



Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018

No. 25, 2018

**An Act to amend the *Intelligence Services Act 2001*,
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 25, 2018

**An Act to amend the *Intelligence Services Act 2001*,
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[Assented to 11 April 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018*.

No. 25, 2018

*Intelligence Services Amendment (Establishment of the Australian
Signals Directorate) Act 2018*

1

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 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	12 April 2018
2. Schedule 1, Parts 1 to 3	1 July 2018.	1 July 2018
3. Schedule 1, Part 4	The later of: (a) 1 July 2018; and (b) immediately after the commencement of Schedule 1 to the <i>Privacy Amendment (Notifiable Data Breaches) Act 2017</i> .	1 July 2018 (paragraph (a) applies)

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Main amendments

Intelligence Services Act 2001

1 Section 3 (definition of agency head)

Repeal the definition, substitute:

agency head means:

- (a) in relation to ASIS—the Director-General of ASIS; and
- (b) in relation to AGO—the Director of AGO; and
- (c) in relation to ASD—the Director-General of ASD.

2 Section 3 (definition of ASD)

Omit “that part of the Defence Department known as”.

3 Section 3

Insert:

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

contracted service provider, for an ASD contract, means:

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

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

4 Section 3 (definition of Director-General)

Repeal the definition.

5 Section 3 (paragraph (a) of the definition of *incidentally obtained intelligence*)

Omit “7(a)”, substitute “7(1)(a)”.

6 Section 3 (paragraph (c) of the definition of *intelligence information*)

Omit “7(a)”, substitute “7(1)(a)”.

7 Section 3

Insert:

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

subcontractor, for an ASD contract, means a person:

- (a) who is a party to a contract (the *subcontract*):
 - (i) with a contracted service provider for the ASD contract (within the meaning of paragraph (a) of the definition of *contracted service provider*); or
 - (ii) with a subcontractor for the ASD contract (under a previous application of this definition); and
- (b) who is responsible under the subcontract for the provision of services to ASD, or to a contracted service provider for the ASD contract, for the purposes (whether direct or indirect) of the ASD contract.

8 Section 7

Before “The functions of ASD”, insert “(1)”.

9 Paragraph 7(c)

Repeal the paragraph, substitute:

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

10 After paragraph 7(c)

Insert:

- (ca) to provide material, advice and other assistance to any person or body mentioned in subsection (2) on matters relating to the security and integrity of information that is processed, stored or communicated by electronic or similar means; and

11 After paragraph 7(d)

Insert:

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

12 Paragraph 7(e)

Omit “Commonwealth and State authorities”, substitute “Commonwealth authorities and State authorities”.

13 At the end of section 7

Add:

- (2) For the purposes of paragraph (1)(ca), material, advice and other assistance may be provided to the following:
 - (a) a Commonwealth authority;
 - (b) a State authority;
 - (c) a foreign person or entity;
 - (d) any other person or body if:
 - (i) the material, advice and other assistance are provided for the purpose of protecting or facilitating trade and commerce with other countries, among the States, between Territories or between a Territory and a State, or outside Australia; or
 - (ii) the material, advice and other assistance are provided by way of a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution); or
 - (iii) the information was obtained or generated in the operation of a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

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

14 Subparagraph 8(1)(a)(ii)

Omit “and”, substitute “or”.

15 At the end of paragraph 8(1)(a)

Add:

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

16 Paragraph 11(2)(c)

Omit “7(a)”, substitute “7(1)(a)”.

17 Paragraph 11(2)(f)

Omit “7(e)”, substitute “7(1)(c), (e)”.

18 Subsection 11(3)

Omit “7(c),”, substitute “7(1)(c), (ca),”.

19 Section 12A (heading)

Omit “**Directors and Director-General**”, substitute “**Director and Directors-General**”.

20 Section 12A

Omit “The Director of AGO, the Director of ASD and the Director-General”, substitute “The Director-General of ASIS, the Director of AGO and the Director-General of ASD”.

21 Section 13 (heading)

Omit “**Co-operation**”, substitute “**Cooperation**”.

