



National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018

No. 67, 2018

**An Act to amend the criminal law and to provide
for certain matters in relation to the foreign
influence transparency scheme, 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. 67, 2018

**An Act to amend the criminal law and to provide
for certain matters in relation to the foreign
influence transparency scheme, and for related
purposes**

[Assented to 29 June 2018]

The Parliament of Australia enacts:

No. 67, 2018

*National Security Legislation Amendment (Espionage and Foreign
Interference) Act 2018*

1

1 Short title

This Act is the *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018*.

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 this Act receives the Royal Assent.	29 June 2018
2. Schedule 1	The day after this Act receives the Royal Assent.	30 June 2018
3. Schedule 2	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.	
4. Schedule 3	The day after this Act receives the Royal Assent.	30 June 2018
5. Schedule 4, Part 1	The day after this Act receives the Royal Assent.	30 June 2018
6. Schedule 4, Part 2	At the same time as the provisions covered by table item 3.	
7. Schedule 5, Part 1	At the same time as the <i>Foreign Influence Transparency Scheme Act 2018</i> commences. However, the provisions do not commence at all if that Act does not commence.	

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
8. Schedule 5, Part 2	<p>The later of:</p> <p>(a) immediately after the commencement of the <i>Foreign Influence Transparency Scheme Act 2018</i>; and</p> <p>(b) immediately after the commencement of Part 1 of Schedule 1 to the <i>Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018</i>.</p> <p>However, the provisions do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.</p>	
9. Schedule 6	The day after this Act receives the Royal Assent.	30 June 2018

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—Treason, espionage, foreign interference and related offences

Part 1—Main amendments

Criminal Code Act 1995

1 Part 5.1 of the *Criminal Code* (heading)

Repeal the heading, substitute:

Part 5.1—Treason and related offences

2 Section 80.1A of the *Criminal Code* (heading)

Repeal the heading, substitute:

80.1A Definitions

3 Section 80.1A of the *Criminal Code*

Insert:

party includes a person, body or group of any kind.

3A At the end of Subdivision A of Division 80 of the *Criminal Code*

Add:

80.1AAA Expressions also used in the *Australian Security Intelligence Organisation Act 1979*

The meaning of an expression in this Division does not affect the meaning of that expression in the *Australian Security Intelligence Organisation Act 1979*, unless that Act expressly provides otherwise.

4 Section 80.1AA of the *Criminal Code*

Repeal the section, substitute:

80.1AA Treason—assisting enemy to engage in armed conflict

- (1) A person commits an offence if:
- (a) a party (the *enemy*) is engaged in armed conflict involving the Commonwealth or the Australian Defence Force; and
 - (b) the enemy is declared in a Proclamation made under section 80.1AB; and
 - (c) the person engages in conduct; and
 - (d) the person intends that the conduct will materially assist the enemy to engage in armed conflict involving the Commonwealth or the Australian Defence Force; and
 - (e) the conduct materially assists the enemy to engage in armed conflict involving the Commonwealth or the Australian Defence Force; and
 - (f) at the time the person engages in the conduct:
 - (i) the person knows that the person is an Australian citizen or a resident of Australia; or
 - (ii) the person knows that the person has voluntarily put himself or herself under the protection of the Commonwealth; or
 - (iii) the person is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Note 1: There is a defence in section 80.3 for acts done in good faith.

Note 2: If a body corporate is convicted of an offence against subsection (1), subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 10,000 penalty units.

Penalty: Imprisonment for life.

- (2) Strict liability applies to paragraph (1)(b) and subparagraph (1)(f)(iii).
- (3) Absolute liability applies to paragraph (1)(e).
- (4) Subsection (1) does not apply to engagement in conduct solely by way of, or for the purposes of, the provision of aid or assistance of a humanitarian nature.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

80.1AB Proclamation of enemy engaged in armed conflict

The Governor-General may, by Proclamation, declare a party to be an enemy engaged in armed conflict involving the Commonwealth or the Australian Defence Force.

Note: See subsection 80.1AA(1) for the effect of the Proclamation.

80.1AC Treachery

A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct involves the use of force or violence; and
- (c) the person engages in the conduct with the intention of overthrowing:
 - (i) the Constitution; or
 - (ii) the Government of the Commonwealth, of a State or of a Territory; or
 - (iii) the lawful authority of the Government of the Commonwealth.

Note 1: There is a defence in section 80.3 for acts done in good faith.

Note 2: If a body corporate is convicted of an offence against subsection (1), subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 10,000 penalty units.

Penalty: Imprisonment for life.

5 Subsection 80.3(1) of the *Criminal Code*

After “Subdivisions B and C”, insert “, and sections 83.1 and 83.4,”.

6 Paragraphs 80.3(2)(b), (c), (d) and (e) of the *Criminal Code*

Repeal the paragraphs, substitute:

- (b) with the intention of assisting a party:
 - (i) engaged in armed conflict involving the Commonwealth or the Australian Defence Force; and
 - (ii) declared in a Proclamation made under section 80.1AB to be an enemy engaged in armed conflict involving the Commonwealth or the Australian Defence Force; or

7 Subsection 80.4(2) of the *Criminal Code*

After “against”, insert “section 80.1AC or”.

8 At the end of Part 5.1 of the *Criminal Code*

Add:

Division 82—Sabotage

Subdivision A—Preliminary

82.1 Definitions

In this Division:

advantage: conduct will not ***advantage*** the national security of a foreign country if the conduct will advantage Australia’s national security to an equivalent extent.

damage to public infrastructure: conduct results in ***damage to public infrastructure*** if any of the following paragraphs apply in relation to public infrastructure:

- (a) the conduct destroys it or results in its destruction;
- (b) the conduct involves interfering with it, or abandoning it, resulting in it being lost or rendered unserviceable;
- (c) the conduct results in it suffering a loss of function or becoming unsafe or unfit for its purpose;
- (d) the conduct limits or prevents access to it or any part of it by persons who are ordinarily entitled to access it or that part of it;
- (e) the conduct results in it or any part of it becoming defective or being contaminated;
- (f) the conduct significantly degrades its quality;
- (g) if it is an electronic system—the conduct seriously disrupts it.

foreign principal has the meaning given by section 90.2.

national security has the meaning given by section 90.4.

prejudice: embarrassment alone is not sufficient to ***prejudice*** Australia’s national security.

public infrastructure: see section 82.2.

82.2 Public infrastructure

Public infrastructure

- (1) **Public infrastructure** means any of the following:
- (a) any infrastructure, facility, premises, network or electronic system that belongs to the Commonwealth;
 - (b) defence premises within the meaning of Part VIA of the *Defence Act 1903*;
 - (c) service property, and service land, within the meaning of the *Defence Force Discipline Act 1982*;
 - (d) any part of the infrastructure of a telecommunications network within the meaning of the *Telecommunications Act 1997*;
 - (e) any infrastructure, facility, premises, network or electronic system (including an information, telecommunications or financial system) that:
 - (i) provides or relates to providing the public with utilities or services (including transport of people or goods) of any kind; and
 - (ii) is located in Australia; and
 - (iii) belongs to or is operated by a constitutional corporation or is used to facilitate constitutional trade and commerce.
- (2) For the purposes of the application of paragraph (1)(a) or (e) in relation to property within the meaning of Chapter 7, whether the property **belongs** to the Commonwealth or a constitutional corporation is to be determined in the same way as it would be under Chapter 7 (see section 130.2).

Fault element for offences in relation to public infrastructure

- (3) For the purposes of a reference, in an element of an offence, to public infrastructure within the meaning of this Division, absolute liability applies:
- (a) in relation to public infrastructure within the meaning of paragraph (1)(a)—to the element that the infrastructure,

facility, premises, network or electronic system belongs to the Commonwealth; and

- (b) in relation to public infrastructure within the meaning of paragraph (1)(e)—to the element that the infrastructure, facility, premises, network or electronic system belongs to or is operated by a constitutional corporation or is used to facilitate constitutional trade or commerce.

82.2A Expressions also used in the *Australian Security Intelligence Organisation Act 1979*

The meaning of an expression in this Division does not affect the meaning of that expression in the *Australian Security Intelligence Organisation Act 1979*, unless that Act expressly provides otherwise.

Subdivision B—Offences

82.3 Offence of sabotage involving foreign principal with intention as to national security

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct results in damage to public infrastructure; and
 - (c) the person intends that the conduct will:
 - (i) prejudice Australia's national security; or
 - (ii) advantage the national security of a foreign country; and
 - (d) any of the following circumstances exists:
 - (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal;
 - (ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal.

Penalty: Imprisonment for 25 years.

- (2) For the purposes of subparagraph (1)(c)(ii), the person:

- (a) does not need to have in mind a particular foreign country;
and
 - (b) may have in mind more than one foreign country.
- (3) For the purposes of paragraph (1)(d), the person:
- (a) does not need to have in mind a particular foreign principal;
and
 - (b) may have in mind more than one foreign principal.

Note: An alternative verdict may be available for an offence against this section (see section 82.12).

82.4 Offence of sabotage involving foreign principal reckless as to national security

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct results in damage to public infrastructure; and
 - (c) the person is reckless as to whether the conduct will:
 - (i) prejudice Australia's national security; or
 - (ii) advantage the national security of a foreign country; and
 - (d) any of the following circumstances exists:
 - (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal;
 - (ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal.

Penalty: Imprisonment for 20 years.

- (2) For the purposes of subparagraph (1)(c)(ii), the person:
- (a) does not need to have in mind a particular foreign country;
and
 - (b) may have in mind more than one foreign country.
- (3) For the purposes of paragraph (1)(d), the person:
- (a) does not need to have in mind a particular foreign principal;
and
 - (b) may have in mind more than one foreign principal.

Note: An alternative verdict may be available for an offence against this section (see section 82.12).

82.5 Offence of sabotage with intention as to national security

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct results in damage to public infrastructure; and
 - (c) the person intends that the conduct will:
 - (i) prejudice Australia's national security; or
 - (ii) advantage the national security of a foreign country.

Penalty: Imprisonment for 20 years.

- (2) For the purposes of subparagraph (1)(c)(ii), the person:
- (a) does not need to have in mind a particular foreign country; and
 - (b) may have in mind more than one foreign country.

Note: An alternative verdict may be available for an offence against this section (see section 82.12).

82.6 Offence of sabotage reckless as to national security

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct results in damage to public infrastructure; and
 - (c) the person is reckless as to whether the conduct will:
 - (i) prejudice Australia's national security; or
 - (ii) advantage the national security of a foreign country.

Penalty: Imprisonment for 15 years.

- (2) For the purposes of paragraph (1)(c), the person:
- (a) does not need to have in mind a particular foreign country; and
 - (b) may have in mind more than one foreign country.

82.7 Offence of introducing vulnerability with intention as to national security

A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct has the result that an article or thing, or software, becomes vulnerable:
 - (i) to misuse or impairment; or
 - (ii) to being accessed or modified by a person not entitled to access or modify it; and
- (c) the article or thing, or software, is or is part of public infrastructure; and
- (d) the person engages in the conduct with the intention that prejudice to Australia's national security will occur (whether at the time or at a future time).

Note: An alternative verdict may be available for an offence against this section (see section 82.12).

Penalty: Imprisonment for 15 years.

