) an APS employee whose duties include responsibilities relating to the equipment.
- (7) Subsection (8) applies in relation to the approved information and communications technology equipment if:
- (a) a security classified document or national security information that is assigned the security classification Top

- Secret or Codeword material is stored on, or has been transmitted by or to, the equipment; and
- (b) the equipment is stored in a Class B security container.
- (8) If the approved information and communications technology equipment is removed from the security container by an authorised recipient in relation to a security classified document or national security information stored on, or transmitted by or to, the equipment, the recipient must:
- (a) make a written record of the following:
- (i) the authorised recipient's full name;
 - (ii) the date and time when the equipment was removed;
 - (iii) the place where the equipment is to be taken; and
- (b) put the record in the security container.

12 Handling security classified documents

- (1) An authorised recipient in relation to a security classified document may only handle the document for the purpose of the proceeding to which the document relates.
- (2) Except for the purpose of carrying the security classified document or using it in court, the authorised recipient may only:
- (a) if the document is assigned the security classification Top Secret or Codeword material—handle the document in an area approved by the Commonwealth for the purpose of handling documents with that security classification; or
- (b) in any other case—handle the document in a discrete area.
- (3) When handling the document, the authorised recipient must ensure that the document cannot be viewed by any person other than:
- (a) an authorised recipient in relation to the document; or
- (b) a judicial officer.

13 Handling approved information and communications technology equipment

- (1) Approved information and communications technology equipment on which a security classified document or national security

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information is stored may be handled only by an authorised recipient in relation to the document or information for the purpose of the proceeding to which the document or information relates.

- (2) Except when the approved information and communications technology equipment is being carried or used in court, the authorised recipient may only:
 - (a) if any security classified document or national security information stored on the equipment is assigned the security classification Top Secret or Codeword material—handle the equipment in an area approved by the Commonwealth for the purpose of handling documents or information with that security classification; or
 - (b) in any other case—handle the equipment in a discrete area.
- (3) When handling the approved information and communications technology equipment, the authorised recipient must ensure that any security classified document or national security information stored on the equipment cannot be viewed by any person other than:
 - (a) an authorised recipient in relation to the document or information; or
 - (b) a judicial officer.

14 Carrying security classified documents

- (1) An authorised recipient in relation to a security classified document must, when carrying the document in a discrete area, ensure that the document cannot be viewed by any person other than:
 - (a) an authorised recipient in relation to the document; or
 - (b) a judicial officer.
- (2) An authorised recipient in relation to a security classified document must not carry the document in an area other than a discrete area unless:
 - (a) the document is inside 2 SCEC-approved single use bags; and

- (b) the document is in a locked container approved by the SCEC; and
 - (c) any keys for the container are removed from the container and are retained by the authorised recipient; and
 - (d) the document remains in the custody and control of the authorised recipient.
- (3) An authorised recipient in relation to a security classified document (including a security classified document that is in a locked security container) must not give the document to another person for the purpose of carrying it unless the other person is:
 - (a) an SCEC endorsed courier; or
 - (b) another authorised recipient in relation to the document; or
 - (c) a judicial officer.
- (4) A security classified document that is to be given to an SCEC endorsed courier must be inside 2 SCEC-approved single use bags.

15 Classified document register

- (1) An authorised recipient in relation to a security classified document must maintain, or have access to, a classified document register.
- (2) As soon as practicable after an authorised recipient receives, creates or prepares a security classified document in hard copy form, or transfers such a document to another person, the recipient must record the following information in the classified document register:
 - (a) if the document has a unique reference number—that number;
 - (b) the title or subject of the document;
 - (c) the security classification of the document;
 - (d) the authorised recipient's full name;
 - (e) the date the authorised recipient received, created, prepared or transferred the document;
 - (f) if the document was transferred—the name of the person to whom the document was transferred;

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- (g) details of any carriage of the document, including the date of the carriage.
- (3) However, an authorised recipient must not record any national security information in the register.
- (4) For the purposes of this section, an authorised recipient who removes a security classified document from a security container as referred to in section 10 is not taken to have received the document.