22 Before subsection 13(1A)

Insert:

Cooperating with authorities of other countries—with approval

23 At the end of section 13

Add:

Cooperating with authorities of other countries—ASD

- (4) Despite paragraph (1)(c), subject to any arrangements made or directions given by the responsible Minister, ASD may, for the purposes of performing its function under paragraph 7(1)(ca), cooperate with authorities of other countries if they are capable of assisting ASD in the performance of its functions.
- (5) The Director-General of ASD must, as soon as practicable after each year ending on 30 June, give to the responsible Minister and the Inspector-General of Intelligence and Security a report about any significant cooperation under this section by ASD with authorities of other countries referred to in subsection (4).
- (6) A report under subsection (5):
 - (a) must be in writing; and
 - (b) is not a legislative instrument.

24 Section 13A (heading)

Omit “Co-operation”, substitute “Cooperation”.

25 Subsection 14(3) (definition of *staff member*)

Repeal the definition, substitute:

staff member includes the Director-General of ASIS, the Director of AGO and the Director-General of ASD.

26 Paragraph 15(3)(b)

Omit “Director of ASD”, substitute “Director-General of ASD”.

27 After Part 3

Insert:

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

Division 1—Establishment and control of ASD

27A Establishment of ASD on a statutory basis

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

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

- (2) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
- (a) ASD is a listed entity; and
 - (b) the Director-General of ASD is the accountable authority of ASD; and
 - (c) the following persons are officials of ASD:
 - (i) the Director-General of ASD;
 - (ii) the staff referred to in section 38A;
 - (iii) consultants engaged under section 38B;
 - (iv) employees of contracted service providers engaged under section 38C who are providing services under the relevant ASD contract;
 - (v) persons whose services are made available to ASD under section 38E; and
 - (d) the purposes of ASD include the functions of ASD referred to in section 7.

27B Appointment of Director-General of ASD

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

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

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

27C Control of ASD

- (1) ASD, and the staff referred to in subsection 38A(1), are under the control of the Director-General of ASD.
- (2) The Director-General of ASD, under the Minister, is responsible for managing ASD and must advise the Minister in matters relating to ASD.

27D Briefing the Leader of the Opposition about ASD

The Director-General of ASD must consult regularly with the Leader of the Opposition in the House of Representatives for the purpose of keeping him or her informed on matters relating to ASD.

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

27E Basis and period of appointment

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

27F Remuneration

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

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

27G Resignation

- (1) The Director-General of ASD may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

27H Termination of appointment

- (1) The Governor-General may terminate the appointment of the Director-General of ASD:
 - (a) for misbehaviour; or
 - (b) if the Director-General is unable to perform the duties of his or her office because of physical or mental incapacity.
 - (2) The Governor-General must terminate the appointment of the Director-General of ASD if:
 - (a) the Director-General:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the Director-General is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Director-General engages in paid work that, in the Minister's opinion, conflicts or may conflict with the proper performance of the Director-General's duties (see section 27L); or
 - (d) the Director-General lacks, or has lost, an essential qualification for performing the duties of his or her office.
-

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

- (3) The Governor-General may, with the Director-General of ASD's consent, retire the Director-General from office on the ground of incapacity if the Director-General is:
- (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or
 - (c) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*.

27J Acting appointments

Appointment generally

- (1) The Minister may, by written instrument, appoint a person to act as the Director-General of ASD:
- (a) during a vacancy in the office of the Director-General (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Director-General:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

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

Appointment while under command

- (2) If:
- (a) a person is appointed to act as the Director-General of ASD under subsection (1); and
 - (b) the person is under the command of the Chief of the Defence Force under the *Defence Act 1903*;

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

27K Leave of absence

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

27L Outside employment

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

27M Other terms and conditions

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

27N Delegation by Director-General of ASD

- (1) The Director-General of ASD may, in writing, delegate all or any of his or her functions or powers under Part 5A to a staff member who holds, or is acting in, a position that is an Executive Level 1 position, or an equivalent or higher position, in ASD.
- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Director-General of ASD.

28 Paragraph 30(ba)

Omit "Director of ASD", substitute "Director-General of ASD".

