





# **National Security Legislation Amendment (Comprehensive Review and Other Measures No. 1) Act 2022**

**No. 31, 2022**

**An Act to amend the law relating to national  
security and intelligence services, 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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**An Act to amend the law relating to national  
security and intelligence services, and for related  
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*[Assented to 1 April 2022]*

The Parliament of Australia enacts:

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*No. 31, 2022      National Security Legislation Amendment (Comprehensive Review and  
Other Measures No. 1) Act 2022      1*

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## 1 Short title

This Act is the *National Security Legislation Amendment (Comprehensive Review and Other Measures No. 1) Act 2022*.

## 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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	1 April 2022
2. Schedules 1 to 8	The day after this Act receives the Royal Assent.	2 April 2022
3. Schedule 9	The later of: (a) the day after this Act receives the Royal Assent; and (b) the commencement of Schedule 2 to the <i>Security Legislation Amendment (Critical Infrastructure) Act 2021</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	2 April 2022 (paragraph (a) applies)
4. Schedule 10, Part 1	The day after this Act receives the Royal Assent.	2 April 2022
5. Schedule 10, Part 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.	

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
6. Schedule 10, Part 3	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.	
7. Schedule 10, Part 4	The later of: (a) the commencement of the provisions covered by item 5 of this table; and (b) the commencement of item 136 of Schedule 1 to the <i>Intelligence Oversight and Other Legislation Amendment (Integrity Measures) Act 2022</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
8. Schedules 11 to 14	The day after this Act receives the Royal Assent.	2 April 2022

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—Emergency authorisations

### *Intelligence Services Act 2001*

#### **1 Paragraph 8(1)(a)**

Omit “or 9B”, substitute “, 9B or 9D”.

#### **2 After section 9C**

Insert:

#### **9D Authorisations in an emergency—imminent risk to safety of an Australian person**

*When this section applies*

- (1) This section applies if an agency head is satisfied that:
  - (a) there is, or is likely to be, an imminent risk to the safety of an Australian person who is outside Australia; and
  - (b) it is necessary or desirable to undertake an activity, or a series of activities, for the specific purpose, or for purposes which include the specific purpose, of producing intelligence on the person; and
  - (c) it is not reasonably practicable to obtain the person’s consent to the agency producing that intelligence; and
  - (d) having regard to the nature and gravity of the risk, it is reasonable to believe that the person would consent to the agency producing that intelligence if the person were able to do so.

*Authorisation*

- (2) The agency head may, orally or in writing, give an authorisation under this section for the activity, or series of activities, if the agency head is satisfied that, apart from paragraph 9(1A)(b):
  - (a) the facts of the case would justify the responsible Minister giving an authorisation under section 9 because the agency head is satisfied that the conditions in subsections 9(1) and (1A) are met; and

- (b) the responsible Minister would have given the authorisation.

*Conditions on authorisation*

- (3) The authorisation is subject to any conditions specified by the agency head.

*Agency head to record and notify*

- (4) As soon as practicable after giving the authorisation (but no later than 8 hours after the authorisation is given) the agency head must, orally or in writing, notify the responsible Minister of the authorisation.
- (5) As soon as practicable after giving the authorisation (but no later than 48 hours after the authorisation is given) the agency head must:
- (a) if the authorisation is given orally—ensure that the authorisation is recorded in writing; and
  - (b) ensure that a summary of the facts of the case that the agency head was satisfied justified giving the authorisation is recorded in writing; and
  - (c) give to the responsible Minister:
    - (i) a copy of the authorisation; and
    - (ii) a summary of the facts of the case that the agency head was satisfied justified giving the authorisation; and
    - (iii) an explanation of the Minister’s obligation under subsection (6); and
  - (d) give to the Inspector-General of Intelligence and Security the documents referred to in subparagraphs (c)(i) and (ii); and
  - (e) if the Australian person is, or is likely to be, involved in an activity or activities that are, or are likely to be, a threat to security—give to the Attorney-General and the Minister responsible for administering the *Australian Security Intelligence Organisation Act 1979* (the **ASIO Minister**) the documents referred to in subparagraphs (c)(i) and (ii).

*Role of responsible Minister*

- (6) The responsible Minister must, as soon as practicable after being given documents under paragraph (5)(c), consider whether to cancel the authorisation under subsection (10).
- (7) If the Attorney-General is required to be given documents under paragraph (5)(e), the responsible Minister must have regard to any advice given by the Attorney-General when making a decision under subsection (6).