16 Security classified documents and national security information to remain in Australia

An authorised recipient in relation to a security classified document or national security information must not take, or send (including by electronic transmission), the document or information out of Australia without the permission of the Commonwealth.

17 Return and destruction of security classified documents

- (1) This section does not apply in relation to security classified documents that are in the possession of a court or a registry of a court.
- (2) This section:
 - (a) has effect subject to the *Archives Act 1983* and is not a requirement for the purposes of paragraph 24(2)(a) of that Act; and
 - (b) has effect subject to any law of a State or Territory that makes provision in relation to the archiving of documents.

Note: This subsection preserves the operation of the *Archives Act 1983* and equivalent State and Territory laws in relation to security classified documents to which those laws apply. This section will not apply in relation to the documents.

- (3) Subject to subsection (4), an authorised recipient who has custody or control of a security classified document that relates to a federal criminal proceeding or a civil proceeding must give the document

to a representative of the Attorney-General in the proceeding within 28 days after the conclusion of the proceeding.

- (4) If the authorised recipient is a legal representative who has ceased to act for a party in the proceeding, the recipient must, within 28 days after ceasing to act, give the security classified document to:
 - (a) a representative of the Attorney-General in the proceeding; or
 - (b) the new legal representative (if any) of the party.
- (5) If, under subsection (3) or (4), a security classified document is given to a representative of the Attorney-General in hard copy form, the representative must ensure that the document is destroyed in accordance with Commonwealth requirements.
- (6) If, under subsection (3) or (4), a security classified document is given to a representative of the Attorney-General in electronic form, the representative must ensure that:
 - (a) the document is deleted from the approved information and communications technology equipment on which it is stored, in accordance with Commonwealth requirements; and
 - (b) as far as practicable, all record of the document is removed from that equipment, including, if necessary, by destroying all or part of the equipment in accordance with Commonwealth requirements.
- (7) If an authorised recipient gives a security classified document to a representative of the Attorney-General under subsection (3) or (4), the authorised recipient may view:
 - (a) the destruction of the document under subsection (5); or
 - (b) the deletion of the document under subsection (6).

18 Return of Commonwealth property relating to security classified documents

If an authorised recipient has custody and control of Commonwealth property relating to a security classified document for the purpose of a federal criminal proceeding or a civil proceeding, the authorised recipient must return the property to the Attorney-General's Department, or a representative of the

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Attorney-General in the proceeding, within 28 days after the earlier of the following:

- (a) the conclusion of the proceeding;
- (b) if the authorised recipient is a legal representative who has ceased to act in the proceeding—the recipient ceasing to act in the proceeding.

Part 3—Expected disclosure

19 Notice by prosecutor, defendant or defendant's legal representative of expected disclosure

For paragraph 24(2)(a) of the Act, Form 1 of Schedule 1 is prescribed.

20 Notice by party or party's legal representative of expected disclosure

For paragraph 38D(3)(a) of the Act, Form 2 of Schedule 1 is prescribed.

Part 4—Application and transitional provisions

21 Application of this instrument

This instrument applies in relation to:

- (a) a security classified document that is disclosed, or to be disclosed, in or for the purpose of:
 - (i) a federal criminal proceeding or a civil proceeding that had commenced before the commencement of this instrument but had not been finally determined before that commencement; or
 - (ii) a federal criminal proceeding or a civil proceeding that is commenced after the commencement of this instrument; and
- (b) national security information that is disclosed, or to be disclosed, in:
 - (i) a federal criminal proceeding or a civil proceeding that had commenced before the commencement of this instrument but had not been finally determined before that commencement; or
 - (ii) a federal criminal proceeding or a civil proceeding that is commenced after the commencement of this instrument.

Schedule 1—Forms

Note: See sections 19 and 20.