29 After Part 5

Insert:

Part 5A—Staff of ASD

38A Employment of staff

Employees

- (1) The Director-General of ASD may, on behalf of the Commonwealth, employ by written agreement such employees of ASD as the Director-General thinks necessary for the purposes of this Act.
- (2) The Director-General of ASD, on behalf of the Commonwealth, has all the rights, duties and powers of an employer in respect of the engagement, and employment, of employees of ASD.
- (3) The Director-General of ASD may determine the terms and conditions on which employees are to be employed. Before making a determination the Director-General must consult with the employees who are to be subject to the terms and conditions of the determination.

Termination of employment

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

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

38B Consultants

- (1) The Director-General of ASD may, on behalf of the Commonwealth, engage as consultants persons having suitable qualifications and experience to assist in the performance of ASD's functions.
- (2) The engagement of a consultant must be by written agreement.

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

38C Contracted service providers

- (1) The Director-General of ASD may, on behalf of the Commonwealth, engage a contracted service provider to assist in the performance of the ASD's functions.
- (2) The engagement of a contracted service provider must be by written agreement.
- (3) The terms and conditions of engagement are those that the Director-General of ASD determines in writing.

38D Secondment of employees of ASD

Secondment

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

Termination of secondment

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

38E Secondment of persons to ASD

- (1) The Director-General of ASD may, by written agreement with a body or organisation (whether within or outside Australia), arrange for a person who is an officer, employee or other member of staff of the body or organisation to be made available to ASD to perform services in connection with the performance of its functions or the exercise of its powers.
- (2) The terms and conditions (including remuneration and allowances) applicable to a person performing services under an agreement are those specified in the agreement.

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

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

38G Voluntary moves to APS

- (1) Section 26 of the *Public Service Act 1999* applies in relation to an employee of ASD as if the employee were an APS employee and ASD were an APS Agency.
- (2) An employee of ASD who moves to an APS Agency under that section is entitled to have his or her employment, as an employee of ASD, treated as if it were:
 - (a) employment as an APS employee; and
 - (b) at a corresponding classification, as agreed between the Director-General of ASD and the Public Service Commissioner.

38H Staff grievances

- (1) The Director-General of ASD must:
 - (a) establish procedures relating to the consideration of grievances of employees and former employees of ASD; and
 - (b) determine the classes of ASD actions that are to be subject to the grievance procedures.
 - (2) In establishing the procedures and determining the classes of action, the Director-General of ASD must:
 - (a) adopt the principles of the *Public Service Act 1999* to the extent to which the Director-General considers they are consistent with the effective performance of the functions of ASD; and
 - (b) consult with the employees of ASD.
 - (3) In this section:
action includes a refusal or failure to act.
-

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

30 Subparagraphs 40(1)(c)(i) to (iv), 40G(1)(d)(iii) and (iv) and 40H(1)(d)(iii) and (iv)

Omit “Director of ASD” (wherever occurring), substitute “Director-General of ASD”.

31 Section 42 (at the end of the heading)

Add “—ASIS”.

32 After section 42

Insert:

42A Annual report—ASD

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

33 Clause 1A of Schedule 1 (paragraph (c) of the definition of agency head)

Omit “Director of ASD”, substitute “Director-General of ASD”.

34 Amendments of listed provisions

The provisions of the *Intelligence Services Act 2001* listed in the following table are amended as set out in the table.

Amendments relating to the term Director-General			
Item	Provision	Omit	Substitute
1	Paragraph 8(2)(b)	Director-General	Director-General of ASIS
2	Subsection 13B(7)	Director-General	Director-General of ASIS
3	Section 13E (heading)	Director-General	Director-General of ASIS