*Role of Inspector-General of Intelligence and Security*

- (8) Within 30 days after the Inspector-General of Intelligence and Security is given documents under paragraph (5)(d), the Inspector-General must:
  - (a) consider whether the agency head has complied with the requirements of this section; and
  - (b) provide the responsible Minister with a report on the Inspector-General's views of the extent of the compliance by the agency head with the requirements of this section; and
  - (c) provide to the Committee a copy of the conclusions in the report.

*Period of effect of authorisation*

- (9) The authorisation ceases to have effect at the earliest of the following times:
  - (a) the end of 6 months, starting on the day the authorisation is given;
  - (b) if the authorisation specifies a time when the authorisation ceases to have effect—that time;
  - (c) if the responsible Minister cancels the authorisation under subsection (10)—the time of cancellation;
  - (d) if the agency head cancels the authorisation under subsection (12)—the time of cancellation;
  - (e) if an authorisation for the activity, or series of activities, is given under section 9, 9A or 9B—the time the authorisation under section 9, 9A or 9B is given.

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*Cancellation by responsible Minister*

- (10) The responsible Minister may, in writing, cancel the authorisation.
- (11) If the responsible Minister cancels the authorisation under subsection (10), the Minister must, as soon as practicable, give written notice of the cancellation to:
  - (a) the Inspector-General of Intelligence and Security; and
  - (b) if the Attorney-General and the ASIO Minister are required to be given documents under paragraph (5)(e)—those Ministers.

*Cancellation by agency head*

- (12) The agency head must, in writing, cancel the authorisation if the agency head is satisfied that:
  - (a) there is not; and
  - (b) there is not likely to be;a significant risk to the safety of the Australian person.

Note: The agency head may cancel the authorisation in other circumstances (see subsection 33(3) of the *Acts Interpretation Act 1901*).

- (13) If the agency head cancels the authorisation under subsection (12), the agency head must, as soon as practicable, give written notice of the cancellation to:
  - (a) the responsible Minister; and
  - (b) the Inspector-General of Intelligence and Security; and
  - (c) if the Attorney-General and the ASIO Minister are required to be given documents under paragraph (5)(e)—those Ministers.

*Delegation*

- (14) An agency head may, in writing, delegate to a staff member (other than a consultant or contractor) all or any of the powers, functions or duties of the agency head under this section.

Note: See sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* on delegations.

- (15) In exercising a power, performing a function or discharging a duty under a delegation under subsection (14), the delegate must comply with any written directions of the agency head.

*Relationship with the Acts Interpretation Act 1901*

- (16) To avoid doubt, this section does not limit subsection 33(3) of the *Acts Interpretation Act 1901* to the extent that it applies to an authorisation given under this section.

*Status of instruments*

- (17) The following are not legislative instruments:
- (a) an authorisation given in writing under subsection (2);
  - (b) a written notice given under subsection (4), (11) or (13);
  - (c) a record made, or a summary or explanation given, under subsection (5);
  - (d) a report under subsection (8);
  - (e) a cancellation under subsection (10) or (12).

### **3 Subsections 10A(1) and (4)**

Omit “or 9B”, substitute “, 9B or 9D”.

### **4 Application of amendments**

The amendments made by this Schedule apply in relation to activities, or a series of activities, undertaken after the commencement of this Schedule.

## **Schedule 2—Authorisations relating to counter-terrorism**

### ***Intelligence Services Act 2001***

#### **1 Section 3**

Insert:

***involved with a listed terrorist organisation*** has a meaning affected by subsection 9(1AAB).

***listed terrorist organisation*** has the same meaning as in subsection 100.1(1) of the *Criminal Code*.

#### **2 After subparagraph 8(1)(a)(i)**

Insert:

(iaa) undertaking an activity, or a series of activities, for the specific purpose, or for purposes which include the specific purpose, of producing intelligence on one or more members of a class of Australian persons; or

#### **3 After subsection 9(1A)**

Insert:

(1AAA) Before a Minister gives an authorisation for an activity, or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(iaa), the Minister must also:

- (a) be satisfied that the class of Australian persons mentioned in that subparagraph is, or is likely to be, involved with a listed terrorist organisation; and
- (b) obtain the agreement (orally or in writing, but subject to subsection (1AA)) of the Attorney-General.