82.8 Offence of introducing vulnerability reckless as to national security

A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct has the result that an article or thing, or software, becomes vulnerable:
 - (i) to misuse or impairment; or
 - (ii) to being accessed or modified by a person not entitled to access or modify it; and
- (c) the article or thing, or software, is or is part of public infrastructure; and
- (d) the person engages in the conduct reckless as to whether prejudice to Australia's national security will occur (whether at the time or at a future time).

Penalty: Imprisonment for 10 years.

82.9 Preparing for or planning sabotage offence

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the person does so with the intention of preparing for, or planning, an offence against this Division (other than this section).

Penalty: Imprisonment for 7 years.

- (2) Section 11.1 (attempt) does not apply to an offence against subsection (1).
- (3) Subsection (1) applies:
 - (a) whether or not an offence against this Division is committed; and
 - (b) whether or not the person engages in the conduct in preparation for, or planning, a specific offence against a provision of this Division; and
 - (c) whether or not the person engages in the conduct in preparation for, or planning, more than one offence against this Division.

82.10 Defences

- (1) It is a defence to a prosecution for an offence by a person against this Division if:
 - (a) the person is, at the time of the offence, a public official; and
 - (b) the person engaged in the conduct in good faith in the course of performing duties as a public official; and
 - (c) the conduct is reasonable in the circumstances for the purpose of performing those duties.

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

- (2) It is a defence to a prosecution for an offence by a person against this Division if:
 - (a) the person is, at the time of the offence:
 - (i) an owner or operator of the public infrastructure; or

- (ii) acting on behalf of, or with the consent of, an owner or operator of the public infrastructure; and
- (b) the person engaged in the conduct in good faith; and
- (c) the conduct is within the lawful authority of the owner or operator; and
- (d) the conduct is reasonable in the circumstances for the purpose of exercising that lawful authority.

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

82.11 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Division.

82.12 Alternative verdicts

- (1) If, on a trial of a person for an offence specified in column 1 of an item in the following table, the trier of fact:
 - (a) is not satisfied that the person is guilty of that offence; and
 - (b) is satisfied beyond reasonable doubt that the person is guilty of an offence against a provision specified in column 2 of that item;
 it may find the person not guilty of the offence specified in column 1 but guilty of an offence specified in column 2.

Alternative verdicts

Item	Column 1 For an offence against:	Column 2 The alternative verdict is an offence against:
1	section 82.3 (sabotage involving foreign principal with intention as to national security)	any of the following: <ul style="list-style-type: none"> (a) section 82.4 (sabotage involving foreign principal reckless as to national security); (b) section 82.5 (sabotage with intention as to national security); (c) section 82.6 (sabotage reckless as to national security)

Alternative verdicts		
Item	Column 1 For an offence against:	Column 2 The alternative verdict is an offence against:
2	section 82.4 (sabotage involving foreign principal reckless as to national security)	section 82.6 (sabotage reckless as to national security)
3	section 82.5 (sabotage with intention as to national security)	section 82.6 (sabotage reckless as to national security)
4	section 82.7 (introducing vulnerability with intention as to national security)	section 82.8 (introducing vulnerability reckless as to national security)

- (2) Subsection (1) only applies if the person has been accorded procedural fairness in relation to the finding of guilt for the offence specified in column 2.

82.13 Consent of Attorney-General required for prosecutions

- (1) Proceedings for the commitment of a person for trial for an offence against this Division must not be instituted without the written consent of the Attorney-General.
- (2) However, the following steps may be taken (but no further steps in proceedings may be taken) without consent having been given:
- (a) a person may be arrested for the offence and a warrant for such an arrest may be issued and executed;
 - (b) a person may be charged with the offence;
 - (c) a person so charged may be remanded in custody or on bail.
- (3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.
- (4) In deciding whether to consent, the Attorney-General must consider whether the conduct might be authorised by section 82.10.

Division 83—Other threats to security

83.1A Expressions also used in the *Australian Security Intelligence Organisation Act 1979*

The meaning of an expression in this Division does not affect the meaning of that expression in the *Australian Security Intelligence Organisation Act 1979*, unless that Act expressly provides otherwise.

83.1 Advocating mutiny

- (1) A person (the *advocate*) commits an offence if:
- (a) the advocate engages in conduct; and
 - (b) the conduct involves advocating mutiny; and
 - (c) the advocate engages in the conduct reckless as to whether the result will be that a defence member (within the meaning of the *Defence Force Discipline Act 1982*) will take part in a mutiny; and
 - (d) at the time the advocate engages in the conduct:
 - (i) the advocate knows that the advocate is an Australian citizen or a resident of Australia; or
 - (ii) the advocate knows that the advocate has voluntarily put himself or herself under the protection of the Commonwealth; or
 - (iii) the advocate is a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

Note: The defence in section 80.3 for acts done in good faith applies to this offence.

Penalty: Imprisonment for 7 years.

- (1A) For the purposes of this section:
- (a) a person *advocates* mutiny if the person counsels, promotes, encourages or urges mutiny; and
 - (b) a reference to advocating mutiny includes a reference to:
 - (i) advocating mutiny even if mutiny does not occur; and
 - (ii) advocating a specific mutiny; and

- (iii) advocating more than one mutiny.
- (2) A **mutiny** is a combination between persons who are, or at least 2 of whom are, members of the Australian Defence Force:
- (a) to overthrow lawful authority in the Australian Defence Force or in a force of another country that is acting in cooperation with the Australian Defence Force; or
 - (b) to resist such lawful authority in such a manner as to substantially prejudice the operational efficiency of the Australian Defence Force or of, or of a part of, a force of another country that is acting in cooperation with the Australian Defence Force.
- (3) Strict liability applies to subparagraph (1)(d)(iii).
- (4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.

83.2 Assisting prisoners of war to escape

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct assists one or more prisoners of war (within the meaning of Article 4 of the Third Geneva Convention) to escape from custody; and
 - (c) the custody is controlled wholly or partly by the Commonwealth or the Australian Defence Force; and
 - (d) the conduct takes place in the context of an international armed conflict.
- Penalty: Imprisonment for 15 years.
- (2) Absolute liability applies to paragraph (1)(d).
- (3) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.

83.3 Military-style training involving foreign government principal etc.

Offence in relation to military-style training

- (1) A person commits an offence if:
- (a) the person provides, receives, or participates in, training; and
 - (b) the training involves using arms or practising military exercises, movements or evolutions; and
 - (c) any of the following circumstances exists:
 - (i) the training is provided on behalf of a foreign government principal within the meaning of Part 5.2 (see section 90.3) or a foreign political organisation within the meaning of that Part (see section 90.1);
 - (ii) the training is directed, funded or supervised by a foreign government principal or foreign political organisation, or a person acting on behalf of a foreign government principal or foreign political organisation.

Penalty: Imprisonment for 20 years.

Defence—authorised by written agreement

- (2) Subsection (1) does not apply to a person in relation to conduct engaged in by the person that is authorised by a written agreement to which the Commonwealth is a party.

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

Defence—solely for service with armed force other than terrorist organisation

- (3) Subsection (1) does not apply in relation to training a person provides, receives or participates in, if the provision, receipt or participation is solely in the course of, and as part of, the person's service in any capacity in or with:
- (a) the armed forces of the government of a foreign country; or
 - (b) any other armed force, if a declaration under subsection 119.8(1) covers the person and the circumstances of the person's service in or with the force.

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

- (4) However, subsection (3) does not apply if:
- (a) at the time the person engages in the conduct:
 - (i) the person is in or with an organisation; or
 - (ii) the training is funded partly by an organisation; and
 - (b) the organisation is:
 - (i) a listed terrorist organisation within the meaning of Part 5.3 (see section 100.1); or
 - (ii) a prescribed organisation within the meaning of Part 5.5 (see section 117.1).

Defence—humanitarian assistance etc.

- (4A) Subsection (1) does not apply to a person in relation to conduct engaged in by the person solely or primarily for one or more of the following purposes:
- (a) providing aid of a humanitarian nature;
 - (b) performing an official duty for:
 - (i) the United Nations or an agency of the United Nations; or
 - (ii) the International Committee of the Red Cross.

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

Geographical jurisdiction

- (5) Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against this section.

83.4 Interference with political rights and duties

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct involves the use of force or violence, or intimidation, or the making of threats of any kind; and
 - (c) the conduct results in interference with the exercise or performance, in Australia by any other person, of an Australian democratic or political right or duty; and

(d) the right or duty arises under the Constitution or a law of the Commonwealth.

Note: The defence in section 80.3 for acts done in good faith applies to this offence.

Penalty: Imprisonment for 3 years.

(2) Absolute liability applies to paragraph (1)(d).

83.5 Consent of Attorney-General required for prosecutions

- (1) Proceedings for the commitment of a person for trial for an offence against this Division must not be instituted without the written consent of the Attorney-General.
- (2) However, the following steps may be taken (but no further steps in proceedings may be taken) without consent having been given:
 - (a) a person may be arrested for the offence and a warrant for such an arrest may be issued and executed;
 - (b) a person may be charged with the offence;
 - (c) a person so charged may be remanded in custody or on bail.
- (3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.
- (4) In deciding whether to consent, the Attorney-General must consider whether the conduct might be authorised in a way mentioned in:
 - (a) for an offence against section 83.3—subsection 83.3(2), (3) or (4A); and
 - (b) for an offence against section 83.1 or 83.4—section 80.3.

9 Part 5.2 of the *Criminal Code* (heading)

Repeal the heading, substitute:

Part 5.2—Espionage and related offences

10 Subsection 90.1(1) of the *Criminal Code*

Insert:

advantage: conduct will not **advantage** the national security of a foreign country if the conduct will advantage Australia's national security to an equivalent extent.

concerns: information or an article **concerns** Australia's national security if the information or article relates to, or is connected with, or is of interest or importance to, or affects, Australia's national security.

deal: a person **deals** with information or an article if the person does any of the following in relation to the information or article:

- (a) receives or obtains it;
- (b) collects it;
- (c) possesses it;
- (d) makes a record of it;
- (e) copies it;
- (f) alters it;
- (g) conceals it;
- (h) communicates it;
- (i) publishes it;
- (j) makes it available.

Note: See also the definition of **make available** in this subsection and subsection (2).

foreign government principal has the meaning given by section 90.3.

foreign political organisation includes:

- (a) a foreign political party; and
- (b) a foreign organisation that exists primarily to pursue political objectives; and
- (c) a foreign organisation that exists to pursue militant, extremist or revolutionary objectives.

foreign principal has the meaning given by section 90.2.

11 Subsection 90.1(1) of the *Criminal Code* (definition of *intelligence or security agency*)

Repeal the definition.

12 Subsection 90.1(1) of the *Criminal Code*

Insert:

make available information or an article includes:

- (a) place it somewhere it can be accessed by another person; and
- (b) give it to an intermediary to give to the intended recipient; and
- (c) describe how to obtain access to it, or describe methods that are likely to facilitate access to it (for example, set out the name of a website, an IP address, a URL, a password, or the name of a newsgroup).

national security has the meaning given by section 90.4.

prejudice: embarrassment alone is not sufficient to *prejudice* Australia's national security.

security classification has the meaning given by section 90.5.