Amendments relating to the term Director-General			
Item	Provision	Omit	Substitute
4	Section 13E	Director-General	Director-General of ASIS
5	Subsections 13F(3) and (4)	Director-General	Director-General of ASIS
6	Paragraph 15(3)(a)	Director-General	Director-General of ASIS
7	Part 3 (heading)	Director-General	Director-General of ASIS
8	Paragraph 16(2)(b)	Director-General	Director-General of ASIS
9	Subparagraph 16(2)(c)(i)	Director-General	Director-General of ASIS
10	Section 17 (heading)	Director-General	Director-General of ASIS
11	Subsections 17(2) and (3) and 18(1) and (2)	Director-General	Director-General of ASIS
12	Section 19	Director-General	Director-General of ASIS
13	Division 2 of Part 3 (heading)	Director-General	Director-General of ASIS
14	Subsections 20(1) and 21(1)	Director-General	Director-General of ASIS
15	Section 22	Director-General	Director-General of ASIS
16	Subsection 23(1)	Director-General	Director-General of ASIS
17	Subsections 23(2) and (3)	Director-General (first occurring)	Director-General of ASIS
18	Section 24 (heading)	Director-General	Director-General of ASIS
19	Subsections 24(1) and (2)	Director-General (first occurring)	Director-General of ASIS
20	Section 25	Director-General (first occurring)	Director-General of ASIS
21	Subsections 27(1) and 33(1)	Director-General	Director-General

Schedule 1 Amendments
Part 1 Main amendments

Amendments relating to the term Director-General			
Item	Provision	Omit (first occurring)	Substitute of ASIS
22	Subsection 33(2)	Director-General	Director-General of ASIS
23	Subsection 33(3)	Director-General (first occurring)	Director-General of ASIS
24	Subsections 34(1) and (3)	Director-General	Director-General of ASIS
25	Section 35	Director-General (first occurring)	Director-General of ASIS
26	Paragraph 36A(2)(b)	Director-General	Director-General of ASIS
27	Subsection 37(1)	Director-General	Director-General of ASIS
28	Subsection 37(2)	Director-General (first occurring)	Director-General of ASIS
29	Paragraph 37(3)(a)	Director-General (first occurring)	Director-General of ASIS
30	Subsection 37(4)	Director-General	Director-General of ASIS
31	Subsection 37(5) (definition of <i>ASIS action</i>)	Director-General	Director-General of ASIS
32	Section 38	Director-General	Director-General of ASIS
33	Subparagraphs 39(1)(c)(i) to (iv), 40C(1)(d)(iii) and (iv), 40D(1)(d)(iii) and (iv) and 41(a)(ii) and (b)(ii)	Director-General (wherever occurring)	Director-General of ASIS
34	Subsection 42(1)	Director-General	Director-General of ASIS
35	Paragraphs 1(2)(c) and (2A)(c) of Schedule 2	Director-General	Director-General of ASIS
36	Subclauses 1(3), (3A) and (5) to (7) of Schedule 2	Director-General	Director-General of ASIS
37	Clause 3 of Schedule 2	Director-General	Director-General of ASIS

Part 2—Consequential amendments

Acts Interpretation Act 1901

35 Subsection 34C(8)

After “Australian Secret Intelligence Service”, insert “, the Australian Signals Directorate”.

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

36 Section 5 (definition of ASD)

Repeal the definition, substitute:

ASD means the Australian Signals Directorate.

37 Section 5

Insert:

ASD Minister means the Minister responsible for administering so much of the *Intelligence Services Act 2001* as relates to ASD.

ASD official means:

- (a) the Director-General of ASD; or
- (b) a person employed under section 38A of the *Intelligence Services Act 2001*; or
- (c) a person engaged under section 38B of the *Intelligence Services Act 2001*; or
- (d) an employee of a contracted service provider engaged under section 38C of the *Intelligence Services Act 2001* who is providing services under the relevant ASD contract within the meaning of that Act; or
- (e) a person whose services are made available to ASD under section 38E of the *Intelligence Services Act 2001*;

For the purposes of this Act, a person covered by paragraph (c), (d) or (e) is taken to be an employee of ASD.

38 Section 5 (definition of *defence intelligence agency*)

Repeal the definition, substitute:

defence intelligence agency means AGO or DIO.

39 Paragraph 128(13B)(d)

Repeal the paragraph, substitute:

- (d) an official of AGO may disclose AUSTRAC information to a Minister who, under section 9A of the *Intelligence Services Act 2001*, is empowered to issue an authorisation to AGO, if the disclosure is for the purposes of, or in connection with, the exercise of that power.