(1AAB) Without limiting the circumstances in which a person is involved with a listed terrorist organisation, a person is taken to be involved with a listed terrorist organisation if the person:

- (a) directs, or participates in, the activities of the organisation; or

- (b) recruits a person to join, or participate in the activities of, the organisation; or
- (c) provides training to, receives training from, or participates in training with, the organisation; or
- (d) is a member of the organisation (within the meaning of subsection 102.1(1) of the *Criminal Code*); or
- (e) provides financial or other support to the organisation; or
- (f) advocates for, or on behalf of, the organisation.

#### **4 Subsection 9(1AA)**

After “paragraph (1A)(b)”, insert “or (1AAA)(b)”.

#### **5 Paragraph 9(1AA)(a)**

Repeal the paragraph, substitute:

- (a) specify classes of Australian persons who are, or are likely to be:
  - (i) involved in an activity or activities that are, or are likely to be, a threat to security; or
  - (ii) involved with a listed terrorist organisation; and

#### **6 Paragraph 9(1AB)(a)**

After “subparagraph 8(1)(a)(i)”, insert “(iaa)”.

#### **7 Subsection 9(4)**

After “subparagraph 8(1)(a)(i)”, insert “(iaa)”.

#### **8 Paragraph 9(5)(b)**

After “paragraph (1A)(b)”, insert “or (1AAA)(b)”.

#### **9 Subsection 9(6)**

After “paragraph (1A)(b)”, insert “or (1AAA)(b)”.

#### **10 Paragraph 9A(1)(a)**

Omit “subparagraph 8(1)(a)(ia)”, substitute “subparagraph 8(1)(a)(iaa), (ia)”.

## **11 Subsection 10(1A)**

After “subparagraph 8(1)(a)(i),”, insert “(iaa),”.

## **12 After section 10**

Insert:

### **10AA Additional requirements for class authorisations**

- (1) This section applies if an authorisation is given to an agency under section 9 for an activity, or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(iaa), (ia) or (ib) in relation to one or more members of a class of Australian persons.
- (2) The agency head must ensure that a list is kept that:
  - (a) identifies each Australian person in relation to whom the agency intends to undertake activities, or a series of activities, under the authorisation; and
  - (b) gives an explanation of the reasons why the agency believes the person is a member of the class; and
  - (c) includes any other information that the agency head considers appropriate.

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

- (3) If:
  - (a) the Attorney-General’s agreement under paragraph 9(1A)(b) or (1AAA)(b) was obtained in relation to the class of Australian persons mentioned in subsection (1); and
  - (b) an Australian person who is a member of that class is included on the list;
 then the agency head must ensure that the Director-General of Security is given, as soon as practicable:
  - (c) a copy of the list; and
  - (d) written notice that the Australian person was included on the list.
- (4) The agency head must ensure that the list is available for inspection on request by the Inspector-General of Intelligence and Security.

- (5) The list and a notice under paragraph (3)(d) are not legislative instruments.

**13 Subsection 10A(3)**

Repeal the subsection, substitute:

- (3) If the report is in respect of an activity, or a series of activities, of a kind mentioned in subparagraph 8(1)(a)(iaa), (ia) or (ib), then:
- (a) the report must be provided to the Minister as soon as practicable, but no later than 3 months, after each of the following days:
    - (i) the day on which the relevant authorisation ceased to have effect;
    - (ii) the day on which the relevant authorisation was renewed; and
  - (b) the report must be accompanied with a statement identifying every Australian person who was included on the list referred to in section 10AA during the period the authorisation was in effect.

## **Schedule 3—Authorisations for activities in support of the Australian Defence Force**

### *Intelligence Services Act 2001*

#### **1 Subparagraph 8(1)(a)(ia)**

After “paragraph 6(1)(ba)”, insert “, 6B(1)(g) or 7(1)(d)”.

## Schedule 4—Authorisations for producing intelligence on Australians

### *Intelligence Services Act 2001*

#### **1 Section 3 (paragraphs (a), (b) and (c) of the definition of intelligence information)**

Omit “information” (wherever occurring), substitute “intelligence”.

#### **2 Section 3**

Insert:

*prescribed activity* has the meaning given by subsection 8(1B).