13 Subsection 90.1(1) of the *Criminal Code* (definition of *security or defence*)

Repeal the definition.

14 Subsection 90.1(1) of the *Criminal Code* (definition of the *Commonwealth*)

Repeal the definition.

15 Subsections 90.1(2) and (3) of the *Criminal Code*

Repeal the subsections, substitute:

- (2) In this Part, dealing with information or an article includes:
 - (a) dealing with all or part of the information or article; and
 - (b) dealing only with the substance, effect or description of the information or article.

16 At the end of Division 90 of the *Criminal Code*

Add:

90.2 Definition of *foreign principal*

Each of the following is a ***foreign principal***:

- (a) a foreign government principal;
- (aa) a foreign political organisation;
- (b) a public international organisation within the meaning of Division 70 (see section 70.1);
- (c) a terrorist organisation within the meaning of Division 102 (see section 102.1);
- (d) an entity or organisation owned, directed or controlled by a foreign principal within the meaning of paragraph (aa), (b) or (c);
- (e) an entity or organisation owned, directed or controlled by 2 or more foreign principals within the meaning of paragraph (a), (aa), (b) or (c).

90.3 Definition of *foreign government principal*

Each of the following is a ***foreign government principal***:

- (a) the government of a foreign country or of part of a foreign country;
- (b) an authority of the government of a foreign country;
- (c) an authority of the government of part of a foreign country;
- (d) a foreign local government body or foreign regional government body;
- (e) a company to which any of the subparagraphs of paragraph (a) of the definition of ***foreign public enterprise*** in section 70.1 applies;
- (f) a body or association to which either of the subparagraphs of paragraph (b) of the definition of ***foreign public enterprise*** in section 70.1 applies;
- (h) an entity or organisation owned, directed or controlled:
 - (i) by a foreign government principal within the meaning of any other paragraph of this definition; or
 - (ii) by 2 or more such foreign government principals that are foreign government principals in relation to the same foreign country.

90.4 Definition of *national security*

- (1) The *national security* of Australia or a foreign country means any of the following:
 - (a) the defence of the country;
 - (b) the protection of the country or any part of it, or the people of the country or any part of it, from activities covered by subsection (2);
 - (c) the protection of the integrity of the country's territory and borders from serious threats;
 - (d) the carrying out of the country's responsibilities to any other country in relation to the matter mentioned in paragraph (c) or an activity covered by subsection (2);
 - (e) the country's political, military or economic relations with another country or other countries.
- (2) For the purposes of subsection (1), this subsection covers the following activities relating to a country, whether or not directed from, or committed within, the country:
 - (a) espionage;
 - (b) sabotage;
 - (c) terrorism;
 - (d) political violence;
 - (e) activities intended and likely to obstruct, hinder or interfere with the performance by the country's defence force of its functions or with the carrying out of other activities by or for the country for the purposes of its defence or safety;
 - (f) foreign interference.

90.5 Definition of *security classification*

- (1) *Security classification* means:
 - (a) a classification of secret or top secret that is applied in accordance with the policy framework developed by the Commonwealth for the purpose (or for purposes that include the purpose) of identifying information:
 - (i) for a classification of secret—that, if disclosed in an unauthorised manner, could be expected to cause

- serious damage to the national interest, organisations or individuals; or
- (ii) for a classification of top secret—that, if disclosed in an unauthorised manner, could be expected to cause exceptionally grave damage to the national interest; or
- (b) any equivalent classification or marking prescribed by the regulations.
- (1A) For the purposes of a reference, in an element of an offence in this Part, to security classification, strict liability applies to the element that:
- (a) a classification is applied in accordance with the policy framework developed by the Commonwealth for the purpose (or for purposes that include the purpose) of identifying the information mentioned in subparagraph (1)(a)(i) or (ii); or
- (b) a classification or marking is prescribed by the regulations as mentioned in paragraph (1)(b).
- (2) Before the Governor-General makes regulations for the purposes of subsection (1), the Minister must be satisfied that the regulations are not inconsistent with the policy framework mentioned in paragraph (1)(a).
- (3) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of subsection (1) of this section may prescribe a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time, if the instrument or other writing is publicly available.

90.6 Expressions also used in the *Australian Security Intelligence Organisation Act 1979*

The meaning of an expression in this Part does not affect the meaning of that expression in the *Australian Security Intelligence Organisation Act 1979*, unless that Act expressly provides otherwise.

17 Division 91 of the *Criminal Code*

Repeal the Division, substitute:

Division 91—Espionage

Subdivision A—Espionage

91.1 Espionage—dealing with information etc. concerning national security which is or will be communicated or made available to foreign principal

Intention as to national security

- (1) A person commits an offence if:
- (a) the person deals with information or an article; and
 - (b) the information or article:
 - (i) has a security classification; or
 - (ii) concerns Australia's national security; and
 - (c) the person intends that the person's conduct will:
 - (i) prejudice Australia's national security; or
 - (ii) advantage the national security of a foreign country; and
 - (d) the conduct results or will result in the information or article being communicated or made available to a foreign principal or a person acting on behalf of a foreign principal.

Note: An alternative verdict may be available for an offence against this subsection (see section 93.5).

Penalty: Imprisonment for life.

Reckless as to national security

- (2) A person commits an offence if:
- (a) the person deals with information or an article; and
 - (b) the information or article:
 - (i) has a security classification; or
 - (ii) concerns Australia's national security; and
 - (c) the person is reckless as to whether the person's conduct will:
 - (i) prejudice Australia's national security; or
 - (ii) advantage the national security of a foreign country; and

- (d) the conduct results or will result in the information or article being communicated or made available to a foreign principal or a person acting on behalf of a foreign principal.

Penalty: Imprisonment for 25 years.

Other matters

- (4) For the purposes of subparagraphs (1)(c)(ii) and (2)(c)(ii), the person:
 - (a) does not need to have in mind a particular foreign country; and
 - (b) may have in mind more than one foreign country.
- (5) For the purposes of paragraphs (1)(d) and (2)(d), the person:
 - (a) does not need to have in mind a particular foreign principal; and
 - (b) may have in mind more than one foreign principal.

91.2 Espionage—dealing with information etc. which is or will be communicated or made available to foreign principal

Intention as to national security

- (1) A person commits an offence if:
 - (a) the person deals with information or an article; and
 - (b) the person intends that the person's conduct will prejudice Australia's national security; and
 - (c) the conduct results or will result in the information or article being communicated or made available to a foreign principal or a person acting on behalf of a foreign principal.

Note: An alternative verdict may be available for an offence against this subsection (see section 93.5).

Penalty: Imprisonment for 25 years.

Reckless as to national security

- (2) A person commits an offence if:
 - (a) the person deals with information or an article; and

- (b) the person is reckless as to whether the person's conduct will prejudice Australia's national security; and
- (c) the conduct results or will result in the information or article being communicated or made available to a foreign principal or a person acting on behalf of a foreign principal.

Penalty: Imprisonment for 20 years.

Other matters

- (3) For the purposes of paragraphs (1)(c) and (2)(c):
 - (a) the person does not need to have in mind a particular foreign principal; and
 - (b) the person may have in mind more than one foreign principal.

91.3 Espionage—security classified information etc.

- (1) A person commits an offence if:
 - (a) the person deals with information or an article; and
 - (aa) the person deals with the information or article for the primary purpose of communicating the information or article, or making it available, to a foreign principal or a person acting on behalf of a foreign principal; and
 - (b) the person's conduct results or will result in the information or article being communicated or made available to a foreign principal or a person acting on behalf of a foreign principal; and
 - (c) the information or article has a security classification.

Penalty: Imprisonment for 20 years.

- (2) For the purposes of paragraphs (1)(aa) and (b):
 - (a) the person does not need to have in mind a particular foreign principal; and
 - (b) the person may have in mind more than one foreign principal.
- (3) Strict liability applies to paragraph (1)(aa).

91.4 Defences

- (1) It is a defence to a prosecution for an offence by a person against this Subdivision that the person dealt with the information or article:
- (a) in accordance with a law of the Commonwealth; or
 - (b) in accordance with an arrangement or agreement to which the Commonwealth is party and which allows for the exchange of information or articles; or
 - (c) in the person's capacity as a public official.

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

- (2) It is a defence to a prosecution for an offence by a person against this Subdivision that the information or article the person deals with is information or an article 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 matters in this subsection (see subsection 13.3(3)).

- (3) It is a defence to a prosecution for an offence by a person against section 91.1, in which the prosecution relies on subparagraph 91.1(1)(c)(ii) or (2)(c)(ii), or against section 91.3, if:
- (a) the person did not make or obtain the information or article by reason of any of the following:
 - (i) the person being, or having been, a Commonwealth officer (within the meaning of Part 5.6);
 - (ii) the person being otherwise engaged to perform work for a Commonwealth entity;
 - (iii) an arrangement or agreement to which the Commonwealth or a Commonwealth entity is party and which allows for the exchange of information; and
 - (b) the information or article has already been communicated, or made available, to the public (the *prior publication*); and
 - (c) the person was not involved in the prior publication (whether directly or indirectly); and

- (d) at the time the person deals with the information or article, the person believes that doing so will not prejudice Australia's national security; and
- (e) having regard to the nature, extent and place of the prior publication, the person has reasonable grounds for that belief.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

91.5 Matters affecting sentencing for offence against subsection 91.1(1)

- (1) In determining the sentence to be passed in respect of a person for an offence against subsection 91.1(1) (punishable by life imprisonment), the court must take into account any circumstances set out in paragraph 91.6(1)(b) that exist in relation to the commission of the offence.
- (2) However, the court need only take the circumstances into account so far as the circumstances are known to the court and relevant.
- (3) The circumstances are in addition to any other matters the court must take into account (for example, the matters mentioned in section 16A of the *Crimes Act 1914*).

91.6 Aggravated espionage offence

- (1) A person commits an offence against this section if:
 - (a) the person commits an offence against section 91.1 (other than subsection 91.1(1)), 91.2 or 91.3 (the ***underlying offence***); and
 - (b) any of the following circumstances exist in relation to the commission of the underlying offence:
 - (ii) the person dealt with information or an article from a foreign intelligence agency;
 - (iii) the person dealt with 5 or more records or articles each of which has a security classification;
 - (iv) the person altered a record or article to remove or conceal its security classification;
 - (v) at the time the person dealt with the information or article, the person held an Australian Government

security clearance allowing access to information that has, or articles that have, a security classification of at least secret.

Penalty:

- (a) if the penalty for the underlying offence is imprisonment for 25 years—imprisonment for life; or
 - (b) if the penalty for the underlying offence is imprisonment for 20 years—imprisonment for 25 years.
- (2) There is no fault element for the physical element in paragraph (1)(a) other than the fault elements (however described), if any, for the underlying offence.
- (4) To avoid doubt, a person does not commit an underlying offence for the purposes of paragraph (1)(a) if the person has a defence to the underlying offence.
- (5) To avoid doubt, the person may be convicted of an offence against this section even if the person has not been convicted of the underlying offence.

Note: An alternative verdict may be available for an offence against this section (see section 93.5).

91.7 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Subdivision.