40 After subsection 128(13B)

Insert:

ASD officials

(13BA) The following provisions have effect:

- (a) an ASD official may disclose AUSTRAC information to an IGIS official for the purposes of, or in connection with, the performance of the IGIS official's duties in relation to ASD or employees of ASD;
- (b) an ASD official may disclose AUSTRAC information to the ASD Minister if the disclosure is for the purposes of, or in connection with, the performance of the ASD Minister's responsibilities in relation to ASD;
- (c) an ASD official may disclose AUSTRAC information to the Minister responsible for the administration of the *Telecommunications (Interception and Access) Act 1979* if the disclosure is for the purposes of, or in connection with, the performance of that Minister's functions under that Act;
- (d) an ASD official may disclose AUSTRAC information to the Attorney-General if the disclosure is for the purposes of, or in connection with, the performance of the Attorney-General's functions under the *Telecommunications (Interception and Access) Act 1979*;
- (e) an ASD official may disclose AUSTRAC information to a Minister who, under section 9A of the *Intelligence Services*

Act 2001, is empowered to issue an authorisation to ASD, if the disclosure is for the purposes of, or in connection with, the exercise of that power.

41 Subsection 128(13D)

After “(13B)”, insert “, (13BA)”.

42 After subparagraph 128(19)(a)(iii)

Insert:

(iiia) ASD;

43 After section 133B

Insert:

**133BA When the Director-General of ASD may communicate
AUSTRAC information to a foreign intelligence agency**

- (1) The Director-General of ASD may communicate AUSTRAC information to a foreign intelligence agency if the Director-General is satisfied that:
 - (a) the foreign intelligence agency has given appropriate undertakings for:
 - (i) protecting the confidentiality of the information; and
 - (ii) controlling the use that will be made of it; and
 - (iii) ensuring that the information will be used only for the purpose for which it is communicated to the foreign country; and
 - (b) it is appropriate, in all the circumstances of the case, to do so.
- (2) The Director-General of ASD may, in writing, authorise an ASD official to access the AUSTRAC information and communicate it to the foreign intelligence agency on the Director-General's behalf.

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

Australian Communications and Media Authority Act 2005

44 After paragraph 59D(1)(k)

Insert:

(ka) the Australian Signals Directorate;

Australian Human Rights Commission Act 1986

45 Subsection 11(4)

Omit “that part of the Defence Department known as the Australian Signals Directorate (including any part of the Defence Force that performs functions on behalf of that part of the Department)”, substitute “the Australian Signals Directorate”.

46 Subsection 21(3)

Repeal the subsection, substitute:

(3) A reference in subsection (2) to an intelligence agency is a reference to the Australian Secret Intelligence Service, the Australian Security Intelligence Organisation, the Australian Signals Directorate, the Office of National Assessments, or the Australian Geospatial-Intelligence Organisation or the Defence Intelligence Organisation of the Defence Department.

Australian Security Intelligence Organisation Act 1979

47 Section 4 (after paragraph (a) of the definition of *intelligence or security agency*)

Insert:

(aa) the Australian Signals Directorate;

48 Section 4 (paragraph (d) of definition of *intelligence or security agency*)

Omit “Organisation;”, substitute “Organisation.”.

49 Section 4 (paragraph (e) of the definition of *intelligence or security agency*)

Repeal the paragraph.

50 Subsection 35(1) (after paragraph (b) of the definition of *agency head*)

Insert:

(ba) the Director-General of the Australian Signals Directorate; or

51 Subsection 35(1) (paragraph (e) of the definition of *agency head*)

Omit “Organisation; or”, substitute “Organisation.”.

52 Subsection 35(1) (paragraph (f) of the definition of *agency head*)

Repeal the paragraph.

Crimes Act 1914

53 Section 85ZL (after paragraph (b) of the definition of *intelligence or security agency*)

Insert:

(ba) the Australian Signals Directorate; or

54 Section 85ZL (paragraph (d) of the definition of *intelligence or security agency*)

Repeal the paragraph.

Criminal Code Act 1995

55 Section 473.1 of the *Criminal Code* (after paragraph (b) of the definition of *intelligence or security officer*)

Insert:

(ba) the Australian Signals Directorate; or

56 Section 473.1 of the *Criminal Code* (paragraph (d) of the definition of *intelligence or security officer*)

Repeal the paragraph.