#### **3 After subsection 8(1)**

Insert:

- (1A) For the purposes of subparagraphs (1)(a)(i), (iaa) and (ia), an agency undertakes an activity, or a series of activities, for the specific purpose, or for purposes which include the specific purpose, of producing intelligence on an Australian person, or one or more members of a class of Australian persons, only if:
- (a) the agency undertakes a prescribed activity to obtain that intelligence; or
  - (b) the agency expressly or impliedly requests an authority referred to in paragraph 13(1)(c) to undertake a prescribed activity to obtain that intelligence.
- (1B) ***Prescribed activity*** means a covert and intrusive activity, or a series of covert and intrusive activities and, to avoid doubt, includes an activity, or a series of activities, that ASIO could not undertake in at least one State or Territory without it being authorised by warrant under:
- (a) Division 2 of Part III of the *Australian Security Intelligence Organisation Act 1979*; or
  - (b) Part 2-2 of the *Telecommunications (Interception and Access) Act 1979*.

## Schedule 5—ASIS cooperating with ASIO

### *Intelligence Services Act 2001*

#### **1 Paragraph 13B(1)(b)**

Repeal the paragraph.

#### **2 Subsection 13B(3)**

Repeal the subsection (including the heading), substitute:

*When ASIO notice is not required—particular activity outside Australia*

- (3) Paragraph (1)(d) does not apply in relation to the undertaking of a particular activity in relation to a particular Australian person if:
- (a) the activity will be undertaken outside Australia; and
  - (b) a staff member of ASIS who:
    - (i) is authorised under subsection (7); and
    - (ii) will be undertaking the activity;reasonably believes that it is not practicable in the circumstances for ASIO to notify ASIS in accordance with paragraph (1)(d) before undertaking the activity.

## Schedule 6—AGO cooperating with authorities of other countries

### *Intelligence Services Act 2001*

#### **1 After subsection 13(3)**

Insert:

##### *Cooperating with authorities of other countries—AGO*

- (3A) Despite paragraph (1)(c), subject to any arrangements made or directions given by the responsible Minister, AGO may, for the purposes of performing its functions under paragraph 6B(1)(e), (ea) or (h), cooperate with authorities of other countries if they are capable of assisting AGO in the performance of its functions.
- (3B) The Director of AGO must, as soon as practicable after each year ending on 30 June, give to the responsible Minister and the Inspector-General of Intelligence and Security a report about any significant cooperation under subsection (3A) by AGO with authorities of other countries referred to in that subsection.

#### **2 Before subsection 13(6)**

Insert:

##### *Reports by AGO and ASD*

#### **3 Subsection 13(6)**

After “subsection”, insert “(3B) or”.

## **Schedule 7—ONI cooperating with other entities**

### ***Office of National Intelligence Act 2018***

#### **1 Subsection 4(1)**

Insert:

*public international organisation* has the same meaning as in section 70.1 of the *Criminal Code*.

#### **2 Paragraph 13(1)(a)**

Repeal the paragraph, substitute:

- (a) subject to subsections (5) and (6):
  - (i) an authority of another country; or
  - (ii) a public international organisation; approved in an instrument under subsection (2); and

#### **3 Subsection 13(2)**

After “country”, insert “, or a public international organisation”.

#### **4 Paragraph 54(2)(aa)**

After “country”, insert “or a public international organisation”.

#### **5 Savings**

An approval given for the purposes of subsection 13(2) of the *Office of National Intelligence Act 2018* and in force immediately before this Schedule commences continues in force, on and after that commencement, as if it had been given under that subsection as amended by this Schedule.

## Schedule 8—Suspension of travel documents

### *Australian Passports Act 2005*

#### **1 Subsection 22A(1)**

Omit “14 days”, substitute “28 days”.

#### **2 Application of amendment**

The amendment to subsection 22A(1) of the *Australian Passports Act 2005* made by this Schedule applies to requests that are made under subsection 22A(2) of that Act after the commencement of this Schedule.

### *Foreign Passports (Law Enforcement and Security) Act 2005*

#### **3 Section 15A (heading)**

Repeal the heading, substitute:

#### **15A Request for 28 day surrender relating to security risk**

#### **4 Subsection 15A(2)**

Omit “14 days”, substitute “28 days”.

#### **5 Section 16A (heading)**

Repeal the heading, substitute:

#### **16A Demand for 28 day surrender of foreign travel document ordered by Minister on request under section 15A**

#### **6 Subsections 16A(6) and (7)**

Omit “14 days”, substitute “28 days”.

#### **7 Application of amendments**

The amendments to sections 15A and 16A of the *Foreign Passports (Law Enforcement and Security) Act 2005* made by this Schedule apply to requests that are made under section 15A of that Act after the commencement of this Schedule.