Subdivision B—Espionage on behalf of foreign principal

91.8 Espionage on behalf of foreign principal

Intention as to national security

- (1) A person commits an offence if:
- (a) the person deals with information or an article; and
 - (b) the person intends that the person's conduct will:
 - (i) prejudice Australia's national security; or
 - (ii) advantage the national security of a foreign country; and

- (c) the person is reckless as to whether the conduct involves the commission, by the person or any other person, of an offence against Subdivision A (espionage); and
- (d) any of the following circumstances exists:
 - (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal;
 - (ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal.

Note: An alternative verdict may be available for an offence against this subsection (see section 93.5).

Penalty: Imprisonment for 25 years.

Reckless as to national security

- (2) A person commits an offence if:
 - (a) the person deals with information or an article; and
 - (b) the person is reckless as to whether the person's conduct will:
 - (i) prejudice Australia's national security; or
 - (ii) advantage the national security of a foreign country; and
 - (c) the person is reckless as to whether the conduct involves the commission, by the person or any other person, of an offence against Subdivision A (espionage); and
 - (d) any of the following circumstances exists:
 - (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal;
 - (ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal.

Penalty: Imprisonment for 20 years.

Conduct on behalf of foreign principal

- (3) A person commits an offence if:
 - (a) the person deals with information or an article; and

- (b) the person is reckless as to whether the person's conduct involves the commission, by the person or any other person, of an offence against Subdivision A (espionage); and
- (c) any of the following circumstances exists:
 - (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal;
 - (ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal.

Penalty: Imprisonment for 15 years.

Other matters

- (4) For the purposes of subparagraphs (1)(b)(ii) and (2)(b)(ii), the person:
 - (a) does not need to have in mind a particular foreign country; and
 - (b) may have in mind more than one foreign country.
- (5) For the purposes of paragraphs (1)(d), (2)(d) and (3)(c), the person:
 - (a) does not need to have in mind a particular foreign principal; and
 - (b) may have in mind more than one foreign principal.

91.9 Defences

- (1) It is a defence to a prosecution for an offence by a person against this Subdivision that the person dealt with the information or article:
 - (a) in accordance with a law of the Commonwealth; or
 - (b) in accordance with an arrangement or agreement to which the Commonwealth is party and which allows for the exchange of information or articles; or
 - (c) in the person's capacity as a public official.

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

- (2) It is a defence to a prosecution for an offence by a person against this Subdivision that the information or article the person deals with is information or an article 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 matters in this subsection (see subsection 13.3(3)).

91.10 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Subdivision.

Subdivision C—Espionage-related offences

91.11 Offence of soliciting or procuring an espionage offence or making it easier to do so

- (1) A person commits an offence if:
- (a) the person engages in conduct in relation to another person (the *target*); and
 - (b) the person engages in the conduct with the intention of soliciting or procuring, or making it easier to solicit or procure, the target to deal with information or an article in a way that would constitute an offence against Subdivision A (espionage) or B (espionage on behalf of foreign principal); and
 - (c) any of the following circumstances exists:
 - (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal;
 - (ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal.

Penalty: Imprisonment for 15 years.

- (2) For the purposes of paragraph (1)(c):
- (a) the person does not need to have in mind a particular foreign principal; and

- (b) the person may have in mind more than one foreign principal.
- (3) A person may commit an offence against subsection (1):
 - (a) even if an offence against Subdivision A or B is not committed; and
 - (b) even if it is impossible for the target to deal with information or an article in a way that would constitute an offence against Subdivision A or B; and
 - (c) even if the person does not have in mind particular information or a particular article, or a particular dealing or kind of dealing with information or an article, at the time the person engages in conduct in relation to the target; and
 - (d) whether it is a single dealing, or multiple dealings, that the person intends to solicit or procure or make it easier to solicit or procure.
- (4) Section 11.1 (attempt) does not apply to an offence against subsection (1).

91.12 Offence of preparing for an espionage offence

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the person does so with the intention of preparing for, or planning, an offence against Subdivision A (espionage) or B (espionage on behalf of foreign principal).

Penalty: Imprisonment for 15 years.

- (2) Section 11.1 (attempt) does not apply to an offence against subsection (1).
- (3) Subsection (1) applies:
 - (a) whether or not an offence against Subdivision A or B is committed; and
 - (b) whether or not the person engages in the conduct in preparation for, or planning, a specific offence against a provision of Subdivision A or B; and
 - (c) whether or not the person engages in the conduct in preparation for, or planning, more than one offence against Subdivision A or B.

91.13 Defences

It is a defence to a prosecution for an offence by a person against this Subdivision that the person dealt with the information or article:

- (a) in accordance with a law of the Commonwealth; or
- (b) in accordance with an arrangement or agreement to which the Commonwealth is party and which allows for the exchange of information or articles; or
- (c) in the person's capacity as a public official.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3)).

91.14 Geographical jurisdiction

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Subdivision.

Division 92—Foreign interference

Subdivision A—Preliminary

92.1 Definitions

In this Division:

deception means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or as to law, and includes:

- (a) a deception as to the intentions of the person using the deception or any other person; and
- (b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorised to cause it to do.

menaces has the same meaning as in Part 7.5 (see section 138.2).

Subdivision B—Foreign interference

92.2 Offence of intentional foreign interference

Interference generally

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) any of the following circumstances exists:
 - (i) the person engages in the conduct on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal;
 - (ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal; and
 - (c) the person intends that the conduct will:
 - (i) influence a political or governmental process of the Commonwealth or a State or Territory; or
 - (ii) influence the exercise (whether or not in Australia) of an Australian democratic or political right or duty; or
 - (iii) support intelligence activities of a foreign principal; or
 - (iv) prejudice Australia's national security; and
 - (d) any part of the conduct:
 - (i) is covert or involves deception; or
 - (ii) involves the person making a threat to cause serious harm, whether to the person to whom the threat is made or any other person; or
 - (iii) involves the person making a demand with menaces.

Note: An alternative verdict may be available for an offence against this subsection (see section 93.5).

Penalty: Imprisonment for 20 years.

Interference involving targeted person

- (2) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) any of the following circumstances exists:

- (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal;
- (ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal; and
- (c) the person intends that the conduct will influence another person (the *target*):
 - (i) in relation to a political or governmental process of the Commonwealth or a State or Territory; or
 - (ii) in the target's exercise (whether or not in Australia) of any Australian democratic or political right or duty; and
- (d) the person conceals from, or fails to disclose to, the target the circumstance mentioned in paragraph (b).

Note: An alternative verdict may be available for an offence against this subsection (see section 93.5).

Penalty: Imprisonment for 20 years.

Other matters

- (3) For the purposes of paragraphs (1)(b) and (2)(b):
 - (a) the person does not need to have in mind a particular foreign principal; and
 - (b) the person may have in mind more than one foreign principal.

92.3 Offence of reckless foreign interference

Interference generally

- (1) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) any of the following circumstances exists:
 - (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal;
 - (ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal; and

- (c) the person is reckless as to whether the conduct will:
 - (i) influence a political or governmental process of the Commonwealth or a State or Territory; or
 - (ii) influence the exercise (whether or not in Australia) of an Australian democratic or political right or duty; or
 - (iii) support intelligence activities of a foreign principal; or
 - (iv) prejudice Australia's national security; and
- (d) any part of the conduct:
 - (i) is covert or involves deception; or
 - (ii) involves the person making a threat to cause serious harm, whether to the person to whom the threat is made or any other person; or
 - (iii) involves the person making a demand with menaces.

Penalty: Imprisonment for 15 years.

Interference involving targeted person

- (2) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) any of the following circumstances exists:
 - (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign principal or a person acting on behalf of a foreign principal;
 - (ii) the conduct is directed, funded or supervised by a foreign principal or a person acting on behalf of a foreign principal; and
 - (c) the person is reckless as to whether the conduct will influence another person (the **target**):
 - (i) in relation to a political or governmental process of the Commonwealth or a State or Territory; or
 - (ii) in the target's exercise (whether or not in Australia) of any Australian democratic or political right or duty; and
 - (d) the person conceals from, or fails to disclose to, the target the circumstance mentioned in paragraph (b).

Penalty: Imprisonment for 15 years.

Other matters

- (3) For the purposes of paragraphs (1)(b) and (2)(b):
- (a) the person does not need to have in mind a particular foreign principal; and
 - (b) the person may have in mind more than one foreign principal.

92.4 Offence of preparing for a foreign interference offence

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person does so with the intention of preparing for, or planning, an offence against another provision of this Subdivision (foreign interference).

Penalty: Imprisonment for 10 years.

- (2) Section 11.1 (attempt) does not apply to an offence against subsection (1).
- (3) Subsection (1) applies:
- (a) whether or not an offence against this Subdivision is committed; and
 - (b) whether or not the person engages in the conduct in preparation for, or planning, a specific offence against a provision of this Subdivision; and
 - (c) whether or not the person engages in the conduct in preparation for, or planning, more than one offence against this Subdivision.

92.5 Defence

It is a defence to a prosecution for an offence by a person against this Subdivision that the person engaged in the conduct:

- (a) in accordance with a law of the Commonwealth; or
- (b) in accordance with an arrangement or agreement to which the Commonwealth is party; or
- (c) in the person's capacity as a public official.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3)).

92.6 Geographical jurisdiction

Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against this Subdivision.

Subdivision C—Foreign interference involving foreign intelligence agencies

92.7 Knowingly supporting foreign intelligence agency

A person commits an offence if:

- (a) the person provides resources, or material support, to an organisation or a person acting on behalf of an organisation; and
- (b) the person knows that the organisation is a foreign intelligence agency.

Note: An alternative verdict may be available for an offence against this section (see section 93.5).

Penalty: Imprisonment for 15 years.

92.8 Recklessly supporting foreign intelligence agency

A person commits an offence if:

- (a) the person provides resources, or material support, to an organisation or a person acting on behalf of an organisation; and
- (b) the organisation is a foreign intelligence agency.

Penalty: Imprisonment for 10 years.

92.9 Knowingly funding or being funded by foreign intelligence agency

A person commits an offence if:

- (a) the person:
 - (i) directly or indirectly receives or obtains funds from, or directly or indirectly makes funds available to, an organisation or a person acting on behalf of an organisation; or

- (ii) directly or indirectly collects funds for or on behalf of an organisation or a person acting on behalf of an organisation; and
- (b) the person knows that the organisation is a foreign intelligence agency.

Note: An alternative verdict may be available for an offence against this section (see section 93.5).

Penalty: Imprisonment for 15 years.

92.10 Recklessly funding or being funded by foreign intelligence agency

A person commits an offence if:

- (a) the person:
 - (i) directly or indirectly receives or obtains funds from, or directly or indirectly makes funds available to, an organisation or a person acting on behalf of an organisation; or
 - (ii) directly or indirectly collects funds for or on behalf of an organisation or a person acting on behalf of an organisation; and
- (b) the organisation is a foreign intelligence agency.

Penalty: Imprisonment for 10 years.

92.11 Defence

It is a defence to a prosecution for an offence by a person against this Subdivision that the person engaged in the conduct:

- (a) in accordance with a law of the Commonwealth; or
- (b) in accordance with an arrangement or agreement to which the Commonwealth is party; or
- (c) in the person's capacity as a public official.

Note: A defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3)).

