



Australian Security Intelligence Organisation Regulation 2016

made under the

Australian Security Intelligence Organisation Act 1979

Compilation No. 3

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Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Australian Security Intelligence Organisation Regulation 2016* that shows the text of the law as amended and in force on 20 March 2024 (the *compilation date*).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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1 Name

This is the *Australian Security Intelligence Organisation Regulation 2016*.

3 Authority

This instrument is made under the *Australian Security Intelligence Organisation Act 1979*.

5 Definitions

In this instrument:

Act means the *Australian Security Intelligence Organisation Act 1979*.

affected person:

- (a) in relation to an internally reviewable decision—has the meaning given by section 82H of the Act; and
- (b) in relation to an externally reviewable decision—has the meaning given by section 83 of the Act; and
- (c) in relation to an independently reviewable decision—has the meaning given by section 83EA of the Act.

externally reviewable decision has the meaning given by section 83 of the Act.

independently reviewable decision has the meaning given by section 83EA of the Act.

independent reviewer means a person engaged as an independent reviewer under section 83EF of the Act.

internally reviewable decision has the meaning given by section 82H of the Act.

internal reviewer has the meaning given by subsection 82L(1) of the Act.

security information means information to which access is controlled or limited on security grounds, otherwise than by section 8.

6 Co-operation with intelligence and law enforcement agencies etc.

For paragraph 19A(1)(e) of the Act, the Defence Department is prescribed.

7 Secrecy relating to questioning warrants

For the purposes of subsection 34GF(6) of the Act, a prescribed authority must not give a direction to a lawyer for the subject of a questioning warrant to communicate to anyone else information that:

- (a) is obtained during:
 - (i) questioning of the subject under the warrant; or
 - (ii) apprehension of the subject in connection with the warrant; and

- (b) relates to:
 - (i) sources or holdings of intelligence; or
 - (ii) the Organisation's method of operations.

Note: A disclosure of information in contravention of a direction given by a prescribed authority under subsection 34GF(6) of the Act may not be a permitted disclosure for the purposes of section 34GF of the Act.

8 Lawyers' access to security information for proceedings relating to warrant

- (1) For the purposes of section 34FH of the Act, this section regulates access to security information by a lawyer acting for a person in connection with proceedings for a remedy relating to:
 - (a) a questioning warrant in relation to the person; or
 - (b) the treatment of the person in connection with such a warrant.
- (2) Access to security information may be given to the lawyer only if:
 - (a) the lawyer has been given a security clearance in relation to the information at the level considered appropriate by the Secretary of the Department; or
 - (b) the Secretary of the Department is satisfied that giving the lawyer access to the information would not be prejudicial to the interests of security.

Note: Security clearances are given in accordance with the Australian Government Protective Security Policy Framework.

- (3) Access to security information may be given to the lawyer subject to any conditions that the Secretary of the Department considers appropriate, including conditions relating to the use, handling, storage or disclosure of the information.
- (4) Nothing in this section entitles a lawyer who has been given a security clearance to be given access to security information.

9 Prescribed information—review of security assessments under Part IV of the Act

For the purposes of subsections 38(1) and 38A(2) of the Act, the prescribed information concerning a person's right to apply to the Administrative Appeals Tribunal under Part IV of the Act is the information set out in Schedule 1 to this instrument.

10 Prescribed information—internally reviewable decision under Part IVA of the Act

For the purposes of subsection 82J(2) of the Act, the following information is prescribed for a notice given to an affected person in relation to an internally reviewable decision referred to in subsection 82J(1) of the Act:

- (a) a statement that the Organisation is an exempt agency under subsection 7(1) of the *Freedom of Information Act 1982* and the affected person is not able to obtain access to documents or information about the decision under that Act;

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- (b) information about the following matters:
- (i) how an affected person may seek review, by an internal reviewer, of the internally reviewable decision, including how the application for that review is to be made;
 - (ii) whether there are any time limits for seeking that review and, if so, what those time limits are;
 - (iii) whether or not a fee is payable for that review and, if so, the amount of the fee and when it is payable;
 - (iv) whether the internal reviewer is required to conduct the review within a particular period and, if so, what that period is;
 - (v) any procedures of the internal reviewer that the Organisation considers that an affected person should be made aware of, including whether an affected person may be contacted by the internal reviewer.