## **Schedule 9—Online activities**

### ***Criminal Code Act 1995***

#### **1 Subsection 476.4(2) of the *Criminal Code***

Omit “sections 476.5 and 476.6”, substitute “section 476.6”.

#### **2 Section 476.5 of the *Criminal Code***

Repeal the section.

#### **3 Section 476.6 of the *Criminal Code* (heading)**

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

#### **4 Subsection 476.6(1) of the *Criminal Code***

Omit “ASD” (first occurring), substitute “an agency (within the meaning of subsection (10))”.

#### **5 Paragraph 476.6(1)(b) of the *Criminal Code***

Omit “ASD”, substitute “the agency”.

#### **6 Paragraph 476.6(2)(a)**

Omit “ASD”, substitute “an agency”.

#### **7 Paragraph 476.6(2)(c)**

Omit “ASD”, substitute “the agency”.

#### **8 Subsection 476.6(6)**

Omit “ASD”, substitute “an agency”.

#### **9 Paragraph 476.6(8)(a)**

Omit “to ASD”, substitute “to an agency”.

#### **10 Subsection 476.6(8)**

Omit “of ASD”, substitute “of the agency”.

## 11 Subsection 476.6(10)

Insert:

*agency* means ASIS, ASD or AGO.

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

*ASIS* means the Australian Secret Intelligence Service.

## 12 Subsection 476.6(10) (definition of *staff member*)

Repeal the definition, substitute:

*staff member* means:

(a) in relation to ASIS:

- (i) the Director-General of ASIS; or
- (ii) a member of the staff of ASIS (whether an employee of ASIS, a consultant or contractor to ASIS, or a person who is made available by another Commonwealth or State authority or other person to perform services for ASIS); or

(b) in relation to ASD:

- (i) the Director-General of ASD; or
- (ii) a member of the staff of ASD (whether an employee of ASD, a consultant or contractor to ASD, or a person who is made available by another Commonwealth or State authority or other person to perform services for ASD); or

(c) in relation to AGO:

- (i) the Director of AGO; or
- (ii) a member of the staff of AGO (whether an employee of AGO, a consultant or contractor to AGO, or a person who is made available by another Commonwealth or State authority or other person to perform services for AGO).

## 13 Application of amendments

The amendments made by this Part apply in relation to conduct engaged in after the commencement of this Schedule.

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## **Schedule 10—Privacy**

### **Part 1—Privacy rules of ASIS, AGO and ASD**

#### *Intelligence Services Act 2001*

##### **1 After subsection 15(1)**

Insert:

- (1A) The agencies must not communicate intelligence information concerning Australian persons, except in accordance with the rules.

##### **2 Subsection 15(5)**

Repeal the subsection, substitute:

- (5) The Minister must ensure that the rules are published on the relevant agency's website as soon as practicable after the rules are made, except to the extent that the rules contain:
- (a) operationally sensitive information (within the meaning of Schedule 1); or
  - (b) information that would or might prejudice:
    - (i) Australia's national security or the conduct of Australia's foreign relations; or
    - (ii) the performance by the relevant agency of its functions.

##### **3 After paragraph 29(1)(cf)**

Insert:

- (cg) to review the privacy rules made under section 15 of this Act; and

##### **4 Paragraph 29(3)(f)**

Repeal the paragraph, substitute:

- (f) reviewing compliance by ASIS, AGO and ASD with the privacy rules made under section 15 of this Act; or

## **5 Application of amendments**

- (1) The amendment to subsection 29(1) of the *Intelligence Services Act 2001* made by this Part applies to privacy rules made on or after the commencement of this Part.
- (2) The other amendments to that Act made by this Part apply to the communication and retention of intelligence information that occurs after the commencement of this Part, whether the intelligence information was obtained or produced before or after that commencement.

## Part 2—Privacy rules of DIO

### *Inspector-General of Intelligence and Security Act 1986*

#### **6 Subsection 35(2B)**

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

#### **7 Subsection 35(2B)**

Omit “section 15”, substitute “section 15 or 41C”.

#### **8 Subsection 35(2B) (note)**

Repeal the note, substitute:

Note: The rules referred to in this subsection regulate the communication and retention of intelligence information (within the meaning of the *Intelligence Services Act 2001*) concerning Australian persons (within the meaning of that Act).