Division 92A—Theft of trade secrets involving foreign government principal

92A.1 Theft of trade secrets involving foreign government principal

- (1) A person commits an offence if:
- (a) the person dishonestly receives, obtains, takes, copies or duplicates, sells, buys or discloses information; and
 - (b) all of the following circumstances exist:
 - (i) the information is not generally known in trade or business, or in the particular trade or business concerned;
 - (ii) the information has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were communicated;
 - (iii) the owner of the information has made reasonable efforts in the circumstances to prevent the information becoming generally known; and
 - (c) any of the following circumstances exists:
 - (i) the conduct is engaged in on behalf of, or in collaboration with, a foreign government principal or a person acting on behalf of a foreign government principal;
 - (ii) the conduct is directed, funded or supervised by a foreign government principal or a person acting on behalf of a foreign government principal.

Penalty: Imprisonment for 15 years.

- (2) For the purposes of paragraph (1)(a), *dishonest* means:
- (a) dishonest according to the standards of ordinary people; and
 - (b) known by the defendant to be dishonest according to the standards of ordinary people.
- (3) In a prosecution for an offence against this section, the determination of dishonesty is a matter for the trier of fact.
- (4) For the purposes of paragraph (1)(c):

- (a) the person does not need to have in mind a particular foreign government principal; and
- (b) the person may have in mind more than one foreign government principal.

92A.2 Geographical jurisdiction

- (1) Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against section 92A.1.
- (2) However, subsections 15.2(2) and 15.2(4) (defences for primary and ancillary offences) do not apply.

18 Section 93.1 of the *Criminal Code*

Repeal the section, substitute:

93.1 Consent of Attorney-General required for prosecutions

- (1) Proceedings for the commitment of a person for trial for an offence against this Part must not be instituted without:
 - (a) the written consent of the Attorney-General; and
 - (b) for proceedings that relate to information or an article that has a security classification—a certification by the Attorney-General that, at the time of the conduct that is alleged to constitute the offence, it was appropriate that the information or article had a security classification.
- (2) However, the following steps may be taken (but no further steps in proceedings may be taken) without consent or certification having been obtained:
 - (a) a person may be arrested for the offence and a warrant for such an arrest may be issued and executed;
 - (b) a person may be charged with the offence;
 - (c) a person so charged may be remanded in custody or on bail.
- (3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.
- (4) In deciding whether to consent, the Attorney-General must consider whether the conduct might be authorised:

- (a) for an offence against Subdivision A of Division 91 (espionage)—in a way mentioned in section 91.4; and
- (b) for an offence against Subdivision B of Division 91 (espionage on behalf of foreign principal)—in a way mentioned in section 91.9; and
- (c) for an offence against Subdivision B of Division 92 (foreign interference)—in a way mentioned in section 92.5; and
- (d) for an offence against Subdivision C of Division 92 (foreign interference involving foreign intelligence agencies)—in a way mentioned in section 92.11.

19 Subsection 93.2(2) of the *Criminal Code*

Omit “interest of the security or defence of the Commonwealth”, substitute “interests of Australia’s national security”.

20 At the end of Division 93 of the *Criminal Code*

Add:

93.4 Fault elements for attempted espionage offences

Despite subsection 11.1(3), the fault element, in relation to each physical element of an offence of attempting to commit an offence against a provision of:

- (a) Subdivision A of Division 91 (espionage); or
- (b) Subdivision B of Division 91 (espionage on behalf of foreign principal);

is the fault element in relation to that physical element of the offence against the provision of Subdivision A or B of Division 91.

93.5 Alternative verdicts

- (1) If, on a trial of a person for an offence specified in column 1 of an item in the following table, the trier of fact:

- (a) is not satisfied that the person is guilty of that offence; and
- (b) is satisfied beyond reasonable doubt that the person is guilty of an offence against a provision specified in column 2 of that item;

it may find the person not guilty of the offence specified in column 1 but guilty of the offence specified in column 2.

Schedule 1 Treason, espionage, foreign interference and related offences
Part 1 Main amendments

Alternative verdicts

Item	Column 1 For an offence against:	Column 2 The alternative verdict is an offence against:
1	subsection 91.1(1)	subsection 91.1(2)
2	subsection 91.2(1)	subsection 91.2(2)
3	subsection 91.6(1)	the underlying offence mentioned in paragraph 91.6(1)(a)
4	subsection 91.8(1)	subsection 91.8(2)
5	subsection 92.2(1)	subsection 92.3(1)
6	subsection 92.2(2)	subsection 92.3(2)
7	section 92.7	section 92.8
8	section 92.9	section 92.10

- (2) Subsection (1) only applies if the person has been accorded procedural fairness in relation to the finding of guilt for the offence specified in column 2.

21 Section 94.1 of the *Criminal Code*

Omit “or document which is made, obtained, recorded, retained, forged, possessed or otherwise”, substitute “or document which is”.

22 After section 132.8 of the *Criminal Code*

Insert:

132.8A Damaging Commonwealth property

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the conduct results in damage to, or the destruction of, property; and
 - (c) the property belongs to a Commonwealth entity.

Penalty: Imprisonment for 10 years.

- (2) Absolute liability applies to paragraph (1)(c).

23 Subsection 132.7(5) of the *Criminal Code* (paragraph (e) of the definition of *property offence*)

After “132.8(1)”, insert “or 132.8A(1)”.

24 Dictionary in the *Criminal Code*

Insert:

Australian Government security clearance means a security clearance given by the Australian Government Security Vetting Agency or by another Commonwealth, State or Territory agency that is authorised or approved by the Commonwealth to issue security clearances.

constitutional trade and commerce means trade and commerce:

- (a) with other countries; or
- (b) among the States; or
- (c) between a State and a Territory; or
- (d) between 2 Territories.

Defence Minister means the Minister administering the *Defence Force Discipline Act 1982*.

foreign intelligence agency means an intelligence or security service (however described) of a foreign country.

mutiny has the meaning given by subsection 83.1(2).

25 Saving provision

- (1) If, immediately before the commencement of this item, a Proclamation is in effect for the purposes of paragraph 80.1AA(1)(b) of the *Criminal Code* as in force at that time, the Proclamation:
 - (a) continues in effect despite the repeal and substitution of section 80.1AA of the *Criminal Code* by this Schedule; and
 - (b) has effect for the purposes of the *Criminal Code* as amended by this Schedule as if it had been made under section 80.1AB of the *Criminal Code* as inserted by this Schedule.
- (2) Subitem (1) does not prevent the Proclamation being repealed.

Part 2—Consequential amendments

Aboriginal and Torres Strait Islander Act 2005

26 Subclause 1(1) of Schedule 4 (definition of *undue influence*)

Omit “section 28 of the *Crimes Act 1914*”, substitute “section 83.4 of the *Criminal Code*”.

Australian Citizenship Act 2007

27 Section 3 (paragraph (a) of the definition of *national security offence*)

Omit “II or”.

28 Section 3 (paragraph (c) of the definition of *national security offence*)

Repeal the paragraph, substitute:

- (c) an offence against Part 5.1 of the *Criminal Code* (treason and related offences) other than section 83.4 (interference with political rights and duties); or
- (ca) an offence against Division 91 of the *Criminal Code* (espionage); or
- (cb) an offence against Part 5.3 (terrorism) of the *Criminal Code*;
or

29 Subparagraph 35A(1)(a)(ii)

Repeal the subparagraph, substitute:

- (ii) a provision of Subdivision B of Division 80 of the *Criminal Code* (treason);
- (iia) a provision of Division 82 of the *Criminal Code* (sabotage) other than section 82.9 (preparing for or planning sabotage offence);
- (iib) a provision of Division 91 of the *Criminal Code* (espionage);

(iic) a provision of Division 92 of the *Criminal Code* (foreign interference);

30 Subparagraph 35A(1)(a)(v)

Repeal the subparagraph.

Australian Federal Police Act 1979

31 Subsection 4(1) (subparagraph (a)(i) of the definition of *protective service offence*)

Omit “24AB, 29”.

32 Subsection 4(1) (after subparagraph (a)(ii) of the definition of *protective service offence*)

Insert:

- (ia) Division 82 of the *Criminal Code* (sabotage); or
- (ib) Division 91 of the *Criminal Code* (espionage), or
- (id) section 132.8A of the *Criminal Code* (damaging Commonwealth property); or

33 Subsection 4(1) (subparagraph (a)(va) of the definition of *protective service offence*)

Omit “Act; or”, substitute “Act”.

34 Subsection 4(1) (subparagraph (a)(vi) of the definition of *protective service offence*)

Repeal the subparagraph.

Commonwealth Electoral Act 1918

35 Subsection 352(1) (definition of *undue influence*)

Omit “28 of the *Crimes Act 1914*”, substitute “83.4 of the *Criminal Code*”.

36 Subparagraph 386(a)(i)

Omit “28 of the *Crimes Act 1914*”, substitute “83.4 of the *Criminal Code*”.

Crimes Act 1914

37 Subsection 4J(7)

Repeal the subsection, substitute:

- (7) This section does not apply to an offence against:
- (a) subsection 79(2) or (5) of this Act; or
 - (b) Division 80 of the *Criminal Code* (treason, urging violence and advocating terrorism or genocide); or
 - (c) Division 82 of the *Criminal Code* (sabotage); or
 - (d) Division 91 of the *Criminal Code* (espionage); or
 - (e) Division 92 of the *Criminal Code* (foreign interference).

38 Paragraphs 15AA(2)(c) and (d)

Omit “Subdivision C of Division 80 or Division 91 of the *Criminal Code*, or against section 24AA of this Act,”, substitute “Division 80 (treason, urging violence and advocating terrorism or genocide) or Division 91 (espionage) of the *Criminal Code*”.

39 At the end of subsection 15AA(2)

Add:

- ; and (e) an offence against subsection 92.2(1) or 92.3(1) (intentional or reckless offence of foreign interference), if:
- (i) the death of a person is alleged to have been caused by conduct that is a physical element of the offence; or
 - (ii) conduct that is a physical element of the offence carried a substantial risk of causing the death of a person.

40 After paragraph 15YU(1)(d)

Insert:

- (da) an offence against Subdivision B of Division 80 of the *Criminal Code* (treason); or
- (db) an offence against Division 82 of the *Criminal Code* (sabotage); or

41 Paragraph 15YU(1)(g)

Repeal the paragraph.

42 Paragraph 19AG(1)(a)

Repeal the paragraph.

42A Paragraph 19AG(1)(c)

Omit “or 91”.

42B After paragraph 19AG(1)(c)

Insert:

; (d) an offence against subsection 91.1(1) or 91.2(1) of the
Criminal Code.

43 Part II

Repeal the Part.

Criminal Code Act 1995

43A Paragraph 5(2)(d)

Omit “treason, urging violence and advocating terrorism or genocide”,
substitute “treason and related offences”.

43B Paragraph 5(2)(e)

Omit “offences relating to espionage and similar activities”, substitute
“espionage and related offences”.

Foreign Evidence Act 1994

**44 Subsection 3(1) (after paragraph (da) of the definition of
designated offence)**

Insert:

(db) an offence against Division 82 of the *Criminal Code*
(sabotage); or

**45 Subsection 3(1) (paragraph (g) of the definition of
designated offence)**

Repeal the paragraph.

Migration Act 1958

46 Subparagraph 203(1)(c)(i)

Repeal the subparagraph.

47 Subparagraph 203(1)(c)(ia)

After “Division 80”, insert “or 82”.