57 Subsection 476.5(3) of the *Criminal Code* (definition of *ASD*)

Omit “that part of the Defence Department known as”.

58 Subsection 476.5(3) of the *Criminal Code* (paragraph (b) of the definition of *staff member*)

Omit “Director of ASD”, substitute “Director-General of ASD”.

Defence Act 1903

59 Subsection 71A(1) (after paragraph (b) of the definition of *intelligence or security agency*)

Insert:

(ba) the Australian Signals Directorate;

Defence Trade Controls Act 2012

60 Subsection 4(1)

Insert:

ASD means the Australian Signals Directorate.

61 Paragraph 10(3)(a)

After “an employee of ASIS,”, insert “an employee of ASD,”.

62 Paragraph 15(2)(a)

After “an employee of ASIS,”, insert “an employee of ASD,”.

Freedom of Information Act 1982

63 Subsection 4(1) (definition of *Australian Signals Directorate*)

Repeal the definition.

64 Division 1 of Part I of Schedule 2 (after table item dealing with the Australian Security Intelligence Organisation)

Insert:

Australian Signals Directorate

65 Division 2 of Part I of Schedule 2 (table item dealing with the Australian Signals Directorate)

Repeal the item.

Independent National Security Legislation Monitor Act 2010

66 Section 4 (after paragraph (e) of the definition of *head*)

Insert:

(ea) in relation to the Australian Signals Directorate—the Director-General of the Australian Signals Directorate; or

67 Section 4 (paragraph (h) of the definition of *head*)

Repeal the paragraph.

68 Section 4 (after paragraph (e) of the definition of *law enforcement or security agency*)

Insert:

(ea) the Australian Signals Directorate;

69 Section 4 (paragraph (i) of the definition of *law enforcement or security agency*)

Repeal the paragraph.

Inspector-General of Intelligence and Security Act 1986

70 Subsection 3(1) (definition of *ASD*)

Repeal the definition, substitute:

ASD means the Australian Signals Directorate.

71 Subsection 3(1) (after paragraph (b) of the definition of *head*)

Insert:

(ba) in relation to ASD—the Director-General of ASD; or

72 Subsection 3(1) (paragraph (e) of the definition of head)

Repeal the paragraph.

73 Subsection 8(5)

Omit “ASD,”.

74 Subsection 8(6)

Omit “or an ASIS employee”, substitute “, an ASIS employee or an ASD employee”.

75 Paragraphs 8(6)(a) and (b)

Omit “ASIO or ASIS”, substitute “ASIO, ASIS or ASD”.

76 After paragraph 8(7)(b)

Insert:

; and (c) for an ASD employee—the Director-General of ASD or ASD employees.

77 Paragraph 11(5)(a)

Omit “or ASIS employees”, substitute “, ASIS employees or ASD employees”.

78 Paragraph 15(3)(a)

After “ASIS” (wherever occurring), insert “, ASD”.

79 Paragraph 15(3)(b)

Omit “AGO, DIO or ASD”, substitute “AGO or DIO”.

80 Paragraph 21(1B)(a)

After “ASIS” (wherever occurring), insert “, ASD”.

81 Paragraph 21(1B)(b)

Omit “AGO, DIO or ASD”, substitute “AGO or DIO”.

82 Paragraph 32A(1)(b)

After “ASIS”, insert “and ASD”.

83 Paragraph 32A(1)(d)

Omit “AGO, DIO and ASD”, substitute “AGO and DIO”.

84 Paragraph 32A(5)(a)

After “ASIS”, insert “, ASD”.

85 Paragraph 32A(5)(b)

Omit “AGO, DIO and ASD”, substitute “AGO and DIO”.

Privacy Act 1988

86 Subsection 6(1) (after paragraph (b) of the definition of *intelligence agency*)

Insert:

(ba) the Australian Signals Directorate; or

87 Paragraph 7(1)(g)

Repeal the paragraph, substitute:

(g) the Defence Intelligence Organisation or the Australian Geospatial-Intelligence Organisation; or

88 Paragraph 7(1A)(c)

Omit “of the Defence Department”.