### *Intelligence Services Act 2001*

#### **9 Section 3 (after paragraph (c) of the definition of *intelligence information*)**

Insert:

(ca) intelligence obtained or produced by DIO in the performance of its intelligence functions;

#### **10 After paragraph 29(1)(cg)**

Insert:

(ch) to review the privacy rules made under section 41C of this Act; and

#### **11 After paragraph 29(3)(f)**

Insert:

(faa) reviewing compliance by DIO with the privacy rules made under section 41C of this Act; or

## 12 Before section 42

Insert:

### 41C Rules to protect privacy of Australians—DIO

- (1) The responsible Minister in relation to DIO must make written rules regulating the communication and retention by DIO of intelligence information concerning Australian persons.
- (2) DIO must not communicate intelligence information concerning Australian persons, except in accordance with the rules.
- (3) In making the rules, the Minister must have regard to the need to ensure that the privacy of Australian persons is preserved as far as is consistent with the proper performance by DIO of its functions.
- (4) Before making the rules, the Minister must consult with:
  - (a) the Attorney-General; and
  - (b) the Inspector-General of Intelligence and Security; and
  - (c) the Director of DIO.
- (5) For the purpose of consultations under paragraphs (4)(a) and (b), the Minister must provide a copy of the rules the Minister is proposing to make to the Attorney-General and to the Inspector-General of Intelligence and Security.
- (6) The Minister must ensure that the rules are published on DIO's website as soon as practicable after the rules are made, except to the extent that the rules contain:
  - (a) operationally sensitive information (within the meaning of Schedule 1); or
  - (b) information that would or might prejudice:
    - (i) Australia's national security or the conduct of Australia's foreign relations; or
    - (ii) the performance by DIO of its functions.
- (7) Rules made under subsection (1) are not legislative instruments.
- (8) The Inspector-General of Intelligence and Security must brief the Committee on the content and effect of the rules if:

- (a) the Committee requests the Inspector-General of Intelligence and Security to do so; or
- (b) the rules change.

### **13 Application of amendments**

- (1) The amendments to the *Inspector-General of Intelligence and Security Act 1986* made by this Part apply to a report prepared under section 46 of the *Public Governance, Performance and Accountability Act 2013* for the period in which this Part commences, and for later periods.
- (2) The amendment to subsection 29(1) of the *Intelligence Services Act 2001* made by this Part applies to privacy rules made on or after the commencement of this Part.
- (3) The other amendments to the *Intelligence Services Act 2001* made by this Part apply to the communication and retention of intelligence information that occurs after the commencement of this Part, whether the intelligence information was obtained or produced before or after that commencement.

## Part 3—Privacy rules of ONI

### *Inspector-General of Intelligence and Security Act 1986*

#### 14 Subsection 35(2C) (note)

Repeal the note, substitute:

Note: The rules referred to in this subsection regulate the collection, communication, handling and retention of certain information that is personal information about an Australian citizen or permanent resident (within the meaning of the *Office of National Intelligence Act 2018*).

### *Intelligence Services Act 2001*

#### 15 Before paragraph 29(1)(c)

Insert:

(ci) to review the privacy rules made under section 53 of the *Office of National Intelligence Act 2018*; and

#### 16 Paragraph 29(3)(fa)

Repeal the paragraph, substitute:

(fa) reviewing compliance by ONI with the privacy rules made under section 53 of the *Office of National Intelligence Act 2018*; or

### *Office of National Intelligence Act 2018*

#### 17 Section 3 (paragraph beginning “This Act also deals with”)

Omit “identifiable information and”, substitute “certain personal information about an Australian citizen or permanent resident, as well as”.

#### 18 Subsection 4(1) (definition of *identifiable information*)

Repeal the definition.

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## 19 Subsection 4(1)

Insert:

*intelligence information* has the meaning given by subsection 53(1C).

*personal information about an Australian citizen or permanent resident* has the meaning given by subsection 53(1B).

## 20 After paragraph 7(1)(g)

Insert:

(ga) to communicate, in accordance with the Government's requirements, intelligence that is produced under paragraph (c), (d) or (g);

## 21 Paragraph 53(1)(a)

Omit "identifiable information", substitute "personal information about an Australian citizen or permanent resident".

## 22 Paragraph 53(1)(b)

Omit "identifiable information", substitute "intelligence information that is personal information about an Australian citizen or permanent resident".

## 23 After subsection 53(1)

Insert:

(1A) ONI must not, except in accordance with the privacy rules:

- (a) collect personal information about an Australian citizen or permanent resident under paragraph 7(1)(g); or
- (b) communicate intelligence information that is personal information about an Australian citizen or permanent resident.