48 After subparagraph 203(1)(c)(ia)

Insert:

- (ib) an offence against section 83.1 (advocating mutiny) or 83.2 (assisting prisoners of war to escape) of the *Criminal Code*; or

48A Subparagraphs 203(1)(c)(ii) and (ia)

Omit “(i) or (ia)”, substitute “(ia) or (ib)”.

Surveillance Devices Act 2004

49 Subparagraph 30(1)(a)(vi)

Omit “, 73.3 or 91.1”, substitute “or 73.3”.

50 After subparagraph 30(1)(a)(vi)

Insert:

- (vii) an offence against Division 91 of the *Criminal Code* (espionage); or

Part 3—Review by Independent National Security Legislation Monitor

Independent National Security Legislation Monitor Act 2010

51 Subsection 6(1B)

Repeal the subsection, substitute:

- (1B) The Independent National Security Legislation Monitor must, as soon as practicable after the third anniversary of the day the *National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018* receives the Royal Assent, begin a review under paragraph (1)(a) of the following provisions of Chapter 5 of the *Criminal Code*:
- (a) Division 82 (sabotage);
 - (b) Part 5.2 (espionage and related offences);
 - (c) Part 5.6 (secrecy of information).

Schedule 2—Secrecy

Part 1—Secrecy of information

Crimes Act 1914

1 Subsection 3(1) (paragraph (b) of the definition of *Commonwealth officer*)

Omit “; and”, substitute “.”.

2 Subsection 3(1) (paragraphs (c) and (d) of the definition of *Commonwealth officer*)

Repeal the paragraphs.

3 Subsection 3(1) (definition of *Queen’s dominions*)

Repeal the definition.

4 Paragraph 4J(7)(a)

Repeal the paragraph.

5 Parts VI and VII

Repeal the Parts.

Criminal Code Act 1995

6 At the end of Chapter 5 of the *Criminal Code*

Add:

Part 5.6—Secrecy of information

Division 121—Preliminary

121.1 Definitions

(1) In this Part:

cause harm to Australia’s interests means to:

- (a) interfere with or prejudice the prevention, detection, investigation, prosecution or punishment of a criminal offence against a law of the Commonwealth; or
- (b) interfere with or prejudice the performance of functions of the Australian Federal Police under:
 - (i) paragraph 8(1)(be) of the *Australian Federal Police Act 1979* (protective and custodial functions); or
 - (ii) the *Proceeds of Crime Act 2002*; or
- (c) harm or prejudice Australia's international relations in relation to information that was communicated in confidence:
 - (i) by, or on behalf of, the government of a foreign country, an authority of the government of a foreign country or an international organisation; and
 - (ii) to the Government of the Commonwealth, to an authority of the Commonwealth, or to a person receiving the communication on behalf of the Commonwealth or an authority of the Commonwealth; or
- (f) harm or prejudice the health or safety of the Australian public or a section of the Australian public; or
- (g) harm or prejudice the security or defence of Australia.

Commonwealth officer means any of the following:

- (a) an APS employee;
- (b) an individual appointed or employed by the Commonwealth otherwise than under the *Public Service Act 1999*;
- (c) a member of the Australian Defence Force;
- (d) a member or special member of the Australian Federal Police;
- (e) an officer or employee of a Commonwealth authority;
- (f) an individual who is a contracted service provider for a Commonwealth contract;
- (g) an individual who is an officer or employee of a contracted service provider for a Commonwealth contract and who provides services for the purposes (whether direct or indirect) of the Commonwealth contract;

but does not include an officer or employee of, or a person engaged by, the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation.

deal has the same meaning as in Part 5.2.

Note: For the meaning of **deal** in that Part, see subsections 90.1(1) and (2).

domestic intelligence agency means:

- (a) the Australian Secret Intelligence Service; or
- (b) the Australian Security Intelligence Organisation; or
- (c) the Australian Geospatial-Intelligence Organisation; or
- (d) the Defence Intelligence Organisation; or
- (e) the Australian Signals Directorate; or
- (f) the Office of National Assessments.

foreign military organisation means:

- (a) the armed forces of the government of a foreign country; or
- (b) the civilian component of:
 - (i) the Department of State of a foreign country; or
 - (ii) a government agency in a foreign country; that is responsible for the defence of the country.

information has the meaning given by section 90.1.

inherently harmful information means information that is any of the following:

- (a) security classified information;
- (c) information that was obtained by, or made by or on behalf of, a domestic intelligence agency or a foreign intelligence agency in connection with the agency's functions;
- (e) information relating to the operations, capabilities or technologies of, or methods or sources used by, a domestic or foreign law enforcement agency.

international relations has the meaning given by section 10 of the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

proper place of custody has the meaning given by section 121.2.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

security classification has the meaning given by section 90.5.

security classified information means information that has a security classification.

security or defence of Australia includes the operations, capabilities or technologies of, or methods or sources used by, domestic intelligence agencies or foreign intelligence agencies.

- (2) To avoid doubt, **communicate** includes publish and make available.
- (3) For the purposes of a reference, in an element of an offence in this Part, to security classified information or security classification, strict liability applies to the element that:
 - (a) a classification is applied in accordance with the policy framework developed by the Commonwealth for the purpose (or for purposes that include the purpose) of identifying the information mentioned in subparagraph 90.5(1)(a)(i) or (ii); or
 - (b) a classification or marking is prescribed by the regulations as mentioned in paragraph 90.5(1)(b).

Note: See the definitions of **security classified information** in subsection (1) and **security classification** in section 90.5.

121.2 Definition of *proper place of custody*

- (1) **Proper place of custody** has the meaning prescribed by the regulations.
- (2) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of subsection (1) of this section may prescribe a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time, if the instrument or other writing is publicly available.

Division 122—Secrecy of information

122.1 Communication and other dealings with inherently harmful information by current and former Commonwealth officers etc.

Communication of inherently harmful information

- (1) A person commits an offence if:
- (a) the person communicates information; and
 - (b) the information is inherently harmful information; and
 - (c) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity.

Note 1: For exceptions to the offences in this section, see section 122.5.

Note 2: The fault elements for this offence are intention for paragraph (1)(a) and recklessness for paragraphs (1)(b) and (c) (see section 5.6).

Penalty: Imprisonment for 7 years.

Other dealings with inherently harmful information

- (2) A person commits an offence if:
- (a) the person deals with information (other than by communicating it); and
 - (b) the information is inherently harmful information; and
 - (c) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity.

Note: The fault elements for this offence are intention for paragraph (2)(a) and recklessness for paragraphs (2)(b) and (c) (see section 5.6).

Penalty: Imprisonment for 3 years.

Information removed from, or held outside, proper place of custody

- (3) A person commits an offence if:
-

- (a) the person:
 - (i) removes information from a proper place of custody for the information; or
 - (ii) holds information outside a proper place of custody for the information; and
- (b) the information is inherently harmful information; and
- (c) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity.

Note: The fault elements for this offence are intention for paragraph (3)(a) and recklessness for paragraphs (3)(b) and (c) (see section 5.6).

Penalty: Imprisonment for 3 years.

Failure to comply with direction regarding information

- (4) A person commits an offence if:
 - (a) the person is given a direction; and
 - (b) the direction is a lawful direction regarding the retention, use or disposal of information; and
 - (c) the person fails to comply with the direction; and
 - (ca) the failure to comply with the direction results in a risk to the security of the information; and
 - (d) the information is inherently harmful information; and
 - (e) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity.

Note: The fault elements for this offence are intention for paragraph (4)(c) and recklessness for paragraphs (4)(a), (b), (ca), (d) and (e) (see section 5.6).

Penalty: Imprisonment for 3 years.

**122.2 Conduct by current and former Commonwealth officers etc.
causing harm to Australia's interests**

Communication causing harm to Australia's interests

- (1) A person commits an offence if:
- (a) the person communicates information; and
 - (b) either:
 - (i) the communication causes harm to Australia's interests;
or
 - (ii) the communication will or is likely to cause harm to Australia's interests; and
 - (c) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity.

Note 1: For the definition of *cause harm to Australia's interests*, see section 121.1.

Note 2: For exceptions to the offences in this section, see section 122.5.

Penalty: Imprisonment for 7 years.

Other conduct causing harm to Australia's interests

- (2) A person commits an offence if:
- (a) the person deals with information (other than by communicating it); and
 - (b) either:
 - (i) the dealing causes harm to Australia's interests; or
 - (ii) the dealing will or is likely to cause harm to Australia's interests; and
 - (c) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity.

Penalty: Imprisonment for 3 years.

Information removed from, or held outside, proper place of custody

- (3) A person commits an offence if:
- (a) the person:
 - (i) removes information from a proper place of custody for the information; or
 - (ii) holds information outside a proper place of custody for the information; and
 - (b) either:
 - (i) the removal or holding causes harm to Australia's interests; or
 - (ii) the removal or holding will or is likely to cause harm to Australia's interests; and
 - (c) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity.

Penalty: Imprisonment for 3 years.

Failure to comply with direction regarding information

- (4) A person commits an offence if:
- (a) the person is given a direction; and
 - (b) the direction is a lawful direction regarding the retention, use or disposal of information; and
 - (c) the person fails to comply with the direction; and
 - (d) either:
 - (i) the failure to comply causes harm to Australia's interests; or
 - (ii) the failure to comply will or is likely to cause harm to Australia's interests; and
 - (e) the information was made or obtained by that person by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity.

Penalty: Imprisonment for 3 years.

122.3 Aggravated offence

- (1) A person commits an offence against this section if:
- (a) the person commits an offence against section 122.1 or 122.2 (the ***underlying offence***); and
 - (b) any of the following circumstances exist in relation to the commission of the underlying offence:
 - (ii) if the commission of the underlying offence involves a record—the record is marked with a code word, “for Australian eyes only” or as prescribed by the regulations for the purposes of this subparagraph;
 - (iii) the commission of the underlying offence involves 5 or more records each of which has a security classification;
 - (iv) the commission of the underlying offence involves the person altering a record to remove or conceal its security classification;
 - (v) at the time the person committed the underlying offence, the person held an Australian Government security clearance allowing the person to access information that has a security classification of at least secret.

Penalty:

- (a) if the penalty for the underlying offence is imprisonment for 7 years—imprisonment for 10 years; or
 - (b) if the penalty for the underlying offence is imprisonment for 3 years—imprisonment for 5 years.
- (2) There is no fault element for the physical element in paragraph (1)(a) other than the fault elements (however described), if any, for the underlying offence.
- (4) To avoid doubt:
- (a) a person does not commit an underlying offence for the purposes of paragraph (1)(a) if the person has a defence to the underlying offence; and
 - (b) a person may be convicted of an offence against this section even if the person has not been convicted of the underlying offence.

122.4 Unauthorised disclosure of information by current and former Commonwealth officers etc.

- (1) A person commits an offence if:
 - (a) the person communicates information; and
 - (b) the person made or obtained the information by reason of his or her being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
 - (c) the person is under a duty not to disclose the information; and
 - (d) the duty arises under a law of the Commonwealth.

Penalty: Imprisonment for 2 years.

- (2) Absolute liability applies in relation to paragraph (1)(d).