89 Paragraph 7(2)(b)

Repeal the paragraph, substitute:

(b) the Defence Intelligence Organisation or the Australian Geospatial-Intelligence Organisation; or

Radiocommunications Act 1992

90 At the end of subsection 24(2)

Add:

; or (c) the Australian Signals Directorate.

Taxation Administration Act 1953

91 After subsection 850-100(3)

Insert:

- (3A) The Director-General of the Australian Signals Directorate (*ASD*) may declare that this section applies to one or more specified entities (*ASD* itself may be specified) in relation to one or more specified transactions.

92 At the end of subsection 850-100(4)

Add:

; or (c) for the Director-General of *ASD*—*ASD*.

Telecommunications Act 1997

93 At the end of section 46

Add:

; or (c) by the Australian Signals Directorate.

94 At the end of section 91

Add:

; or (c) by the Australian Signals Directorate.

Work Health and Safety Act 2011

95 Section 4

Insert:

ASIS means the Australian Secret Intelligence Service.

96 After subsection 12C(2A)

Insert:

- (2AA) Without limiting the generality of subsection (1), the Director-General of the Australian Signals Directorate may, by instrument in writing, declare that specified provisions of this Act do not apply, or apply subject to modifications set out in the

declaration, in relation to a person carrying out work for the Director-General of the Australian Signals Directorate.

97 Subsection 12C(3)

Omit “(2A) or (2B)”, substitute “(2A), (2AA) or (2B)”.

98 After subsection 12C(5)

Insert:

(5A) In administering the Australian Signals Directorate and in the exercise of the power under subsection (2AA), the Director-General of the Australian Signals Directorate must take into account the need to promote the objects of this Act to the greatest extent consistent with the maintenance of national security.

99 Paragraph 273B(2)(a)

After “(2A)”, insert “, (2AA)”.

Part 3—Transitional provisions

100 Definitions

In this Part:

accrued employment benefits, in relation to a person, means benefits accrued by the person as an APS employee before 1 July 2018, whether accrued under a law of the Commonwealth, a workplace instrument (within the meaning of the *Fair Work Act 2009*) or a written agreement.

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

Minister means the Minister responsible for the Australian Signals Directorate.

new ASD means the Australian Signals Directorate, as established on a statutory basis by section 27A of the new law.

new law means the *Intelligence Services Act 2001*, as amended by this Schedule.

old ASD means that part of the Defence Department known as the Australian Signals Directorate under the *Intelligence Services Act 2001*, as in force immediately before the commencement of this item.

staffing procedures includes procedures and policies related to:

- (a) recruitment, promotion or performance management; or
- (b) inefficiency, misconduct, forfeiture of position, fitness for duty or loss of essential qualifications; or
- (c) disciplinary action, grievance processes or reviews of, or appeals against, staffing decisions; or
- (d) transfers, resignations or termination of employment; or
- (e) leave.

101 Things done by, or in relation to, the old ASD

- (1) If a thing was done by, or in relation to, the old ASD, then the thing is taken, for the purposes of the operation of any law on and after 1 July 2018, to have been done by, or in relation to, the new ASD.

- (2) The Minister may, in writing, determine that subitem (1) does not apply in relation to a specified thing done by, or in relation to, the old ASD.
- (3) To avoid doubt, doing a thing includes making an instrument.
- (4) A determination under subitem (2) is not a legislative instrument.

102 Things done by, or in relation to, the Director of the old ASD

- (1) If a thing was done by, or in relation to, the Director of the old ASD, then the thing is taken, for the purposes of the operation of any law on and after 1 July 2018, to have been done by, or in relation to, the Director-General of the new ASD.
- (2) The Minister may, in writing, determine that subitem (1) does not apply in relation to a specified thing done by, or in relation to, the Director of the old ASD.
- (3) To avoid doubt, doing a thing includes making an instrument.
- (4) A determination under subitem (2) is not a legislative instrument.

103 Director of the Australian Signals Directorate continues as Director-General

The person who holds the position of the Director of the old ASD, immediately before 1 July 2018, is taken to have been appointed as the Director-General of the new ASD by the Governor-General under section 27B of the new law:

- (a) for a term of 6 months; and
- (b) on the terms and conditions set out in Division 2 of Part 3A of the new law.