(1B) *Personal information about an Australian citizen or permanent resident* means information or an opinion about an identified Australian citizen or permanent resident, or an Australian citizen or permanent resident who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and

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

(1C) **Intelligence information** means intelligence produced by ONI under paragraph 7(1)(c), (d) or (g).

## 24 Subsection 53(5)

Repeal the subsection.

## 25 Application of amendments

- (1) The amendments to the *Inspector-General of Intelligence and Security Act 1986* made by this Part apply in relation to a report prepared under section 46 of the *Public Governance, Performance and Accountability Act 2013* for the period in which this Part commences, and for later periods.
- (2) The amendment to subsection 29(1) of the *Intelligence Services Act 2001* made by this Part applies to privacy rules made on or after the commencement of this Part.
- (3) The other amendments to the *Intelligence Services Act 2001*, and the amendments to the *Office of National Intelligence Act 2018*, made by this Part apply to:
  - (a) the collection of information under paragraph 7(1)(g) of the *Office of National Intelligence Act 2018* that occurs after the commencement of this Part; and
  - (b) the communication, handling and retention of intelligence information that occurs after that commencement, whether the intelligence information was produced before or after that commencement.

## **Part 4—Contingent amendments**

### *Intelligence Services Act 2001*

#### **26 Section 3 (definition of *intelligence function*)**

Before “means”, insert “, in relation to AUSTRAC,”.

## Schedule 11—Assumed identities

### *Crimes Act 1914*

**1 Section 15K (subparagraph (a)(iii) of the definition of *chief officer*)**

Omit “and”.

**2 Section 15K (at the end of paragraph (a) of the definition of *chief officer*)**

Add:

- (iv) in relation to the Australian Signals Directorate—the Director-General of the Australian Signals Directorate; and

**3 Section 15K (at the end of the definition of *intelligence agency*)**

Add:

- ; or (d) the Australian Signals Directorate.

**4 Section 15K (paragraphs (a), (b) and (c) of the definition of *intelligence officer*)**

Repeal the paragraphs, substitute:

- (a) for an intelligence agency other than the Office of National Intelligence—a person who is a staff member (within the meaning of the *Intelligence Services Act 2001*) of the agency; and
- (b) for the Office of National Intelligence—a staff member (within the meaning of the *Office of National Intelligence Act 2018*) of the Office of National Intelligence;

**5 At the end of subsection 15KB(4)**

Add:

- ; or (i) in the case of the Australian Signals Directorate—a person who holds the position, or performs the duties, of an APS

Executive Officer Level 1 position, or an equivalent or higher position, in the Australian Signals Directorate.

**6 Paragraph 15KG(b)**

After “Office of National Intelligence”, insert “or the Australian Signals Directorate”.

**7 Subsection 15KH(2)**

After “Office of National Intelligence”, insert “or the Australian Signals Directorate”.

**8 Paragraph 15KI(2A)(b)**

After “Office of National Intelligence”, insert “or the Australian Signals Directorate”.

**9 Paragraph 15KI(2A)(c)**

Omit “another intelligence agency”, substitute “the Australian Security Intelligence Organisation or the Australian Secret Intelligence Service”.

**10 At the end of subsection 15KI(2A)**

Add:

; or (d) if the chief officer of the Australian Signals Directorate granted the authority—the chief officer of the Australian Security Intelligence Organisation or the Australian Secret Intelligence Service.

**11 Paragraph 15KX(2A)(b)**

After “Office of National Intelligence”, insert “or the Australian Signals Directorate”.

**12 Paragraph 15KX(2A)(c)**

Omit “another intelligence agency”, substitute “the Australian Security Intelligence Organisation or the Australian Secret Intelligence Service”.

**13 After paragraph 15KX(2A)(c)**

Insert:

; or (d) if the chief officer of the Australian Signals Directorate granted the authority—the chief officer of the Australian

Security Intelligence Organisation or the Australian Secret Intelligence Service.

**14 Paragraph 15KY(3)(b)**

Repeal the paragraph.

**15 Subsection 15LH(3) (paragraph (g) of the definition of *senior officer*)**

Omit “a senior ASIS intelligence officer designated by the Deputy Director-General of ASIS, or a person occupying an equivalent or higher position in ASIS”, substitute “an intelligence officer who holds, or is acting in, a position in ASIS that is equivalent to, or higher than, a position occupied by an SES employee”.