Sunset provision

- (3) This section does not apply in relation to any communication of information that occurs after the end of 5 years after this section commences.

122.4A Communicating and dealing with information by non-Commonwealth officers etc.

Communication of information

- (1) A person commits an offence if:
 - (a) the person communicates information; and
 - (b) the information was not made or obtained by the person by reason of the person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
 - (c) the information was made or obtained by another person by reason of that other person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
 - (d) any one or more of the following applies:
 - (i) the information has a security classification of secret or top secret;

- (ii) the communication of the information damages the security or defence of Australia;
- (iii) the communication of the information interferes with or prejudices the prevention, detection, investigation, prosecution or punishment of a criminal offence against a law of the Commonwealth;
- (iv) the communication of the information harms or prejudices the health or safety of the Australian public or a section of the Australian public.

Note 1: For exceptions to the offences in this section, see section 122.5.

Note 2: The fault elements for this offence are intention for paragraph (1)(a) and recklessness for paragraphs (1)(b) to (d) (see section 5.6).

Penalty: Imprisonment for 5 years.

Other dealings with information

- (2) A person commits an offence if:
- (a) the person deals with information (other than by communicating it); and
 - (b) the information was not made or obtained by the person by reason of the person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
 - (c) the information was made or obtained by another person by reason of that other person being, or having been, a Commonwealth officer or otherwise engaged to perform work for a Commonwealth entity; and
 - (d) any one or more of the following applies:
 - (i) the information has a security classification of secret or top secret;
 - (ii) the dealing with the information damages the security or defence of Australia;
 - (iii) the dealing with the information interferes with or prejudices the prevention, detection, investigation, prosecution or punishment of a criminal offence against of a law of the Commonwealth;

- (iv) the dealing with the information harms or prejudices the health or safety of the Australian public or a section of the Australian public.

Note: The fault elements for this offence are intention for paragraph (2)(a) and recklessness for paragraphs (2)(b) to (d) (see section 5.6).

Penalty: Imprisonment for 2 years.

Proof of identity not required

- (3) In proceedings for an offence against this section, the prosecution is not required to prove the identity of the other person referred to in paragraph (1)(c) or (2)(c).

122.5 Defences

Powers, functions and duties in a person's capacity as a public official etc. or under arrangement

- (1) It is a defence to a prosecution for an offence by a person against this Division that:
- (a) the person was exercising a power, or performing a function or duty, in the person's capacity as a public official or a person who is otherwise engaged to perform work for a Commonwealth entity; or
 - (b) the person communicated, removed, held or otherwise dealt with the information in accordance with an arrangement or agreement to which the Commonwealth or a Commonwealth entity is party and which allows for the exchange of information.

Note: A defendant may bear an evidential burden in relation to the matters in this subsection (see subsection (12) of this section and subsection 13.3(3)).

Information that is already public

- (2) It is a defence to a prosecution for an offence by a person against this Division that the relevant information 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 matters in this subsection (see subsection 13.3(3)).

Information communicated etc. to integrity agency

- (3) It is a defence to a prosecution for an offence by a person against this Division that the person communicated the relevant information, or removed, held or otherwise dealt with the relevant information for the purpose of communicating it:
- (a) to any of the following:
- (i) the Inspector-General of Intelligence and Security, or a person engaged or employed to assist the Inspector-General as described in subsection 32(1) of the *Inspector-General of Intelligence and Security Act 1986*;
 - (ii) the Commonwealth Ombudsman, or another officer within the meaning of subsection 35(1) of the *Ombudsman Act 1976*;
 - (iia) the Australian Information Commissioner, a member of the staff of the Office of the Australian Information Commissioner, or a consultant engaged under the *Australian Information Commissioner Act 2010*;
 - (iii) the Law Enforcement Integrity Commissioner, a staff member of ACLEI, or a consultant to, or a person made available to, the Integrity Commissioner under the *Law Enforcement Integrity Commissioner Act 2006*; and
- (b) for the purpose of the Inspector-General, the Ombudsman, the Australian Information Commissioner or the Law Enforcement Integrity Commissioner (as the case requires) exercising a power, or performing a function or duty.

Note: A person mentioned in paragraph (3)(a) does not bear an evidential burden in relation to the matters in this subsection (see subsection (12)).

Information communicated etc. in accordance with the Public Interest Disclosure Act 2013 or the Freedom of Information Act 1982

- (4) It is a defence to a prosecution for an offence by a person against this Division that the person communicated the relevant information, or removed, held or otherwise dealt with the relevant
-

information for the purpose of communicating it, in accordance with:

- (a) the *Public Interest Disclosure Act 2013*; or
- (b) the *Freedom of Information Act 1982*.

Note: A defendant may bear an evidential burden in relation to the matters in this subsection (see subsection (12) of this section and subsection 13.3(3)).

Information communicated etc. for the purpose of reporting offences and maladministration

- (4A) It is a defence to a prosecution for an offence by a person against this Division that the person communicated, removed, held or otherwise dealt with the relevant information for the primary purpose of reporting, to an appropriate agency of the Commonwealth, a State or a Territory:
- (a) a criminal offence, or alleged criminal offence, against a law of the Commonwealth; or
 - (b) maladministration relating to the prevention, detection, investigation, prosecution or punishment of a criminal offence against a law of the Commonwealth; or
 - (c) maladministration relating to the performance of functions of the Australian Federal Police under:
 - (i) the *Australian Federal Police Act 1979*; or
 - (ii) the *Proceeds of Crime Act 2002*.

Note: A defendant may bear an evidential burden in relation to the matters in this subsection (see subsection (12) of this section and subsection 13.3(3)).

Information communicated etc. to a court or tribunal

- (5) It is a defence to a prosecution for an offence by a person against this Division that the person communicated the relevant information, or removed, held or otherwise dealt with the relevant information for the purpose of communicating it, to a court or tribunal (whether or not as a result of a requirement).

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

Information communicated etc. for the purposes of obtaining or providing legal advice

(5A) It is a defence to a prosecution for an offence by a person against this Division that the person communicated, removed, held or otherwise dealt with the relevant information for the primary purpose of obtaining or providing, in good faith, legal advice in relation to:

- (a) an offence against this Part; or
- (b) the application of any right, privilege, immunity or defence (whether or not in this Part) in relation to such an offence;

whether that advice was obtained or provided before or after the person engaged in the conduct constituting the offence.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

Information communicated etc. by persons engaged in business of reporting news etc.

(6) It is a defence to a prosecution for an offence by a person against this Division that the person communicated, removed, held or otherwise dealt with the relevant information in the person's capacity as a person engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news media, and:

- (a) at that time, the person reasonably believed that engaging in that conduct was in the public interest (see subsection (7)); or
- (b) the person:

- (i) was, at that time, a member of the administrative staff of an entity that was engaged in the business of reporting news, presenting current affairs or expressing editorial or other content in news media; and
- (ii) acted under the direction of a journalist, editor or lawyer who was also a member of the staff of the entity, and who reasonably believed that engaging in that conduct was in the public interest (see subsection (7)).

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

- (7) Without limiting paragraph (6)(a) or (b), a person may not reasonably believe that communicating, removing, holding or otherwise dealing with information is in the public interest if:
- (a) engaging in that conduct would be an offence under section 92 of the *Australian Security Intelligence Organisation Act 1979* (publication of identity of ASIO employee or ASIO affiliate); or
 - (b) engaging in that conduct would be an offence under section 41 of the *Intelligence Services Act 2001* (publication of identity of staff); or
 - (c) engaging in that conduct would be an offence under section 22, 22A or 22B of the *Witness Protection Act 1994* (offences relating to Commonwealth, Territory, State participants or information about the national witness protection program); or
 - (d) that conduct was engaged in for the purpose of directly or indirectly assisting a foreign intelligence agency or a foreign military organisation.

Information that has been previously communicated

- (8) It is a defence to a prosecution for an offence by a person against this Division if:
- (a) the person did not make or obtain the relevant information by reason of any of the following:
 - (i) his or her being, or having been, a Commonwealth officer;
 - (ii) his or her being otherwise engaged to perform work for a Commonwealth entity;
 - (iii) an arrangement or agreement to which the Commonwealth or a Commonwealth entity is party and which allows for the exchange of information; and
 - (b) the information has already been communicated, or made available, to the public (the **prior publication**); and
 - (c) the person was not involved in the prior publication (whether directly or indirectly); and
 - (d) at the time of the communication, removal, holding or dealing, the person believes that engaging in that conduct

will not cause harm to Australia's interests or the security or defence of Australia; and

- (e) having regard to the nature, extent and place of the prior publication, the person has reasonable grounds for that belief.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

Information relating to a person etc.

- (9) It is a defence to a prosecution for an offence by a person against this Division if:
- (a) the person did not make or obtain the relevant information by reason of any of the following:
 - (i) his or her being, or having been, a Commonwealth officer;
 - (ii) his or her being otherwise engaged to perform work for a Commonwealth entity;
 - (iii) an arrangement or agreement to which the Commonwealth or a Commonwealth entity is party and which allows for the exchange of information; and
 - (b) at the time of the communication, removal, holding or dealing, the person believes that the making or obtaining of the information by the person was required or authorised by law; and
 - (c) having regard to the circumstances of the making or obtaining of the information, the person has reasonable grounds for that belief; and
 - (d) any of the following apply:
 - (i) the person communicates the information to the person to whom the information relates;
 - (ii) the person is the person to whom the information relates;
 - (iii) the communication, removal, holding or dealing is in accordance with the express or implied consent of the person to whom the information relates.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

- (10) To avoid doubt, a defence to an offence may constitute an authorisation for the purposes of paragraph (9)(b).

Removing, holding or otherwise dealing with information for the purposes of communicating information

- (11) For the purposes of subsection (3), (4), (5) or (5A), it is not necessary to prove that information, that was removed, held or otherwise dealt with for the purposes of communicating it, was actually communicated.

Burden of proof for integrity agency officials

- (12) Despite subsection 13.3(3), in a prosecution for an offence against this Division, a person mentioned in subparagraph (3)(a)(i), (ii), (iia) or (iii) does not bear an evidential burden in relation to the matter in:
- (a) subsection (1), (4) or (4A); or
 - (b) either of the following:
 - (i) subparagraph (3)(a)(i), (ii), (iia) or (iii);
 - (ii) paragraph (3)(b), to the extent that that paragraph relates to the Inspector-General of Intelligence and Security, the Ombudsman, the Australian Information Commissioner or the Law Enforcement Integrity Commissioner.

Defences do not limit each other

- (13) No defence in this section limits the operation of any other defence in this section.

Division 123—Miscellaneous

123.1 Injunctions

Enforceable provisions

- (1) The provisions of Division 122 are enforceable under Part 7 of the Regulatory Powers Act.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person and relevant court

- (2) For the purposes of Part 7 of the Regulatory Powers Act, as that Part applies to the provisions of Division 122 of this Act:
- (a) the Minister is an authorised person; and
 - (b) each of the following is a relevant court:
 - (i) the Federal Court of Australia;
 - (ii) the Federal Circuit Court of Australia;
 - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Extension to external Territories

- (3) Part 7 of the Regulatory Powers Act, as that Part applies to the provisions of Division 122 of this Act, extends to every external Territory.