11 Prescribed information—externally reviewable decision under Part IVA of the Act

For the purposes of subsection 82L(6) or 83A(2) of the Act, the following information is prescribed for a notice given to an affected person in relation to an externally reviewable decision referred to in subsection 82L(5) or 83A(1) of the Act:

- (a) a statement that the Organisation is an exempt agency under subsection 7(1) of the *Freedom of Information Act 1982* and the affected person is not able to obtain access to documents or information about the decision under that Act;
- (b) information about the following matters:
 - (i) how an affected person may seek review, by the Administrative Appeals Tribunal, of the externally reviewable decision, including how the application for that review is to be made;
 - (ii) whether there are any time limits for seeking that review and, if so, what those time limits are;
 - (iii) whether or not a fee is payable for that review and, if so, the amount of the fee and when it is payable;
 - (iv) whether the Administrative Appeals Tribunal is required to conduct the review within a particular period and, if so, what that period is;
 - (v) any procedures of the Administrative Appeals Tribunal that the Organisation considers that an affected person should be made aware of, including whether an affected person may be contacted by the Administrative Appeals Tribunal.

12 Prescribed information—independently reviewable decision under Part IVA of the Act

For the purposes of subsection 82L(6A) of the Act, the following information is prescribed for a notice given to an affected person in relation to an independently reviewable decision referred to in subsection 82L(5) of the Act:

Section 12

- (a) a statement that the Organisation is an exempt agency under subsection 7(1) of the *Freedom of Information Act 1982* and the affected person is not able to obtain access to documents or information about the decision under that Act;
- (b) information about the following matters:
 - (i) how an affected person may seek review, by an independent reviewer, of the independently reviewable decision, including how the application for that review is to be made;
 - (ii) whether there are any time limits for seeking that review and, if so, what those time limits are;
 - (iii) whether or not a fee is payable for that review and, if so, the amount of the fee and when it is payable;
 - (iv) whether the independent reviewer is required to conduct the review within a particular period and, if so, what that period is;
 - (v) any procedures of the independent reviewer that the Organisation considers that an affected person should be made aware of, including whether an affected person may be contacted by the independent reviewer.

Schedule 1—Review of security assessments under Part IV of the Act

Note: See section 9.

1. You may apply in writing to the Security Division of the Administrative Appeals Tribunal for a review of the assessment attached to this notice.
2. You must give with your application a copy of the assessment as given to you.
3. You must give with your application a statement indicating any part of the assessment you do not agree with and set out the grounds on which your application is made.
4. Your application must be made within 28 days after receipt of the notification of the assessment or within such further time as the Administrative Appeals Tribunal, either before or after the expiration of the 28 days, allows.
5. After the completion of a review of the assessment (other than a review of a security assessment made for the purposes of subsection 202(1) of the *Migration Act 1958*), you may apply for a review of the findings of the Administrative Appeals Tribunal on the ground that you have fresh evidence of material significance that was not available at the time of the previous review.

Note: See subsection 54(2) of the Act.

6. You must give with your application for a review of the findings of the Administrative Appeals Tribunal a statement setting out the grounds on which the application is made.
7. The application may be lodged at the Registry of the Administrative Appeals Tribunal for your State or Territory, or sent to GPO Box 9955, Canberra, ACT 2601.

Note: Information about the Registries of the Administrative Appeals Tribunal could in 2016 be viewed on the Administrative Appeals Tribunal's website (<http://www.aat.gov.au>).

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

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

Legislation history and amendment history—Endnotes 3 and 4

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

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

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

Editorial changes

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

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

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

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

Endnote 2—Abbreviation key

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

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Australian Security Intelligence Organisation Regulation 2016	31 Mar 2016 (F2016L00460)	1 Apr 2016 (s 2(1) item 1)	
Australian Security Intelligence Organisation Amendment (Permitted Disclosure) Regulations 2021	5 Feb 2021 (F2021L00098)	6 Feb 2021 (s 2(1) item 1)	—
Australian Security Intelligence Organisation Amendment (Notification of Review Rights) Regulations 2023	6 July 2023 (F2023L00979)	7 July 2023 (s 2(1) item 1)	—
Statute Law Amendment (Prescribed Forms) Regulations 2024	15 Mar 2024 (F2024L00294)	Sch 1 (items 8, 9): 20 Mar 2024 (s 2(1) item 1)	—

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
s 2.....	rep LA s 48D
s 4.....	rep LA s 48C
s 5.....	am F2021L00098; F2023L00979
s 7.....	rs F2021L00098
s 8.....	am F2021L00098
s 9.....	am F2023L00979
	rs F2024L00294
s 10.....	ad F2023L00979
s 11.....	ad F2023L00979
s 12.....	ad F2023L00979
Schedule 1	
Schedule 1 heading.....	rs F2023L00979
Schedule 1.....	am F2023L00979; F2024L00294
Schedule 2.....	rep LA s 48C