**16 Subsection 15LH(3) (after paragraph (ga) of the definition of *senior officer*)**

Insert:

(gb) in relation to the Australian Signals Directorate—an intelligence officer who holds, or is acting in, a position in the Australian Signals Directorate that is equivalent to, or higher than, a position occupied by an SES employee in the Australian Signals Directorate; and

## **Schedule 12—Authorities of other countries**

### ***Intelligence Services Act 2001***

#### **1 Section 3**

Before “In this Act”, insert “(1)”.

#### **2 Subsection 3(1)**

Insert:

*authority*, of another country, has a meaning affected by subsection (2).

#### **3 At the end of section 3**

Add:

- (2) For the purposes of determining whether a body is an authority of another country, it does not matter whether:
  - (a) the body is established by a law of the country; or
  - (b) the body is connected with an internationally recognised government of the country.

## Schedule 13—ASIO authorisations

### *Australian Security Intelligence Organisation Act 1979*

#### **1 After subsection 24(2)**

Add:

- (2A) To avoid doubt, and without limiting subsection (2), if approval is given to a person or class of persons holding, occupying or performing the duties of an office or position, then the approval extends to such an office or position that comes into existence after the approval is given.
- (2B) Subsection (2A) does not, by implication, affect the interpretation of any other provision of this Act.

#### **2 After subsection 24(3)**

Add:

*Records of persons who exercise the authority*

- (3A) The Director-General must, as soon as practicable after the authority conferred by a relevant warrant or relevant device recovery provision is exercised on behalf of the Organisation, cause one or more written records to be made that identify each person who exercised that authority.

### *Telecommunications (Interception and Access) Act 1979*

#### **3 Section 12**

Before “The Director-General”, insert “(1)”.

#### **4 Subsection 12(1)**

After “approve any persons”, insert “, or class of persons,”.

#### **5 At the end of section 12**

Add:

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- (2) To avoid doubt, and without limiting subsection (1), if approval is given to a person or class of persons holding, occupying or performing the duties of an office or position, then the approval extends to such an office or position that comes into existence after the approval is given.
  - (3) Subsection (2) does not, by implication, affect the interpretation of any other provision of this Act.
  - (4) The Director-General of Security must, as soon as practicable after the authority conferred by a Part 2-2 warrant is exercised on behalf of the Organisation, cause one or more written records to be made that identify each person who exercised that authority.

## **6 Application of amendments**

- (1) Subsection 24(2A) of the *Australian Security Intelligence Organisation Act 1979* (as inserted by this Schedule) applies in relation to approvals given after the commencement of this Schedule to exercise authority conferred by:
  - (a) a relevant warrant issued before or after that commencement;  
or
  - (b) a relevant device recovery provision relating to a relevant warrant issued before or after that commencement.
- (2) Subsection 24(3A) of the *Australian Security Intelligence Organisation Act 1979* (as inserted by this Schedule) applies in relation to the exercise by a person, after the commencement of this Schedule, of authority conferred by a relevant warrant or relevant device recovery provision, whether or not:
  - (a) approval for the person to exercise the authority was given before or after that commencement; or
  - (b) the warrant to which the authority relates was issued before or after that commencement.
- (3) Subsection 12(1) of the *Telecommunications (Interception and Access) Act 1979* (as amended by this Schedule), and subsection 12(2) of that Act (as inserted by this Schedule), apply in relation to approvals given after the commencement of this Schedule to exercise authority conferred by a warrant issued before or after that commencement.

- (4) Subsection 12(3) of the *Telecommunications (Interception and Access) Act 1979* (as inserted by this Schedule) applies in relation to the exercise by a person, after the commencement of this Schedule, of authority conferred by a warrant, whether or not:
- (a) approval for the person to exercise the authority was given before or after that commencement; or
  - (b) the warrant to which the authority relates was issued before or after that commencement.

## **Schedule 14—Amendments related to the Intelligence Services Amendment (Establishment of the Australian Signals Directorate) Act 2018**

### *Intelligence Services Act 2001*

#### **1 Subsections 9(4) and 10(1A)**

Omit “or (ii)”, substitute “, (ii) or (iii)”.

#### **2 Subsection 13(5)**

Omit “this section”, substitute “subsection (4)”.

#### **3 Subsection 13(5)**

Omit “subsection (4)”, substitute “that subsection”.

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[*Minister’s second reading speech made in—  
House of Representatives on 25 November 2021  
Senate on 30 March 2022*]

(105/21)

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