123.2 Forfeiture of articles etc.

- (1) A sketch, article, record or document which is made, obtained, recorded, retained, possessed or otherwise dealt with in contravention of this Part is forfeited to the Commonwealth.
- (2) In subsection (1), *sketch*, *article* and *record* have the same respective meanings as in Part 5.2.

123.3 Extended geographical jurisdiction—category D

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Part.

123.4 Effect of this Part on other rights, privileges, immunities or defences

Nothing in this Part limits or affects any other right, privilege, immunity or defence existing apart from this Part.

123.5 Requirements before proceedings can be initiated

- (1) Proceedings for the commitment of a person for trial for an offence against this Part must not be instituted without:
-

- (a) the written consent of the Attorney-General; and
 - (b) for proceedings that relate to security classified information—a certification by the Attorney-General that, at the time of the conduct that is alleged to constitute the offence, it was appropriate that the information had a security classification.
- (2) However, the following steps may be taken (but no further steps in proceedings may be taken) without consent or certification having been obtained:
- (a) a person may be arrested for the offence and a warrant for such an arrest may be issued and executed;
 - (b) a person may be charged with the offence;
 - (c) a person so charged may be remanded in custody or on bail.
- (3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.
- (4) In deciding whether to consent, the Attorney-General must consider whether the conduct might be authorised in a way mentioned in section 122.5.

7 Application

The amendments made by this Part apply to conduct that occurs on or after the commencement of this item.

Part 2—Consequential amendments

Agricultural and Veterinary Chemicals (Administration) Act 1992

8 Subsection 69F(3)

Omit “section 70 of the *Crimes Act 1914*”, substitute “Part 5.6 (secrecy of information) of the *Criminal Code*”.

Archives Act 1983

9 Subsection 30A(1) (note)

Omit “70 of the *Crimes Act 1914*”, substitute “122.4 of the *Criminal Code*”.

Australian Citizenship Act 2007

10 Section 3 (paragraph (a) of the definition of *national security offence*)

Repeal the paragraph.

Australian Crime Commission Act 2002

12 Schedule 1 (entry relating to the *Australian Security Intelligence Organisation Act 1979*)

Omit “*Crimes Act 1914*, section 85B”.

Australian Federal Police Act 1979

13 Subsection 4(1) (subparagraph (a)(i) of the definition of *protective service offence*)

Omit “79,”.

14 Subsection 4(1) (after subparagraph (a)(iib) of the definition of *protective service offence*)

Insert:

(iic) Part 5.6 of the *Criminal Code* (secrecy); or

Chemical Weapons (Prohibition) Act 1994

15 Subsection 102(5) (definition of *Commonwealth officer*)

Omit “70 of the *Crimes Act 1914*”, substitute “121.1 of the *Criminal Code*”.

Comprehensive Nuclear-Test-Ban Treaty Act 1998

16 Paragraph 74(1)(e)

Omit “70 of the *Crimes Act 1914*”, substitute “121.1 of the *Criminal Code*”.

Defence Home Ownership Assistance Scheme Act 2008

17 Subsection 81(5)

Repeal the subsection.

Freedom of Information Act 1982

18 Paragraph 78(1)(a)

Repeal the paragraph.

Law Enforcement Integrity Commissioner Act 2006

19 Paragraph 105(3)(a)

Repeal the paragraph.

Liquid Fuel Emergency Act 1984

20 Subsection 29(3)

Repeal the subsection.

Migration Act 1958

21 Subsection 503A(9) (definition of Commonwealth officer)

Omit “70 of the *Crimes Act 1914*”, substitute “121.1 of the *Criminal Code*”.

National Greenhouse and Energy Reporting Act 2007

22 Subsection 23(1) (note)

Omit “70 of the *Crimes Act 1914*”, substitute “122.4 of the *Criminal Code*”.

23 Subsection 57(2) (note)

Omit “70 of the *Crimes Act 1914*”, substitute “122.4 of the *Criminal Code*”.

Native Title Act 1993

24 Subsection 203DF(8)

Repeal the subsection.

Offshore Minerals Act 1994

25 Subsection 405(2) (note 3)

Repeal the note, substitute:

Note 3: See Part 5.6 of the *Criminal Code* for offences relating to secrecy of information.

Ombudsman Act 1976

26 Paragraph 14(2)(a)

Repeal the paragraph.

Parliamentary Service Act 1999

27 Subsection 65AA(2) (note)

Omit “70 of the *Crimes Act 1914* creates offences”, substitute “122.4 of the *Criminal Code* creates an offence”.

28 Subsection 65AB(2) (note)

Omit “70 of the *Crimes Act 1914* creates offences”, substitute “122.4 of the *Criminal Code* creates an offence”.

Public Service Act 1999

29 Subsection 72A(2) (note)

Omit “70 of the *Crimes Act 1914* creates offences”, substitute “122.4 of the *Criminal Code* creates an offence”.

30 Subsection 72B(2) (note)

Omit “70 of the *Crimes Act 1914* creates offences”, substitute “122.4 of the *Criminal Code* creates an offence”.

Renewable Energy (Electricity) Act 2000

31 Subsection 156(4)

Repeal the subsection.

***Textile, Clothing and Footwear Investment and Innovation
Programs Act 1999***

32 Subsection 37R(6)

Repeal the subsection.

33 Subsection 37ZZA(6)

Repeal the subsection.

34 Subsection 52(5)

Repeal the subsection.

Schedule 3—Aggravated offence for giving false or misleading information

Criminal Code Act 1995

1 After section 137.1 of the *Criminal Code*

Insert:

137.1A Aggravated offence for giving false or misleading information

- (1) A person commits an offence if:
- (a) the person commits an offence against subsection 137.1(1) (the *underlying offence*); and
 - (b) the information given in committing the underlying offence was given in relation to an application for, or the maintenance of, an Australian Government security clearance.

Penalty: Imprisonment for 5 years.

- (2) There is no fault element for the physical element in paragraph (1)(a) other than the fault elements (however described) for the underlying offence.
- (3) To avoid doubt:
- (a) a person does not commit an underlying offence for the purposes of paragraph (1)(a) if the person has a defence to the underlying offence; and
 - (b) a person may be convicted of an offence against subsection (1) even if the person has not been convicted of the underlying offence.

Alternative verdicts

- (4) If, on a trial of a person for an offence against subsection (1), the trier of fact:
- (a) is not satisfied that the person is guilty of that offence; and

- (b) is satisfied beyond reasonable doubt that the person is guilty of the underlying offence;
it may find the person not guilty of the offence against subsection (1) but guilty of the underlying offence.
- (5) Subsection (4) only applies if the person has been accorded procedural fairness in relation to the finding of guilt for the underlying offence.

References to section 137.1

- (6) A reference in any law to section 137.1 is taken to include a reference to this section.

Schedule 4—Telecommunications serious offences

Part 1—Amendments commencing at the same time as Schedules 1 and 3 to this Act

Telecommunications (Interception and Access) Act 1979

1 After subparagraph 5D(1)(e)(ib)

Insert:

- (ic) Division 82 of the *Criminal Code* (sabotage); or
- (id) Division 83 of the *Criminal Code* (other threats to security); or
- (ie) Division 91 of the *Criminal Code* (espionage); or
- (if) Division 92 of the *Criminal Code* (foreign interference);
or
- (ig) Division 92A of the *Criminal Code* (theft of trade secrets involving foreign government principal); or

2 At the end of paragraph 5D(1)(e)

Add:

- (viii) section 137.1A of the *Criminal Code* (aggravated offence for giving false or misleading information); or

**Part 2—Amendments commencing at the same time
as Schedule 2 to this Act**

Telecommunications (Interception and Access) Act 1979

3 After subparagraph 5D(1)(e)(vi)

Insert:

- (vii) Division 122 of the *Criminal Code* (secrecy of information); or

Schedule 5—Foreign influence transparency scheme

Part 1—Transitional provisions

1 Requirement to register in relation to pre-existing arrangements

If, at the time the *Foreign Influence Transparency Scheme Act 2018* commences, a registrable arrangement is in existence between a person and a foreign principal, then, despite section 16 of that Act, the person is not required to register under the scheme before the day that is 6 months after the day on which that Act commences.

Part 2—Amendments relating to the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018

Foreign Influence Transparency Scheme Act 2018

2 Section 10 (definition of *electoral donations threshold*)

Omit “\$13,500”, substitute “the disclosure threshold within the meaning of Part XX of the *Commonwealth Electoral Act 1918*”.

3 Section 10 (after paragraph (d) of the definition of *general political lobbying*)

Insert:

- (e) a person or entity that is registered under the *Commonwealth Electoral Act 1918* as a political campaigner;

4 At the end of subsection 12(1)

Add:

- ; (g) processes in relation to a person or entity registered under the *Commonwealth Electoral Act 1918* as a political campaigner.

5 At the end of section 12

Add:

Examples of processes in relation to registered political campaigner

- (7) For the purposes of paragraph (1)(g), the following are examples of processes in relation to a person or entity registered under the *Commonwealth Electoral Act 1918* as a political campaigner:
 - (a) processes in relation to the campaigner’s:
 - (i) constitution; or
 - (ii) platform; or
 - (iii) policy on any matter of public concern; or
 - (iv) administrative or financial affairs (in his or her capacity as a campaigner, if the campaigner is an individual); or

Schedule 5 Foreign influence transparency scheme

Part 2 Amendments relating to the Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Act 2018

- (v) membership; or
- (vi) relationships with foreign principals;
- (b) the conduct of the campaigner's campaign in relation to a federal election or designated vote;
- (c) the selection (however done) of officers of the campaigner's executive or delegates to its conferences;
- (d) the selection (however done) of the campaigner's leader and any spokespersons for the campaigner.

Schedule 6—Protection for persons providing information voluntarily to the Inspector-General

Inspector-General of Intelligence and Security Act 1986

1 After section 34A

Insert:

34B Protection for persons providing information voluntarily to the Inspector-General

- (1) This section applies in relation to a person if the person voluntarily provides, or makes available, information or documents to the Inspector-General for any of the following purposes:
- (a) making a complaint under Division 2 of Part II;
 - (b) the Inspector-General conducting an inspection under section 9A;
 - (c) the Inspector-General conducting a preliminary inquiry into a complaint under section 14;
 - (d) the Inspector-General conducting an inquiry under Division 3 of Part II.

Person not liable to penalties under Commonwealth laws

- (2) The person is not (subject to subsection (3)) liable to a penalty under any law of the Commonwealth for providing or making available the information or documents in accordance with subsection (1).

Exceptions

- (3) Subsection (2) does not apply:
- (a) in relation to proceedings for an offence against:
 - (i) section 137.1 or 137.2 (false or misleading information and documents), section 145.1 (using forged document)

Schedule 6 Protection for persons providing information voluntarily to the Inspector-General

- or 149.1 (obstructing Commonwealth officials) of the *Criminal Code*; or
 - (ii) Division 3 of Part III of the *Crimes Act 1914* (offences relating to evidence and witnesses); or
 - (iii) section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, in relation to an offence referred to in subparagraph (i) or (ii); or
- (b) if the provision:
- (i) is enacted after the commencement of this section; and
 - (ii) is expressed to have effect despite this section.
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[*Minister's second reading speech made in—
House of Representatives on 7 December 2017
Senate on 27 June 2018*]

(295/17)