Form 1—Notice of expected disclosure of national security information in a federal criminal proceeding

COMMONWEALTH OF AUSTRALIA

National Security Information (Criminal and Civil Proceedings) Act 2004

NOTICE BY *PROSECUTOR/*DEFENDANT/*DEFENDANT'S LEGAL
REPRESENTATIVE OF EXPECTED DISCLOSURE OF NATIONAL
SECURITY INFORMATION IN A FEDERAL CRIMINAL PROCEEDING

TO The Attorney-General

1. I, [name], am the *prosecutor/*defendant/*defendant's legal representative in the following federal criminal proceeding: [name or description of proceeding].
2. I give notice under section 24 of the *National Security Information (Criminal and Civil Proceedings) Act 2004* that I *know/*believe that:
 - *(a) I will disclose national security information in the proceeding.
 - *(b) The person known as [name or code] whom I intend to call as a witness will disclose national security information *in giving evidence/*by the person's mere presence in the proceeding.
 - *(c) The person known as [name or code] is required by subpoena or other order of the court, issued or made on my application, to disclose national security information, other than as a witness, in the proceeding.
- *3. The national security information that will be disclosed is [include a description of the information].

OR

Schedule 1 Forms

Form 1 Notice of expected disclosure of national security information in a federal criminal proceeding

-
- *3. The national security information that will be disclosed is contained in the following *document/*documents: *[give details of each document, for example, the title, author and date of issue, if applicable]*.

A copy of each document, or the relevant extract from each document that contains the national security information, accompanies this notice.

Dated:

.....
[signature of *prosecutor/*defendant/*defendant's legal representative]
[Insert particulars of person signing this notice, including: full name; full address; telephone number; fax number; email address; and (if not already inserted) name, address, telephone number, fax number and email address of defendant's legal representative.]

* Omit if not applicable.

Note: The person giving this notice must advise the court and the other people involved in the proceeding that the notice has been given (see subsection 24(3) of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

Form 2—Notice of expected disclosure of national security information in a civil proceeding

COMMONWEALTH OF AUSTRALIA

National Security Information (Criminal and Civil Proceedings) Act 2004

NOTICE BY *PARTY/*PARTY'S LEGAL REPRESENTATIVE OF EXPECTED DISCLOSURE OF NATIONAL SECURITY INFORMATION IN A CIVIL PROCEEDING

TO *The Attorney-General/*The Minister appointed under subsection 6A(3) of the *National Security Information (Criminal and Civil Proceedings) Act 2004*/*The Minister appointed under subsection 6A(4) of the *National Security Information (Criminal and Civil Proceedings) Act 2004*

1. I, [name], am *a party/*the legal representative of a party to the following civil proceeding: [name or description of proceeding].
2. I give notice under section 38D of the *National Security Information (Criminal and Civil Proceedings) Act 2004* that I *know/*believe that:
 - *(a) I will disclose national security information in the proceeding.
 - *(b) The person known as [name or code] whom I intend to call as a witness in the proceeding will disclose national security information *in giving evidence/*by the person's mere presence in the proceeding.
 - *(c) The person known as [name or code] is required by subpoena or other order of the court, issued or made on my application, to disclose national security information, other than as a witness, in the proceeding.
- *3. The national security information that will be disclosed is [include a description of the information].

OR

Schedule 1 Forms

Form 2 Notice of expected disclosure of national security information in a civil proceeding

-
- *3. The national security information that will be disclosed is contained in the following *document/*documents: *[give details of each document, for example, the title, author and date of issue, if applicable]*.

A copy of each document, or the relevant extract from each document that contains the national security information, accompanies this notice.

Dated:

.....
[signature of *party/*party's legal representative]

[Insert particulars of person signing this notice, including: full name; full address; telephone number; fax number; email address; and (if not already inserted) name, address, telephone number, fax number and email address of party's legal representative.]

* Omit if not applicable.

Note: The person giving this notice must advise the court and the other people involved in the proceeding that the notice has been given (see subsection 38D(4) of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

Schedule 2—Repeals

National Security Information (Criminal and Civil Proceedings) Regulations 2005

1 The whole of the Regulations

Repeal the Regulations.

<i>No. 26, 2015</i>	<i>National Security Information (Criminal and Civil Proceedings) Regulation 2015</i>	<i>23</i>
<i>OPC61142 - B</i>		