104 Existing ASD staff—terms and conditions of employment and accrued entitlements etc.

Existing staff

- (1) If, immediately before 1 July 2018, a person was employed in the old ASD, the person:
 - (a) continues, on and after 1 July 2018, to be employed in the new ASD; and

(b) ceases to be an APS employee.

Terms and conditions of employment

- (2) A person who, immediately before 1 July 2018, was employed in the old ASD under a written agreement, continues to be employed on the terms and conditions specified in that agreement.
- (3) A person who, immediately before 1 July 2018, had his or her terms and conditions of employment in the old ASD determined under section 24 of the *Public Service Act 1999*, continues to be employed on the terms and conditions specified in that determination.
- (4) Subitems (2) and (3) are subject to any determination made by the Director-General of the new ASD under subsection 38A(3) of the new law.

Preservation of accrued entitlements

- (5) The accrued employment benefits of a person to whom subitem (1) applies are not affected by the person ceasing to be an APS employee.

Continuity of service

- (6) The service of a person to whom subitem (1) applies as an employee of the new ASD is taken, for all purposes, to have been continuous with his or her service as an employee of the old ASD.

Ceasing employment with ASD

- (7) To avoid doubt, if a person ceases to be an APS employee (as mentioned in subitem (1)), the person is not entitled to receive any payment or other benefit merely because he or she ceased to be such an employee.

105 Safety, Rehabilitation and Compensation Act 1988

- (1) This item applies in relation to a person if:
 - (a) the person was a member of the staff of the old ASD before 1 July 2018 (whether or not the person was still a member of the staff of ASD immediately before that date); and
 - (b) the person was an employee (within the meaning of the *Safety, Rehabilitation and Compensation Act 1988* (the **SRC**

Act)) of the old ASD when the person was a member of the staff as mentioned in paragraph (a); and

(c) the person suffered an injury (within the meaning of that Act) before 1 July 2018.

- (2) The SRC Act applies, on and after 1 July 2018, as if the person had been an employee of the new ASD during the period that the person was a member of the staff of the old ASD.

106 Continuation of existing staffing procedures

- (1) The staffing procedures of the old ASD that were in effect immediately before 1 July 2018 continue to apply on and after that date in relation to:
- (a) processes begun before, but not completed by, that date; and
 - (b) things done by, for or in relation to the old ASD or an employee of the old ASD before that date.
- (2) The rules may prescribe details relating to how the staffing procedures of the old ASD will continue to apply under subitem (1).
- (3) Subitem (1) and any rules made under subitem (2) have effect despite the *Public Service Act 1999*.

107 Continuation of existing inquiries under the *Inspector-General of Intelligence and Security Act 1986*

If the Inspector-General of Intelligence and Security had begun an inquiry in relation to the old ASD under section 8 of the *Inspector-General of Intelligence and Security Act 1986* before 1 July 2018 but had not completed it on that day, then, for the purposes of completing that inquiry:

- (a) the *Inspector-General of Intelligence and Security Act 1986*, as in force on the day that the inquiry began, continues in force despite the amendments made by this Schedule; and
- (b) any other Act amended by this Schedule, as in force on the day that the inquiry began, continues in force despite the amendments made by this Schedule.

Note: This means, for example, that a person who was given a notice under section 18 of the *Inspector-General of Intelligence and Security Act 1986* before 1 July 2018 in relation to an inquiry is still required to comply with the notice after that date if the person hasn't done so.

108 Power to make rules

- (1) The Minister may, by legislative instrument, make 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) Without limiting subitem (1), the rules may prescribe other matters of a transitional nature in relation to the transfer of persons who were employees of the old ASD before 1 July 2018.
- (3) To avoid doubt, the 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.

Part 4—Further amendments

Privacy Act 1988

109 Subparagraph 26WQ(3)(b)(ii)

Omit “of the Defence Department”.

110 Subparagraph 26WR(6)(a)(ii)

Omit “of the Defence Department”.

*[Minister’s second reading speech made in—
House of Representatives on 15 February 2018
Senate on 19 March 2018]*

(29/18)

No. 25, 2018

*Intelligence Services Amendment (Establishment of the Australian
Signals Directorate) Act 2018*

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